

Establishment of Harmonized Policies for the ICT Market in the ACP countries

# Access to Public Information (Freedom of Information): Assessment Report

# HIPCAR

Harmonization of ICT Policies,  
Legislation and Regulatory  
Procedures in the Caribbean





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## Foreword

Information and communication technologies (ICTs) are shaping the process of globalisation. Recognising their potential to accelerate the Caribbean region's economic integration and thereby its greater prosperity and social transformation, the Caribbean Community (CARICOM) Single Market and Economy has developed an ICT strategy focusing on strengthened connectivity and development.

Liberalisation of the telecommunication sector is one of the key elements of this strategy. Coordination across the region is essential if the policies, legislation, and practices resulting from each country's liberalisation are not to be so various as to constitute an impediment to the development of a regional market.

The project 'Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures' (HIPCAR) has sought to address this potential impediment by bringing together and accompanying all 15 Caribbean countries in the Group of African, Caribbean and Pacific States (ACP) as they formulate and adopt harmonised ICT policies, legislation, and regulatory frameworks. Executed by the International Telecommunication Union (ITU), the project has been undertaken in close cooperation with the Caribbean Telecommunications Union (CTU), which is the chair of the HIPCAR Steering Committee. A global steering committee composed of the representatives of the ACP Secretariat and the Development and Cooperation - EuropeAid (DEVCO, European Commission) oversees the overall implementation of the project.

This project is taking place within the framework of the ACP Information and Telecommunication Technologies (@CP-ICT) programme and is funded under the 9<sup>th</sup> European Development Fund (EDF), which is the main instrument for providing European aid for development cooperation in the ACP States, and co-financed by the ITU. The @CP-ICT aims to support ACP governments and institutions in the harmonization of their ICT policies in the sector by providing high-quality, globally-benchmarked but locally-relevant policy advice, training and related capacity building.

All projects that bring together multiple stakeholders face the dual challenge of creating a sense of shared ownership and ensuring optimum outcomes for all parties. HIPCAR has given special consideration to this issue from the very beginning of the project in December 2008. Having agreed upon shared priorities, stakeholder working groups were set up to address them. The specific needs of the region were then identified and likewise potentially successful regional practices, which were then benchmarked against practices and standards established elsewhere.

These detailed assessments, which reflect country-specific particularities, served as the basis for the model policies and legislative texts that offer the prospect of a legislative landscape for which the whole region can be proud. The project is certain to become an example for other regions to follow as they too seek to harness the catalytic force of ICTs to accelerate economic integration and social and economic development.

I take this opportunity to thank the European Commission and ACP Secretariat for their financial contribution. I also thank the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunication Union (CTU) Secretariat for their contribution to this work. Without political will on the part of beneficiary countries, not much would have been achieved. For that, I express my profound thanks to all the ACP governments for their political will which has made this project a resounding success.



Brahima Sanou  
BDT, Director



## Acknowledgements

The present document represents an achievement of the regional activities carried out under the HIPCAR project “Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”, officially launched in Grenada in December 2008. It is a companion document to the Model Policy Guidelines and Legislative Texts on this HIPCAR area of work<sup>1</sup>.

In response to both the challenges and the opportunities from information and communication technologies’ (ICTs) contribution to political, social, economic and environmental development, the International Telecommunication Union (ITU) and the European Commission (EC) joined forces and signed an agreement aimed at providing “*Support for the Establishment of Harmonized Policies for the ICT market in the ACP*”, as a component of the programme “ACP-Information and Communication Technologies (@CP-ICT)” within the framework of the 9<sup>th</sup> European Development Fund (EDF), i.e., ITU-EC-ACP project.

This global ITU-EC-ACP project is being implemented through three separate sub-projects customized to the specific needs of each region: the Caribbean (HIPCAR), sub-Saharan Africa (HIPSSA) and the Pacific Islands Countries (ICB4PAC).

The HIPCAR Steering Committee – chaired by the Caribbean Telecommunications Union (CTU) – provided guidance and support to a team of consultants including Ms. Pricilla Banner and Mr. Gilberto Martins de Almeida, who prepared the initial draft documents. The documents were then reviewed, finalized and adopted by broad consensus by the participants at the First Consultation Workshop for HIPCAR’s Working Group 1 on ICT Policy and Legislative Framework on Information Society Issues, held in Saint Lucia on 8-12 March 2010. Based on the assessment report, Model Policy Guidelines and Legislative Texts were developed, reviewed and adopted by broad consensus by the participants at the Second Consultation Workshop held in Saint Kitts and Nevis on 19-22 July 2010.

ITU would like to especially thank the workshop delegates from the Caribbean ICT and telecommunications ministries and regulators as well as their counterparts in the ministries of justice and legal affairs, academia, civil society, operators, and regional organizations, for their hard work and commitment in producing the contents of the HIPCAR model texts. The contributions from the Caribbean Community Secretariat (CARICOM) and the Caribbean Telecommunications Union (CTU) are also gratefully acknowledged.

Without the active involvement of all of these stakeholders, it would have been impossible to produce a document such as this, reflecting the overall requirements and conditions of the Caribbean region while also representing international best practice.

The activities have been implemented by Ms Kerstin Ludwig, responsible for the coordination of activities in the Caribbean (HIPCAR Project Coordinator), and Mr Sandro Bazzanella, responsible for the management of the whole project covering sub-Saharan Africa, the Caribbean and the Pacific (ITU-EC-ACP Project Manager) with the overall support of Ms Silvia Villar, ITU-EC-ACP Project Assistant. The work was carried under the overall direction of Mr Cosmas Zavazava, Chief, Project Support and Knowledge Management (PKM) Department. The document has further benefited from comments of the ITU Telecommunication Development Bureau’s (BDT) ICT Applications and Cybersecurity Division (CYB), and Regulatory and Market Environment Division (RME). Support was provided by Mr. Philip Cross, ITU Area Representative for the Caribbean. The team at ITU’s Publication Composition Service was responsible for its publication.

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<sup>1</sup> HIPCAR Model Policy Guidelines and Legislative Texts, including implementation methodology, are available at [www.itu.int/ITU-D/projects/ITU\\_EC\\_ACP/hipcar/index.html](http://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/index.html)





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## Section I: Introduction

Public access to information, also known as Freedom of Information (“FOI”), is generally deemed to create an enabling environment for democratic governance, by providing openness, transparency and accountability within government.

Legislation on such matter, the so-called Freedom of Information Act (“FOIA”), allows citizens to have a direct and enforceable right of access to information held by public bodies and private bodies exercising public functions (governmental and quasi governmental entities), as well as to information held by private parties where access to which has not been restrained.

Such direct access allows citizens to have more frank and informed interactions with the government and to participate in democratic governance in more meaningful ways. This includes citizen’s ability to participate in the formation of discourses aimed at influencing government’s decision-making, as well as to critically scrutinize government policies and actions, for the purpose of improving policies and actions and keeping government accountable.

Empowerment of citizens with information concerning official policy-making contributes to the flourishing of participatory democracy. Therefore, relevant legislation allows citizens to effectively monitor government’s activities in pursuit of good governance and to ensure that the government is honouring its duties vis-à-vis citizenry. On the other hand, it also allows governments to build an environment of trust and confidence with its citizens.

By the same token, FOIA recognizes the detrimental effect which the disclosure of certain information may have on the public or community interests or on private or business interests of persons where the government is the keeper of such information by law. FOIA, thus, seeks to balance these competing interests by providing for disclosure of or access to information generally, with specified exceptions which vary from one jurisdiction to the next.

This need for balance is particularly pertinent in view of the manner in which information and communication technology has changed the landscape of information storage, maintenance, dissemination, management and the like.

Freedom of Information laws generally contain certain fundamental principles which are necessary for the law to achieve its purpose. In this regard, FOIA normally includes a presumption in favour of disclosure of information, procedural guidelines which provide the manner in which the right of access is exercised and the information is obtained, specified exemptions to the right of access, and the right of appeal to an independent body regarding any claimed refusal or breach of the right to access information.

Ideally, FOIA should also contain concrete measures to ensure proper training and effective implementation and enforcement, as well as protection of individuals who release information in good faith.



## Section II: Executive Summary

This Assessment Report has been prepared in accordance with Phase 1 of the Work Plan for the Working Group on ICT Legislative Framework – Information Society Issues under the HIPCAR Project<sup>2</sup>, which makes provision for a critical assessment report of Access to Public Information (Freedom of Information) existing in a number of States (the “Beneficiary Member States”<sup>3</sup>) in the Caribbean Region. This Assessment Report is for discussion and adoption by the HIPCAR Working Group on ICT Legislative Framework Meeting to be held in Saint Lucia on March 8-12th, 2010.

The purpose of this Assessment Report is to provide an analysis of the key issues and common principles reflected in ICT regulatory and legislative frameworks relating to Access to Public Information (Freedom of Information (FOI) in the Beneficiary Member States and to provide a reference document for policy makers, legislators and regulators in the Beneficiary Member States that will serve as a basis for harmonized policy guidelines to be developed in Phase II of the Work Plan, and that may be used to produce model legislation under Phase III of the Work Plan.

Section 3 of this Assessment Report briefly highlights the challenges inherent to legislating in the area of FOI, as well as the challenges posed by the task of harmonizing the legislative framework of Access to Public Information (Freedom of Information) in the Beneficiary Member States, given the varied legal and regulatory frameworks and the varied stages of development of ICT policy implementation and of FOI legislation.

Section 4 identifies the international and regional trends and best practices, which provide the basis for comparison with national laws, and eventual gap analysis.

Section 5 addresses an overview of current legislation in the Beneficiary Member States vis-à-vis the main issues associated with an effective legal framework for FOI.

Section 6 presents a comparative law analysis based on the international, regional, and national sceneries portrayed by Sections 4 and 5.

Section 7 shows a table picturing the current stage of legislative efforts in the Beneficiary Member States, including a matrix featuring the main issues associated with such endeavour. Grades attributed to legislation of each individual Beneficiary Member State are rooted in the comments made in Sections 5 and 6.

Section 8 analyses the main factors and criteria which may subsidy the definition and implementation of policy guidelines.

This Report takes into account the laws which have been enacted by six of the fifteen Beneficiary Member States for the HIPCAR ICT Legislative Framework Project, considering the elements of information available so far. In the event that there are additional pieces of legislation, not included in this Report, which are detected by Beneficiary Member States prior to or during the March 08-12 Workshop in Saint Lucia, relevant comments shall be included.

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<sup>2</sup> The full title of the HIPCAR Project – funded by the European Union and International Telecommunication Union (ITU) and implemented by ITU in collaboration with the Caribbean Telecommunications Union (CTU) and with the involvement of other organizations in the region – is: “Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”.

<sup>3</sup> Beneficiary countries of the HIPCAR Project are: Antigua and Barbuda, The Bahamas, Barbados, Jamaica, the Commonwealth of Dominica, the Dominican Republic, Haiti, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

## Section I/

Minor reference is made herein below to the Beneficiary Member States which have only introduced bills and have not as yet enacted a FOIA.

This report will further document areas of common principles, key provisions and areas of potential harmonization among the Beneficiary Member States with enacted legislation; document areas of divergence and varying rationale for differing approaches in the region, and comment on new trends in FOIA, especially in jurisdictions comparable to those in the Caribbean.

## Section III: Challenges

Approximately 70 countries in the world have adopted FOI laws and another 50 countries reportedly have draft legislation pending.<sup>4</sup> Of the Beneficiary Member States, six<sup>5</sup> have enacted a national law on FOI, five<sup>6</sup> countries have draft bills on FOI, and four<sup>7</sup> countries have remained without a bill.

Many international organizations have declared the importance of enacting FOI laws for maintenance of democracy and of respect for human rights.

Underpinning FOI laws is the belief that government shall only be custodian of official documents which must be available to the public to promote the public good, unless there is some overriding public interest in keeping documents secret.<sup>8</sup>

The general call for the enactment of FOI legislation is rooted in the conviction that the right to access information from public bodies is a fundamental human right.

However, neither internationally, nor regionally in the Caribbean, have the majority of countries passed FOI laws.

Given its nature and contents, FOI is the point of convergence of different principles, interests, and rights, such as freedom of expression, national security, interception of communications, secrecy (professional, banking, postal, trade secrets) and others, therefore legislating on FOI translates into arbitrating between different values.

The increasing importance of data in the so-called Information Age has converted FOI into a topic commonly associated with freedom or censorship of communications via Internet, use of cryptography, institutional cooperation, characterization of “press” activities, digitalization of proprietary works, control of electronic search mechanisms, and the like.

The international character of some of those challenges determines the need to follow-on respective developments, as well as the convenience to monitor and properly address relevant local effects, which may require enactment of specific regulation.

The varying stage of legislation on FOI in the Beneficiary Member States is a challenge for the goal of harmonizing applicable laws in the Region.

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<sup>4</sup> Banisar, David, “Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws”, Privacy International, 2006 available at [www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf).

<sup>5</sup> Antigua and Barbuda, Belize, Dominican Republic, Jamaica, Saint Vincent and the Grenadines, Trinidad and Tobago.

<sup>6</sup> Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia and Barbados.

<sup>7</sup> The Bahamas, Guyana, Haiti and Suriname.

<sup>8</sup> Mendel, Toby (Ed.), “Freedom of Information: A Comparative Legal Survey” 2<sup>nd</sup> Edition, UNESCO, Paris, 2008.





## Section IV: International and Regional Trends and Best Practices

Historically, international and regional treaties and conventions have ensured a suitable architecture and framework for countries to accede to and enjoy the benefits of global protection to FOI. Given current globalization of communications, it is of crucial importance that Beneficiary Member States which wish to stay connected with international flows of information enact FOIA compatible with such treaties and conventions.

### 4.1 INTERNATIONAL

#### 4.1.1 United Nations

The United Nations has long recognized a right of access to information. In 1946, the United Nations General Assembly adopted Resolution 59(1) wherein the right was recognized as follows:

*Freedom on information is a fundamental human right and...the touchstone of all the freedoms to which the UN is consecrated.*

Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights<sup>9</sup> provide that every person shall have the right to free expression and to seek and impart information. Article 19 of the Universal Declaration provides that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

Article 19 of the International Covenant provides that:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
  1. *For respect of the rights or reputations of others;*
  2. *For the protection of national security or of public order (ordre public), or of public health or morals.*

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<sup>9</sup> Universal Declaration of Human Rights. General Assembly resolution 217 A (III) of 10 December 1948; International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966.

Although these provisions, at the time they were drafted, may not have envisaged the far-reaching nature of some FOI laws today, there is no doubt that the dynamic nature of those human rights instruments is such that their interpretation adapt to the times in which they are construed.<sup>10</sup>

## 4.2 REGIONAL

The Organization of American States (“OAS”), the African Union and the Council of Europe have all recognized the right to freedom of information.

### 4.2.1 Organization of American States

The American Convention on Human Rights (“ACHR”), in Article 13, provides in a similar fashion a right to “seek, receive and impart information”, which reads in part as follows:

1. *Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.*
2. *The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:*
  - a. *respect for the rights or reputations of others; or*
  - b. *the protection of national security, public order, or public health or morals.*
3. *The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.*

The Chapultepec Declaration was adopted by the Hemisphere Conference on Free Speech in Mexico City in March 1994. The Declaration of Chapultepec, which elaborates on Article 13 of the ACHR makes provision for the explicit recognition of the right to information as a fundamental right as follows:

1. *Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.*
2. *The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector...*

Notable is that of the Beneficiary Member States, Antigua and Barbuda, The Bahamas, Belize, The Dominican Republic, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago have signed the Declaration of Chapultepec. This indicates that all six of the Beneficiary Member States which have enacted legislation are parties to such Declaration.

<sup>10</sup> Mendel, Toby (Ed.), “Freedom of Information: A Comparative Legal Survey” 2<sup>nd</sup> Edition, UNESCO, Paris, 2008 available at [www.openforum.mn/policyissue/freedom\\_information\\_%20Toby%20Mendel.pdf](http://www.openforum.mn/policyissue/freedom_information_%20Toby%20Mendel.pdf).

## Section IV

The General Assembly of the OAS has officially recognized the importance of FOI as seen in its Resolution 1932 (XXXII-O/03) in 2003, reiterated in 2004 by means of Resolution 2057 (XXXIV-O/04), and in 2005, through Resolution 2121 (XXXV-O/05), the General Assembly has asked the Office of the Special Rapporteur to continue preparing a report in its Annual Reports on the situation regarding access to public information in the Americas. In 2005, the General Assembly reaffirmed what was resolved in earlier Resolutions and additionally called upon the Inter-American Commission on Human Rights in passing a Resolution on “Access to Public Information: Strengthening Democracy”,<sup>11</sup> “to conduct a study on how the State can guarantee all citizens the right to seek, receive, and impart public information on the basis of the principle of freedom of expression.”

In 2006, through Resolution 2252 (XXXVI-O-06), the Special Rapporteurship was instructed to provide support to the Beneficiary Member States for development of legislation and mechanisms on access to information. The IACHR was also asked to conduct a study on the various forms of guaranteeing that all persons have the right to seek, receive, and disseminate public information based on the principle of freedom of expression. As a follow-up to this resolution, the Office of the Special Rapporteur, in August, 2007, published the *Special Study on the Right of Access to Information*.

In the same regard, still in 2007, the General Assembly approved Resolution 2288 (XXXVII-O/07), which highlights the importance of the right of access to public information, takes note of the Office of the Special Rapporteur’s reports on the situation regarding access to information in the Region, urges the Beneficiary Member States to adapt their legislation, and instructs the OSR to offer advisory support in this area. It also requests that different bodies within the OAS, including the Office of the Special Rapporteur, prepare a basic document on best practices and the development of common approaches or guidelines to increase access to public information. This document, developed in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department of State Modernization and Good Governance, as well as with input from delegations of the Beneficiary Member States, was approved in April, 2008 by the Committee on Juridical and Political Affairs.

In 2008, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the Beneficiary Member States to adapt their legislation to meet the standards on this issue, and instructs the Office of the Special Rapporteur to offer advisory support in this area, as well as to continue including a report on the situation regarding access to public information in the region, in its Annual Report.<sup>12</sup>

#### 4.2.2 Council of Europe

One of the key documents of the Council of Europe (“COE”) is the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) which guarantees freedom of expression and information as a fundamental right. Article 10 of the ECHR protects the right of the person to receive and impart information. In 1981, the Committee of Ministers of the COE adopted recommendation No. R(81)19 on Access to Information Held by Public Authorities, which stated:

*Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities....*

<sup>11</sup> “Access to Public Information: Strengthening Democracy” AG/RES. 1932 (XXXIII-O/03). Available at [www.oas.org/juridico/english/ga03/agres\\_1932.htm](http://www.oas.org/juridico/english/ga03/agres_1932.htm).

<sup>12</sup> Annual Report of the Inter-American Commission on Human Rights, 2008, Vol. II, General Secretariat, Organization of American States, as available at [www.cidh.org](http://www.cidh.org).

Again in 1994, the Committee of Ministers made a recommendation, adopted on 21 February, 2002, which contained the following provision:

*III. General Principles on Access to Official Documents*

*Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.*

There is currently a draft European Convention on Access to Official Documents, which has been presented to the COE's Steering Committee for Human Rights. The Committee was expected to consider the draft at its 2008 meeting.<sup>13</sup>

#### 4.2.3 African Union

Article 9 of the African Charter on Human and People's Rights and Article 10 of the European Convention on Human Rights provide for a right to "receive and impart information". The African Commission on Human and Peoples' Rights adopted a Declaration of Principles on Freedom of Expression in Africa in October, 2002 which builds upon Article 9 of the African Charter. The Declaration speaks directly to the right to access information from public bodies where its states:

*IV. Freedom of Information*

*Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*

#### 4.3 The Commonwealth

As far back as 1980, the Commonwealth, which is comprised of 53 former countries of the British Empire, adopted a resolution to encourage its members to enhance citizens' access to information. In 1999, Commonwealth Law Ministers made a recommendation that Member States adopt laws on Freedom of Information based on principles of disclosure, promoting a culture of openness, limited exemptions, records management and right of review.<sup>14</sup>

In 2003, the Commonwealth Secretariat was responsible for issuing a model bill on freedom of information.

<sup>13</sup> Mendel, Toby (Ed.), "Freedom of Information: A Comparative Legal Survey" 2<sup>nd</sup> Edition, UNESCO, Paris, 2008 available at [www.openforum.mn/policyissue/freedom\\_information\\_%20Toby%20Mendel.pdf](http://www.openforum.mn/policyissue/freedom_information_%20Toby%20Mendel.pdf).

<sup>14</sup> Communiqué issued by the Meeting of Commonwealth Law Ministers at the Port of Spain, Trinidad and Tobago, May 1999.

## Section V:

# Overview of Freedom of Information Laws in Beneficiary Member States

### 5.1 Overview of FOI Legislation in Beneficiary Member States

Of the fifteen Beneficiary Member States of the HIPCAR Project for the ICT Legislative Framework (Caribbean region), six have enacted legislation relating to freedom of information – access to public information, namely, Antigua and Barbuda, Belize, Dominican Republic, Jamaica, Saint Vincent and the Grenadines and Trinidad and Tobago. Most of the other Beneficiary Member States have begun the process of enacting legislation by either circulating drafts among the public for feedback or introducing bills in Parliament for further action.

#### 5.1.1 Antigua and Barbuda

*The Freedom of Information Act, 2004*

The Freedom of Information Act<sup>15</sup> came into force in 2004. Part 1 of the Act recites section 12 of the Constitution which states that every person has the right, and is free, to receive and to disseminate information and ideas without interference (s. 6(1)). The broad objective of the Act is to give maximum effect to that right in respect of information held by public authorities and to enhance good governance through knowledge, transparency and accountability. The Act allows any person to demand information from public bodies, being so defined the ones which are controlled or substantially financed by Government or which perform public functions to the extent of those functions. It does not apply to Commission of Inquiry, Courts, and their registries.

Part 2 of the Act deals with measures to promote openness. The Act makes provision for the Commissioner to compile and disseminate a clear and simple guide which contains practical information that will facilitate the exercise of the rights under the Act. The Commissioner is also required to publish a guide on minimum standards and best practices regarding the duty of public authorities to publish information. The Act further imposes on a public authority the duty to publish basic information about internal operations. Public authorities also have an obligation to maintain records in such a way that facilitates the right to access information.

Part 3 relates to the right to access information. Requests must be in writing unless the requestor is illiterate or disabled in which case it can be made orally. Both public and private bodies must respond to requests in twenty (20) working days, which can be extended to a maximum of forty (40) days where the request is for a large number of records or requires a large search. Requests for information necessary to safeguard the life or liberty of a person must be responded to in 48 hours. A failure to respond within the time limits is deemed a refusal. Information will be provided after payment of a fee (which cannot exceed the actual cost of searching for, preparing and communicating the information). No fee is payable for requests for personal information or requests in the public interest.

Part 4 deals with exemptions to the general right of access which include:

- Personal information
- Legal privilege
- Commercial and confidential information

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<sup>15</sup> Government of Antigua and Barbuda, Freedom of Information Act, 5 November, 2004 (Act No. 19 of 2004).

## Section V

- Health and safety
- Law enforcement
- Defence and security
- Public economic interests
- Public policy and operations of public authorities

However, public and private bodies must show that the harm still exists at the time of the request, and there is a limit of thirty years for some of the exemptions. A blanket “public interest override” applies to all exemptions, which requires that, even if an exemption applies, public authorities may not refuse a request unless the harm that would result from disclosure outweighs the public interest in release.

Part 5 regulates the position of Information Commissioner. Appeals of denials are to an independent Information Commissioner and then to the High Court. The Information Commissioner hears complaints and can issue binding decisions on public authorities and private bodies. The Commissioner must dispose of cases within 30 days and has the power to order compensation, impose fines, and require public authorities to take actions to come into compliance with the Act and must refer cases which reasonably disclose evidence of criminal offences under the Act to the appropriate authorities. The Commissioner must also publicize the Act (including publishing a guide on using the Act), issue a code of practice on record keeping, monitor and report on compliance of the Act, make recommendations on reforms, train public officials, and issue an annual report.

Part 6 concerns enforcement by the Commissioner and makes provision for complaints to be made to the Commissioner where a public authority has breached its duty under Part 3. The Commissioner must make a decision on a complaint as soon as is reasonably possible and in any case within 30 days after giving both the complainant and the relevant public authority or private body an opportunity to provide their views in writing. The burden of proof is placed on the public authority to prove that it acted in accordance with its obligations. The Commissioner may either dismiss an application or order compliance. The Commissioner also has power to conduct an investigation including issuing orders requiring the production of evidence or the compelling of witnesses. Either the complainant or the relevant public authority may apply to the High Court for a review of the Commissioner’s decision within 28 days.

Part 7 of the Act makes provision for the protection of whistleblowers. The provision allows any person to disclose information relating to a wrong-doing of a public authority to the Commissioner or other authority. Such disclosure may include information concerning a serious threat to the health or safety of a person, a serious threat to the public or the environment, the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption, dishonesty or serious maladministration, abuse of authority, neglect in the performance of an official duty, injustice to an individual and unauthorized use of public funds. That person is not subject to legal liability or employment sanctions if done in good faith. However, the act also makes provision that where a person discloses information maliciously or without reasonable belief of the truthfulness of the information that person commits an offence.

### 5.1.2 Belize

#### *The Freedom of Information Act*

The Freedom of Information Act<sup>16</sup>, which was enacted in 1994 and amended in 2008, was one of the first in the Caribbean region. The Act was modeled substantially from the Australian Freedom of Information

<sup>16</sup> Freedom of Information Act, 14 May, 1994 (Cap. 13 of the Laws of Belize) as amended by Act No. 7 of 2008 available at [www.belize.gov.bz/lawadmin/PDF\\_files/cap013.pdf](http://www.belize.gov.bz/lawadmin/PDF_files/cap013.pdf). Amendment not yet in electronic form.

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Act, 1982.<sup>17</sup> In Part 1 of the Act, it is provided that the Act does not apply to the Courts or to registries, and the Governor General is not deemed to be a Department of Government. While a public authority is not defined, “Minister”, “principal officer” and “prescribed authority” are all defined under the Act. The definition of “documents” means “public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid 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, but does not include library material maintained for reference purposes.”

Part 2 deals with publication of documents and certain information and imposes an obligation on a responsible Minister, principal officer or prescribed authority to cause to be published, as soon as practicable after the commencement of the Act, a statement setting out particulars of the organization and functions of the Ministry or prescribed authority indicating the decision-making powers and other powers affecting members of the public that are involved in those functions, particulars of arrangements that exist for consultations or representations by bodies or persons outside the Government administration in relation to the formulation of policy in the Ministry or prescribed authority. A statement of categories of documents that are maintained in the possession of the Ministry or prescribed authority must also be published. Such statements are expected to be updated every 12 months after the first publication. There is no obligation to publish the existence of documents which are exempt.

Part 3 of the Act declares the right to access documents of a Ministry or prescribed authority other than an exempt document. A request to obtain a document must be made in writing and it is the duty of the Ministry or prescribed authority to assist the person making the request to reformulate the request if it is made to the improper authority or if it does not contain the appropriate information. The Ministry or prescribed authority may also transfer the request to the appropriate authority. A request for material produced in electronic form may also be made by an applicant. A request for an electronic document is treated as if it was a request for a written document. The Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but not later than two weeks after the day on which the request was received. Exempt matter may be deleted from a document which itself is not a wholly exempt document. Where a decision is made that an applicant is not entitled to a document, the reasons and other particulars of a decision is to be given.

Part 4 deals with exempt documents which include:

- Documents affecting national security, defence and international relations
- Cabinet documents
- Documents affecting enforcement and administration of the law
- Documents to which secrecy provisions of enactments apply
- **Repealed in 2008** – Certain documents concerning operations of Ministries
- **Repealed in 2008** – Documents affecting personal privacy
- Documents affecting legal proceedings or subject to legal professional privilege
- **Repealed in 2008** – Documents relating to trade secrets
- Documents affecting national economy
- **Repealed in 2008** – Documents containing material obtained in confidence
- Documents the disclosure of which would be contempt of National Assembly or contempt of Court

<sup>17</sup> Available at [www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/).

In reviewing documents and considering whether or not to claim exemption, the Act imposes a duty on authorities to act in good faith and use the best endeavours to achieve the object of the Act to afford members of the public maximum access to official documents consistent with public interest.

Part 5 of the Act concerns the review of decisions of a Ministry or prescribed authority on an application. There are two means of redress, same as with the Jamaica Access to Information Act: (1) Application to Ombudsman and (2) Internal Review. Under (1), denials of access can be appealed to the Ombudsman who can order that certain documents be disclosed. The Ombudsman does not have power to decide that access to an exempt document should be granted. However, where there are proceedings before the Ombudsman in relation to a document which is claimed to be an exempt document and the Ombudsman is not satisfied with the evidence that the document is an exempt document, he may require the document to be produced for inspection by him only. The Ombudsman cannot require the production of an exempt document where there is an exemption certificate. Further, the Ombudsman's power does not extend to a review of the decision to give an exemption certificate. Under (2), where a decision is made by a Ministry of prescribed authority, the applicant may, within 28 days after the day on which notice is given of the decision, apply to the responsible Minister or principal officer concerned for a review of the decision. Any party dissatisfied with a decision of an Ombudsman may apply to the Supreme Court.

Under Part 6, the Act requires the Minister administering the Act to publish an annual report on the operation of the Act, which shall be submitted to the National Assembly. Currently, there are no reports which have been produced in compliance with the Act. The Act also provides protection in respect of offences for officers where access is required to be given to a document in accordance with the Act or the granting of access was authorized.

### 5.1.3 Dominican Republic:

#### *General Law on Free Access to Public Information, 2004*

The General Law on Free Access to Public Information, 2004 declares that the right to access government information is one of the sources of development and strengthening of a representative democracy in that it allows citizens to analyze, judge and evaluate the actions of their representatives in a comprehensive manner, and stimulates transparency in the actions of government. The Act also declares that in order to guarantee free access to public information a law is required that regulates its exercise and that establishes the accepted exceptions to the universal right in the event that a real and imminent risk which threatens national security or public order exists.

Chapter 1 of the Act deals with the right to information and to access to the files and records of an administrative character. The right to information consists of the freedom to access the information contained in records and files of the public administration, as well as the right to be informed periodically and upon request, of the activities developed by entities and persons exercising public functions. For the purposes of the law, records and files mean all those documents preserved or recorded in written, optical, acoustic or any other form, which fulfils aims or objectives of a public character. Draft and project documents which are not of a final nature and consequently do not form part of an administrative process, are not considered as records and files. Chapter 1 also provides for mandatory publication and periodic updating of information. In order to comply with its duty to publish information, the authorities are required to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means. The relevant authorities are required to provide information contained in written documents, photographs, recordings, magnetic or digital media, or in any other format, which it has created or obtained or which is in its possession and under its control.

Chapter 2 of the Act deals with the procedure to exercise the right of access to information. The application must be in writing and shall contain the following minimum requirements for processing, namely, a) complete name and merits of the person making the application; b) clear and precise



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identification of the data and information being requested; c) Identification of the public authority that possesses the information; d) Motivation of the reasons for requesting the data and information; and e) Place or medium to receive notifications. Failure to include minimum information shall not result in a refusal but the applicant will be assisted in providing the appropriate information. Chapter 2 also provides for the time-frame for the delivery of information and for failure to respond to a request to be deemed a denial. Where requested information has been previously published, the applicant is to be directed to the information. The Act allows information to be provided free of costs except for reproduction and to a certain extent, search costs.

Exceptions or Limitations to the delivery of information are provided for in Article 17 as follows:

- Information relating to the defence, security or international relations
- Information affecting the success of a public measure
- Information affecting the functioning of the banking system
- Information which may compromise the procedural strategy by the administration in proceedings of a judicial cause or legal professional privilege
- Information classified as secret to protect national interests
- Information that may prejudice administrative investigations
- Information which may damage the principle of equality between bidders or confidential information
- Information regarding advice, recommendations or opinions generated as part of deliberations prior to a government decision
- Information relating to private or state owned commercial, industrial, scientific or technical secrets or industrial, commercial, reserved or confidential third party information
- Information that does not allow violation of secrecy pursuant to laws
- Information that may damage the right to privacy or endanger their lives or security
- Information which would endanger public health and safety
- Information which may affect the right to intellectual property

Chapter 2 also makes provision for a sunset period for legal reservation of confidential information on the basis of overriding public interest and for the right of the collective media to access public information.

Chapter 3 of the Act deals with the duty to publish draft regulations and other dispositions and the manner of conducting publications through public and private media and through other electronic means and mechanisms.

Chapter 4 concerns administrative and jurisdictional recourses and provides for both internal review mechanisms and for recourse to the Courts on a habeas corpus application.

Chapter 5 deals with criminal and administrative sanctions for impediment or obstruction to access to information. Chapter 6 deals with final provisions.

#### 5.1.4 Jamaica

*The Access to Information Act, 2002*<sup>18</sup>

The Access to Information Act, promulgated in 2002, has as its objects in Part 1 to promote transparency, accountability and increased public participation in national decision making by granting to the public a general right of access to official documents held by public authorities (s. 2). A public authority must publish within 12 months of the commencement of the Act, its establishment or the date of the Order bringing it under the Act, whichever is later, information on its organization and functions (S. 4). The Act is made to apply to all public authorities (S. 5) and official documents which are up to 30 years old (S. 6). The Act does not apply to the Governor General, judicial functions of a Court, the holder of a judicial office or another office connected to a Court, the security or intelligence services in relation to their strategic or operational intelligence gathering activities. Notwithstanding these exclusions, the Act does apply to official documents relating to administrative matters held in a registry or other office of a Court. By Order of the Minister, the Act may be made to apply to any body or organisation which provides services of a public nature essential to the welfare of the Jamaican Society.

By virtue of Part 2 which deals with right of access, every person shall have the right of access to an official document. An applicant is not required to provide any reasons for a request and applications may be made in writing or transmitted by telephone or other electronic means (letter, e-mail, fax) (s7). Deferral of access to information may only be done under stipulated conditions and the deletion of exempt matter is subject to conditions. Further, fees are payable for the reproduction of documents. (s.12).

Part 3 deals with exempt documents which include:

- Cabinet documents
- Documents affecting security, defence and international relations
- Documents relating to law enforcement
- Documents subject to legal privilege
- Documents affecting national economy
- Documents revealing government's deliberative process
- Documents revealing trade secrets
- Documents relating to heritage sites
- Documents affecting personal privacy

Notable is that exemptions cease to apply after a period of twenty (20) years.

Part 4 of the Act deals with amendment and annotations of personal records. The Act therefore provides for persons to apply to a public authority to request personal information relating to them to be amended or annotated.

Part 5 of the Act, Review and Appeal, makes provision for two means of redress. Firstly, the Act provides for internal review where the entity making the original decision to deny access is asked by the applicant to review its decision. Secondly, an appeal lies to an Appeal Tribunal where the applicant may seek to overturn the decision taken at Internal Review or where the Internal Review is not applicable.

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<sup>18</sup> For a more detailed account on the passage of the law in Jamaica, see Laura Neuman, "The Carter Center Access to Information Project: Jamaica Case Study," in Laura Neuman, ed., *Access to Information: A Key to Democracy* (Atlanta, GA: The Carter Center, 2002).

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Part 6 concerns miscellaneous provisions including offences. Under the Act, it is an offence for a person to perform acts to prevent disclosure of information. A penalty of a fine of up to \$ 500,000 or imprisonment of up to six months or both such fine and imprisonment is stipulated. The Act also provides that the Official Secrets Act does not apply to disclosure of information under the Access to Information Act. The Minister is also mandated under the Act to report to Parliament on the operation of the Act at the end of each year. A review of the Act was to take place no later than two years after a day appointed which, under the Act, was the 5th January, 2004. The First Schedule to the Act details the information required to be published by Public Authorities while the Second Schedule sets out the constitution of the Appeal Tribunal.

### 5.1.5 Saint Vincent and the Grenadines

#### *Freedom of Information Act*

The Freedom of Information Act<sup>19</sup> was enacted in 2003 but has not as yet been proclaimed. The object of the Act is to extend the right of members of the public to access information in the possession of public authorities by making available to the public information about public authorities with the aim of increasing transparency and accountability in government; ensuring that the rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices; creating a general right of access to information limited only by exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected by public authorities; and creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect or misleading. Public authority includes Parliament or a committee of Parliament, Cabinet, a Ministry or a department or division of a Ministry, a local authority, a public statutory cooperation or body, a corporate body established for a public purpose, which is owned or controlled by the state, and any other body designated by the Minister to be a public body for the purposes of the Act. The Act does not apply to the Governor General or a commission of inquiry issued by the Governor General. A Court is expressly not regarded as a public authority.

Part 2 of the Act concerns the publication of certain documents and information. A public authority, with the approval of the Minister, has an obligation to ensure, as soon as possible (but not later than 12 months), the publishing of a statement setting out the particulars of the organization and functions of a public authority; a statement of categories of documents that are maintained in the possession of the public authority; a statement of the material that has been by the public authority for publication or inspection by members of the public and a statement of the procedure to be followed by a person when a request for access to a document is made by a public authority. A public authority need not provide a document which contains exempt information.

Part 3 provides generally for a right of access to information to an official document other than an exempt document. A person who wishes to obtain access to a document shall make a request in writing to the public authority for access to the document. A request shall identify sufficient information to enable the public authority to retrieve the document and may specify the form of access required. Where a request is made to a public authority which does not have the requested document in its possession, the authority may transfer the request to the appropriate authority. Provision is also made for a public authority to take all reasonable steps to notify an applicant of the decision on his request as soon as practicable but in any case no later than thirty (30) days from the date on which the request is made. Where the public authority decides that the applicant is not entitled to access, the public authority shall give the applicant notice in writing and the notice shall state the findings of fact and the reasons for the decision; state the name and designation of the person giving the decision; state whether exempt material has been deleted from the document; where the document is claimed to not exist, state that a thorough and diligent search

<sup>19</sup> Available at [www.oas.org/juridico/spanish/vct\\_res4.pdf](http://www.oas.org/juridico/spanish/vct_res4.pdf)

was made for the document; and inform the applicant of his right to apply to Court for a review of the decision and the time within which the application for review is required to be made.

Part 4 deals with exempt documents which include:

- Cabinet documents
- Documents affecting national security, defence and international relations
- Documents affecting enforcement or administration of the law
- Documents affecting legal proceedings or subject to legal professional privilege
- Documents to which secrecy provisions apply
- Documents affecting personal privacy
- Documents relating to trade secrets, business affairs etc
- Documents affecting national economy
- Documents containing material obtained in confidence
- Documents disclosure of which would be contempt of Court or contempt of Parliament

Disclosure of exempt documents in the public interest is provided for where there is reasonable evidence that significant abuse of authority or neglect in the performance of official duty, injustice to an individual, danger to the health or safety of an individual or public, or unauthorized use of public funds has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest. In considering whether a document is exempt, a public authority is mandated to act in good faith and use its best endeavours to achieve the objects of the Act.

Part 5 deals with miscellaneous provisions and provides protection for officers giving access, where access was required to be given by the Act or the access was authorized by a Minister or by an officer having authority. Furthermore, any person aggrieved by a decision of a public authority may apply to the High Court for judicial review of the decision. An obligation is also imposed on a public authority to maintain and preserve records in relation to its functions and a copy of all official documents which are created by it or which come into its possession. A person who destroys or damages a record required to be maintained or preserved commits an offence.

### 5.1.6 Trinidad and Tobago

#### *Freedom of Information Act*

The Freedom of Information Act<sup>20</sup> was Gazetted on 5 November 1999 but came into effect in February 2001. The object of the Act is to extend the right of members of the public to access information in the possession of public authorities. This is done by (1) making available to the public information about the operations of public authorities and in particular ensuring that the authorizations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available and by (2) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by private authorities.

Public authority is defined extensively to mean Parliament, (subject to exclusion of the holder of a judicial office) the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a Court of summary jurisdiction, the Cabinet, a Ministry or department or division of a Ministry, the Tobago House of Assembly, a municipal corporation established under the Municipal Corporations Act, 1990, a regional

<sup>20</sup> Freedom of Information Act, 1999 (Act No. 26 of 1999) available at [www.foia.gov.tt](http://www.foia.gov.tt).

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health authority established under the Regional Health Authorities Act, 1994, a statutory body responsibility for which is assigned to a Minister, a company incorporated under the laws of Trinidad and Tobago which is controlled by the State, a Service Commission established by the Constitution, a body corporate or unincorporated entity in relation to a function exercised on behalf of the state or which is supported directly or indirectly by government funds and over which government has control. The Act does not apply to the President, a Commission of Inquiry issued by the President or any other public authority or function of a public authority as the President may determine.

Part 2 deals with publication of certain documents and information. As with the other Acts, a public authority, with the approval of the Minister, has an obligation to publish statements concerning particulars of the organization and functions of the public authority, a statement of categories of documents maintained in the possession of the public authority, a statement if material prepared by the public authority for publication or inspection by the public and information as to where the information can be retrieved, a statement listing the literature available by subscription services, a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority, a statement of officers responsible to receive requests, a statement listing all boards, councils, committees and other bodies that have been constituted for advising public authorities and whose meetings are open to the public, and a statement of details relating to any library or reading room available by a public authority. A public authority is not required to publish exempt information. Where a statement has not been published specifying the information outlined by the Act, the Minister shall publish a statement in the Gazette giving reasons for failure to publish.

Part 3 deals with the right of access to an official document. This access procedure does not apply to (a) a document which contains information that is open for public access as part of a public register or in accordance with some law, (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority, (c) a document that is available for public inspection in a registry maintained by the Registrar General or other public authority, and (d) a document which is stored for preservation or safe custody. Any request for a document shall identify the official document and specify sufficient information to enable the public authority to identify the document with reasonable effort. The request may specify the form of access desired. Responses to request for information should be provided within thirty (30) days. Where there is deferment or refusal of access to information, the public authority is required to provide reasons.

Part 4 of the Act specifies documents which are exempt, which includes:

- Cabinet documents
- Defence and security documents
- International relations documents
- Internal working documents
- Law enforcement documents
- Documents affecting legal proceedings or subject to legal professional privilege
- Documents affecting personal privacy
- Documents relating to trade secrets
- Documents containing material obtained in confidence
- Documents affecting the economy, commercial affairs and certain documents concerning operations of public authorities
- Documents to which secrecy provisions apply

It is also provided however that a public authority shall give access to an exempt document where there is reasonable evidence that significant abuse of authority or neglect in the performance of official duty, injustice to an individual, danger to the health or safety of an individual or the public, or unauthorized use

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of public funds has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so. The President may issue a decree exempting agencies from coverage under the Act. Notable is that the government issued a Freedom of Information (Exemption) Order, 2003 in which it exempted the National Entrepreneurship Development Company Limited (NEDCO), the Export-Import Bank and other related bodies.<sup>21</sup>

Part 5 deals with miscellaneous provisions and allows for the correction of personal information and for protection of officers against actions for defamation in respect of documents to which access is provided. It also provides for review of decisions by an Ombudsman of refusals of access as well as applications for judicial review of a decision to the High Court. The Act also requires public authorities to publish information relating to the structure and functions of the authority, rules, manuals and other documents on making decisions. There is also a provision which deals with the preservation of records and documents.

The Act was amended in 2003 to clarify that the minister in charge of the Act would be appointed by the government after the original ministry designated in the Act was abolished. The amendment also clarified which ministry can certify national security documents. The Act requires that annual reports are published by the Ministry which administers the Act.

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<sup>21</sup> Banisar, David, "Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws", Privacy International, 2006 available at [www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf).

## Section VI: Comparative Law Analysis

In this section, a comparative analysis of the legislation of the Beneficiary Member States is provided, focusing key issues and the manner in which they are dealt with in international and in regional laws and best practices. This comparative analysis will root a classification of the legislation of the Beneficiary Member States in Section 7.

### 6.1 Types of Information or Documents and Bodies Covered by FOI Laws

The Interpretation and Scope sections of FOI legislation normally deal with the definition of “information” or “documents” and the extent to which private and public entities are covered by the Act, respectively. It is crucial for any FOI law to expressly identify the types of documents or records which a person may have access to by virtue of the Act as well as the authorities from which the information, documents or records may be obtained.

#### 6.1.1 Information or Documents

Insofar as the documents which may be obtained by an applicant are concerned, the terms “information”, “document” and “record” are used interchangeably in the FOI laws of the six Beneficiary Member States which have enacted legislation. Antigua and Barbuda, Saint Vincent and the Grenadines and Trinidad and Tobago all define a “document” or “record” very broadly to mean “information in any form” or recorded information “regardless of its form, source, date of creation or official status.”

While the provisions in Belize and Jamaica are extensive in their own right, they are not as far-reaching in scope as the former three countries particularly since for Belize and Jamaica, the provisions list the types of documents which are covered by the Acts rather than describe the documents to be “information in any form”.

For instance, in Trinidad and Tobago a document means:

*“information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;”*

On the other hand, in Belize, a document is defined to include:

*“public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid 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, but does not include library material maintained for reference purposes;”*

In the Dominican Republic, records and files mean all those documents preserved or recorded in written, optical, acoustic or any other form, which fulfils aims or objectives of a public character. Draft and project documents which are not of a final nature and consequently do not form part of an administrative process, are not considered records and files.

The non-specific nature of the definition of document in the former three countries is an appropriate solution in light of the fact that the manner in which information is stored is dynamic particularly in view of the emergence of information and communication technology.

#### Recommendation

Best practice dictates that “information”, “document” or “record” should be defined very broadly. These terms should include all final records held by a public body, regardless of the form in which the information is stored (document, tape, film, electronic, digital), its source (whether it was produced by a public body or some other body) and the date of production of the information. A list of examples of information and documents is helpful, but it shall be accompanied of the broad definition and of the clarification that such examples are only for illustrative purposes, and not to limit the intended scope.

### 6.1.2 Public Authorities

In terms of the authorities from which information may be obtained, the terms “public authorities”, “prescribed authorities” and “private bodies” are defined in the Acts of the Beneficiary Member States.

In most of the Acts, public authority is defined by setting out a general list of authorities on which an obligation is imposed to provide information to applicants. Such public authorities are routinely defined to include the Government, a Ministry of Department of Government, Parliament, a Joint Select Committee of Parliament or a Committee of either House of Parliament, the Courts (with the exclusion of judicial officers), a public statutory corporation or body, the Cabinet as constituted under the Constitution, an incorporated body established for a public purpose, a statutory body responsibility for which is assigned to a Minister, a company owned or controlled by the State, a Service Commission established under the Constitution, any body or organization which provides services of a public nature which are essential to the State, a local authority or municipal corporation, a body established under the Constitution or any other law, a body owned, controlled or substantially financed by the state and a body carrying out a function conferred by law or by executive action or a public function conferred by Government. Notable is that the definitions for public authorities of each of the Beneficiary States apparently do not purport to include all these bodies or authorities. It is clear however that most of the Acts cover all “public” (in the sense of belonging to the structure of the Public Administration) agencies, ministries or departments of government, statutory bodies and authorities.

Apart from the listing of public authorities to which the Act applies, the Minister or the President and Minister in the case of Trinidad and Tobago, has a general authority to declare a body corporate or unincorporated entity a public authority and in some instances to declare any other body carrying out a public function a public authority for the purposes of the Act.

In the Dominican Republic, even though a specific term such as “public authority” is not used, Article 1 provides that all persons have the right to request and receive complete, accurate, adequate and timely information from any agency of the Dominican State, and from all corporations, limited companies, or companies limited by shares which have State participation including

- a) centralized public administration agencies and entities;
- b) autonomous and/or decentralized agencies and entities of the State, including the national District and municipal agencies;
- c) autarkical and/or decentralized agencies and entities of the State;
- d) commercial businesses and societies owned by the State;
- e) corporations, limited companies or companies limited by shares, which have State participation;
- f) private agencies and institutions that receive funds from the National Budget for the execution of their objectives;



- g) the administrative activities of the Legislative Power;
- h) the administrative activities of the Judicial Power.

In essence, therefore, the entities covered by the Dominican Republic Act are similar to those covered by the Acts of the other Beneficiary Member States under review.

Provision is also made in the Acts for bodies to which the Acts do not apply. For instance, the provisions are not applicable to commissions of enquiry, a public authority which a Minister has indicated by Order, a Court or the holder of a judicial office, a registry or other office of a Court (**in Antigua and Barbuda**); a Court or holder of a judicial office or other office pertaining to the Court, a registry or other office of a Court and its staff, the Officer of the Governor General (**in Belize**); the Governor General, the judicial functions of a Court, the holder of a judicial officer, the security or intelligence services in relation to their strategic or operational intelligence gathering activities, and any statutory body or authority designated by the Minister (**in Jamaica**); the Governor General, a Commission of Inquiry issued by the Governor General (**in Saint Vincent and the Grenadines**); and the President, a Commission of Inquiry issued by the President, such public authority or function of a public authority as the President may, by Order subject to negative resolution of Parliament determine (**in Trinidad and Tobago**).

For the purpose of disclosure of information, best practice dictates that a public authority should be defined to focus on the type of service which is provided by the authority rather than the actual designation of the authority. A public authority should therefore include “all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions.”<sup>22</sup>

The question remains whether private bodies themselves should be included in the FOI legislation for the purpose of extending the right of access to documents held by private entities. The Australian Law Reform Commission (ALRC)-Administrative Review Council (ARC) Report on “Open Government: A Review of the federal Freedom of Information Act 1982”, 1995<sup>23</sup> (“The ALRC-ARC Report”), has indicated that such an extension of the FOIA to the private sector should not be made. It stated that:

*The Review remains of the view that the democratic accountability and openness required of the public sector under the FOI Act should not be required of the private sector. As a general rule, private sector bodies do not exercise the executive power of government and do not have a duty to act in the interest of the whole community. Private sector bodies should not be under an obligation to disclose to any member of the public any document in their possession... In the Review’s view strong justification would be needed to subject private sector bodies to the additional resource burden and potential threats to commercial operations that could result from a general extension of the FOI Act. The Review does not consider that such justification exists.*

It is noted that South Africa is the only country where FOI laws expressly and thoroughly extend to the private sector. It is thought that this is because of the “special circumstances arising out of the country’s transition from apartheid to majority rule.”<sup>24</sup> The Report did not completely disregard the role that some private sector entities may play and found that some private sector organizations should not fall

<sup>22</sup> Mendel, Toby (Ed.), “The Public’s Right to Know: Principles on Freedom of Information Legislation” Article 19, Global Campaign for Free Expression, International Standards Series, London, 1999.

<sup>23</sup> Australian Law Reform Commission (ALRC) /Administrative Review Council (ARC) ALRC Report No. 77, ARC Report No. 40, Open Government: a review of the federal Freedom of Information Act 1982, November 1995. p. 31.

<sup>24</sup> See: Enhancing Open and Accountable Government, “Discussion Paper: Review of the Freedom of Information Act, 1992”, Freedom of Information Independent Review Panel, Australia, 29 January, 2008.

completely outside of the reach of FOI laws. It noted particularly that the practice of governments contracting with private sector entities to provide services to the community itself raised some serious regulatory and accountability issues.

Another view, however, is on the trend to increasingly incorporate more private sector entities within the scope of FOI laws. Modern FOI law is seen to oscillate between organizations that receive some public funding (Mexican law) to bodies which provide public services (Jamaican law) and to the South African case (Promotion of Access to Information Act) which apparently covers all private bodies when the information requested is deemed necessary for the protection or the exercise of a right.<sup>25</sup>

Interestingly, section 17 of the Antigua and Barbuda Act, which deals with the procedure for obtaining access to information, provides that:

*For the purposes of section 15, a request for information shall be made by the applicant in writing addressed to a senior official or the information officer of a public authority or private body and in sufficient detail to facilitate a determination, with reasonable effort, whether or not the authority holds a record containing that information.*

Since a public authority is also defined in the Antigua and Barbuda Act as a body carrying out a function conferred by law or by executive action, or a public function conferred by the Government, only to the extent of that function and such other body carrying out a public function as the Minister may, by Order published in the Gazette, designate, it is suspected that it is those bodies to which the word “private” refers.

Another such view is that private bodies should be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests such as the environment and health and that inter-governmental organizations should also be subject to the freedom of information regime.<sup>26</sup>

Ultimately, however, it is believed that the best practice in FOI laws dictates that FOI should extend to any body that is exercising government functions. In particular, where incorporated bodies provide essential public services and functions it is thought that this is sufficient to allow FOI laws to extend to those entities. The question of what principles should govern the determination of whether an institution should be covered by FOI laws has been constantly debated. The Canadian Department of Justice dealt with this issue in a paper entitled, “Strengthening the Access to Information Act”, 2006<sup>27</sup> wherein it stated that in making a determination as to the types of institutions which should be covered in the Act, a general guide should be the perceived objective or purpose of the Act:

*If the principal purpose of the [Act] is perceived as being to foster public participation in public policy decisions by allowing access to “unfiltered” information, then the focus of coverage would be those institutions which develop and apply public policy. If the purpose of the [Act] is perceived to be accountability for actions, then the focus of coverage would be those institutions which are considered to be operational. If the purpose of the [Act] is perceived to be accountability for spending money, then the focus would be financial. The broadest approach is to include all institutions considered to be part of, or controlled by, the federal government unless there is a reason not to.*

<sup>25</sup> The Carter Center, “Observations of the Access to Information Act 2002 in Jamaica”, March 2006 at page 2, available at [www.cartercenter.org/resources/pdfs/peace/americas/observations\\_amendments\\_jamaica2006.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/observations_amendments_jamaica2006.pdf).

<sup>26</sup> Mendel, Toby (Ed.), “The Public’s Right to Know: Principles on Freedom of Information Legislation” Article 19, Global Campaign for Free Expression, International Standards Series, London, 1999 at p. 9.

<sup>27</sup> Department of Justice, Canada, Strengthening the Access to Information Act, 11 April 2006, p. 3.

One commentator, providing an overview of the Jamaica Access to Information Act, summarizes the position thus:

*The rationale for including all public bodies under the provisions of the act, as well as extending coverage to some private sector bodies, is that through access to information those in power may be held accountable for their decisions. For most citizens, it does not matter whether the government is responsible for their electricity supply or a private entity, what is of concern is that it is accessible, consistent and affordable. It seems unwise and unfair to create duties for the public sector to provide a right to access to information while exempting powerful private interests. Nevertheless, with private sector information it is appropriate to include a caveat to ensure that there is not an unjustified intrusion on privacy. As with publicly held information, a right to private bodies information also can be limited with appropriate exemptions, such as for commercial confidentiality or trade secrets. But where a private company is clearly providing a public service, such as after a privatization process, its information should be defined in the law as public information and covered under the Act.<sup>28</sup>*

It would therefore seem that the current trend is for FOI laws to include all public bodies but also to extend to include private bodies which are executing government functions. To a large extent, the provisions found in the legislation of the Beneficiary Member States fulfill these criteria. This is because, not only are public authorities expressly covered by the Acts, but in many instances the Acts cover any body or organization which provides services of a public nature which are essential to the State, which is a broad definition.

#### Recommendations

Best practice dictates that the definition of public authority in freedom of information laws should extend to any body which carries out government functions. In certain instances, freedom of information should extend to private entities once those entities are clearly providing an essential and/or permanent public service. One should be cautioned against extending freedom of information too far as it relates to private entities so that one does not run afoul of those entities rights. It is also useful that one be guided by the objects of the FOI legislation for the purpose of clarifying the entities which would need to be captured by FOI legislation.

## 6.2 Obligation to Publish or Automatic Publication

A key feature of FOI legislation is the inclusion of the obligation of public authorities to actively and voluntarily publish and disseminate general information of significant public interest as well as key categories of information. Such action reduces costs and frequency of requests, fosters convenience and promotes the tenets of transparency and the principles of maximum disclosure which are foundational elements of FOI legislation.

The active publishing of information concerning great public interest is useful not only to members of the public but also to public authorities which will decrease the number of requests relating to those documents. The web portals of public authorities should be populated with documents which would be the subject of requests thereby decreasing the frequency of requests made. Through this form of automatic publication, the Government is able to cut costs associated with individualized attention to requests made by many persons for the same document or information.

<sup>28</sup> The Carter Center, "Observations of the Access to Information Act 2002 in Jamaica", March 2006 at page 2, available at [www.cartercenter.org/resources/pdfs/peace/americas/observations\\_amendments\\_jamaica2006.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/observations_amendments_jamaica2006.pdf).

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At a minimum, public bodies should be under an obligation to publish the following categories of information:

- operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public;
- information on any requests, complaints or other direct actions which members of the public may take in relation to the public body;
- guidance on processes by which members of the public may provide input into major policy or legislative proposals;
- the types of information which the body holds and the form in which this information is held; and
- the content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision.

The form in which information is published should also ensure the maximum accessibility by the public. Time limits should also be imposed in the legislation for updating the information regularly.

The trend in more modern FOI laws is to include provisions for automatic publication of certain official documents by each public authority. The automatic publication provisions must be well-defined and mandated by law so as to reduce the difficulties or confusion in implementation.

In Trinidad and Tobago and the Dominican Republic, the law is more far-reaching than the other Beneficiary Member States under review in respect of documents which are required to be published automatically.

In Trinidad and Tobago, the law requires that each public authority publish three statements in accordance with sections 7, 8 and 9 of the Act. Section 7 of the Act speaks to the publication of information concerning the functions etc, of public authorities. Under section 7, a public authority shall, with the approval of the Minister cause to be published in the Gazette and in a daily newspaper circulating in Trinidad and Tobago, as soon as practicable after commencement of the Act:

- (i) a statement setting out the particulars of the organization and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority;
- (ii) a statement of the categories of documents that are maintained in the possession of the public authority;
- (iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;
- (iv) a statement listing the literature available by way of subscription services;
- (v) a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority;
- (vi) a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, notices under section 10, requests for access to documents under section 13 and applications under section 36;
- (vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the

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public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;

- (viii) if the public authority maintains a library or reading room that is available for public use, a statement of that fact including details of the address and hours of opening of the library or reading room;

During the year commencing on the 1st of January following publication, and during each succeeding year, the public authority has the obligation to cause to be published in the Gazette and in a daily newspaper circulating in Trinidad and Tobago statements bringing up to date the information contained in prior statements.

Where a statement has not been published, the Minister is required under the Act to give reasons, published in the Gazette, for the failure to publish.

Under section 8, the public authority shall cause certain documents to be available for inspection. Section 9 imposes an obligation for the statement of possession of certain documents to be published. The Act itself sets out clear guidelines and lists the types of documents that must be contained in the statement, as well as where and when it must be published.

The Dominican Republic Act has also very wide scope as it provides in Article 3 that all the actions and activities of centralized and decentralized Public Administration, including those of the Legislative and Judicial Power and information relating to their functions, shall be published, and consequently it shall be mandatory for the Dominican State and all its autonomous, autarkical, centralized and/or decentralized authorities and agencies to present permanent and updated information regarding:

- a) Budgets and estimates of resources and approved expenditure, its development and status of implementation;
- b) Programs and projects, their budgets, deadlines, implementation and supervision;
- c) Invitations to tender, competition, purchases, expenditure and results;
- d) List of officials, legislators, magistrates, employees, categories, functions and remuneration and sworn asset declarations when so required by law;
- e) List of beneficiaries of assistance programs, subsidies, scholarships, pensions and retirements;
- f) Financial statements of the public debt, their expiration and payments;
- g) Laws, decrees, resolutions, dispositions, regulatory frameworks and any other form of regulatory measures;
- h) Official indices, statistics and values;
- i) Legal and contractual regulatory frameworks for rendering of public services, conditions, negotiations, table of charges, and sanctions;
- j) Any other information that special laws require to be made available to the public.

Article 4 also mandates that the Dominican State and all its authorities, agencies and entities listed in Article 1 (See 3.1.2 above) provide information required by the law, and that such information is permanently updated. The Act provides that the relevant authorities are required to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means. The duty to provide information to requesting persons extends to all legally established agencies, and those in the process of formation, which are recipients of public funds, including established political parties or those in the process of formation, in the case of which the information shall include the identity of contributors, origin and destination of operational and administration funds.

Pursuant to Article 5, the computerization and incorporation of all the centralized and decentralized public agencies of the State is also provided for and the law specifically goes on to state that this information must be incorporated into the internet-based communication system or into any other system of a similar nature which may be established in the future. This is provided with the aim of guaranteeing direct access to State information by the public. All authorities and agencies of the State shall ensure the publication of their respective web pages with the following objectives:

- a) Dissemination of information: organization, members, operating rules, projects, management reports, database;
- b) Exchange and Customer or User Services Center: enquiries, complaints and suggestions;
- c) Bilateral procedures or transactions.

The information referred to in the preceding paragraph shall be freely accessible to the public without the need for a request.

Ultimately, detailed lists such as that provided in the Trinidad and Tobago legislation with relation to the types of documents that must be made available automatically, where these must be published (such as on each agency's website) and the frequency with which these publications must be made current would help to ensure better understanding and compliance with this cost-reducing and transparency promoting mandate.

#### Recommendations

International best practice as reflected in FOI laws indicates that vast amounts of information kept by public authorities should be made available and published unconditionally and automatically in an understandable and organized format for the public benefit. This ensures that decision making in respect of individual cases and the consequent drain on government's resources is curtailed. A list of categories of information which is to be automatically disclosed should be published. Electronic disclosure through websites should complement disclosure of hard copies particularly in view of the digital divide. FOI legislation relating to this issue should include provisions which: specify the frequency with which information should be updated which should not be more than six months; impose a proactive disclosure obligation on public authorities; require public bodies to computerize and organize public records; require public bodies to develop specific guidelines on proper record keeping and management. Use of technological available means of disseminating information, such as RSS, shall be encouraged.

### 6.3 Records Management or Maintenance

The effective exercise of the right to access information or freedom of information cannot be realized without proper records management. The large volume of information held and controlled by government requires that information be carefully managed so that public authorities can locate and provide requested information in a timely and efficient manner. A public authority should have a record keeping system in place which allows for the easy collection, indexing, storage, maintenance, retrieval and disposal of information.

International best practice is tending toward inclusion of provisions in FOI laws which explicitly require that appropriate record keeping and management systems are in place to ensure effective and speedy implementation of the law. The Pakistan Freedom of Information Ordinance 2002 makes specific inclusion of such a provision at section 6 as follows: *"Computerization of records – Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerized and connected through a network all over the country on different system so that authorized access to such records is facilitated."*

An emerging problem in the area of records management relates to electronic records. Technologically neutral provisions in FOI legislation must be included particularly in view of the evolving nature of

software which stores information. A proper records management system is even more crucial where countries lack archiving legislation.

If Government is not required to manage information in an effective and transparent way, freedom of information becomes encumbered: “information can be manipulated, deleted or lost, citizens cannot prove equal or unjust treatment, human rights violations are difficult to challenge, the public cannot make an informed contribution to the governance Process, and individuals cannot satisfy themselves that the information held by government about them is appropriate and correct”.<sup>29</sup>

The Dominica Republic Act is important in this regard as it makes specific provision in Article 4 for the purpose of complying with the objectives of the Act to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means.

#### Recommendations

The security, efficiency, effectiveness and user-friendly characteristics of a records management system directly affect the outcomes for freedom of information. It is therefore recommended that an appropriate provision relating to proper record management and maintenance be a part of FOI legislation.

## 6.4 Exemptions

Almost all FOI laws contain exemptions or exceptions to the general right of access to information. The extent of these exemptions varies from one country to the next. The FOI legislation of the Beneficiary Member States under review all contain the following exemption provisions:

- Cabinet documents
- Documents affecting defence, security and international relations
- Documents affecting law enforcement and administration of law
- Documents affecting legal proceedings or subject to legal professional privilege
- Documents affecting health and safety

On the other hand, all the Beneficiary Member States, except Belize, contain the following exemptions:

- Documents affecting personal privacy
- Documents relating to trade secrets
- Documents containing material obtained in confidence
- Documents affecting the economy, commercial affairs and certain documents concerning operations of public authorities

In 2008, the newly elected United Democratic Party, which was responsible for the enactment of the Freedom of Information Act in 1994, amended the Act by repealing the foregoing exemptions in order to broaden the right of access of the public. Therefore, of the Beneficiary Member States under review, Belize has the least exemptions. In the same amendment, Belize also introduced provisions which prohibited and invalidated secrecy provisions in public contracts in the following terms:

*21 A. (1) No public contract or other public document shall contain a provision to the effect that the contract thereof shall be kept confidential.*

<sup>29</sup> See: Enhancing Open and Accountable Government, “Discussion Paper: Review of the Freedom of Information Act, 1992”, Freedom of Information Independent Review Panel, Australia, 29 January, 2008.

*(2) Every secrecy provision in a public contract or other public document, whether such public contract or other public document exists at the date of commencement of the Freedom of Information (Amendment) Act 2008 or is executed in the future, which prohibits or restricts its disclosure to the public, shall be wholly void and of no effect, and the public construed for all purposes as if such a secrecy provision did not exist.*

All FOI legislation of Beneficiary Member States under review, except for Antigua and Barbuda, include an exemption for documents to which secrecy provisions apply. Jamaica is the only Beneficiary Member State which contains an exemption for documents relating to heritage sites in its Access to Information Act. Furthermore, all Beneficiary Member States except Antigua and Barbuda, Dominican Republic and Trinidad and Tobago have included a provision in their Acts dealing with documents the disclosure of which would be contempt of the National Assembly or contempt of Court.

The ALRC-ARC Report (p. 91) spoke of the balance that must be struck between giving access to information and withholding access on the ground of an exemption as follows:

*The public interest in the general availability of government information will in some cases be outweighed by the public interest in protecting information from disclosure. The purpose of the exemption provisions is to balance the objective of providing access to government information against legitimate claims for protection.*

The current approach in this area is that exemptions should be clearly and narrowly drawn and should be subject to a “public interest test”. Therefore, the general rule is that all requests for information from a public body should be agreed to unless the public body is able to show that the request falls within the limited and narrow regime of exemptions. Furthermore, a refusal to disclose information would only be justified in the circumstance where the public authority is able to show that the harm to the public interest outweighs the harm that would be caused by the refusal to disclose. The public interest test ensures that all considerations relevant to a specific request are considered and a balancing exercise is undertaken which weighs the potential harm in releasing the document against the public good in the document’s disclosure.

The current trend in FOI laws is to ensure that a general provision is included in the statute for the “public interest test” prior to the denial of access based on a particular exemption. Such public interest override would apply to all exemptions. The Antigua and Barbuda Act contains a general provision whereby the public interest is to override all other considerations as follows:

*Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm that would result from the refusal outweighs the public interest in the disclosure of that information.*

Interestingly, the Dominican Republic Act, in Articles 17 and 18, justifies and bases its limiting or exemption provisions on the overriding public and private interest. The Act also provides in Article 21, however, for the period of five years as the expiration period for legal preservation of confidential information on the basis of overriding public interest. Once the period of five years has expired, access to the previously confidential information is to be given.

Both the Saint Vincent and the Grenadines and the Trinidad and Tobago FOI legislation contain the same comprehensive provision relating to the public interest test as follows:

*35. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant*

*(a) abuse of authority or neglect in the performance of official duty;*



- (b) *injustice to an individual;*
- (c) *danger to the health or safety of an individual or of the public; or*
- (d) *unauthorised use of public funds;*

*has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.*

In the Jamaica Access to Information Act, Sections 19 (Documents revealing government deliberations) and 21 (documents relating to heritage sites) are the only two exemption provisions which contain a form of the public interest test. In both sections 19 and 21, a public authority shall grant access to a document relating to a heritage site or government’s deliberative process if it is satisfied, having regard to all the circumstances that the disclosure of the document would, on balance, be in the public interest.

Ultimately, the application of the general public interest override for all exemptions is thought to ensure an appropriate balance between the application of exemptions and the release of information in the public interest. It is clear from those exemptions that the exemptions are not all necessarily narrow in scope and as such may be subject to abuse. Where the exemptions are not subject to the public interest test, the exemptions become exceptions to an entire class and seeks to remove the discretion from the public authority once a document falls within that class. Such an approach undoubtedly curtails the impact and effectiveness of FOI legislation and undercuts the purpose and objectives of FOI legislation generally.

Notable is that *all* the FOI legislation of the Beneficiary Member States under review contain a provision for the deletion of exempt matter from a document so that the remainder of the document may be disclosed.

#### **Recommendations**

The current trend in modern FOI laws is to ensure that exemptions are clearly and narrowly drawn as wide-ranging exemptions can defeat the purpose of the legislation. In ultimately determining whether a document is exempt from disclosure, the best international practice dictates that a “public interest test” be administered. This ensures that documents are tested on an individualized basis and are not automatically placed into an exemption class. FOI legislation should therefore include a public interest override which is applicable to all exemptions so that the harm to the legitimate aim of the exemption can be weighed against the public interest in having the information made public. Where the public interest in disclosing the information is greater than the potential harm to be caused, the information should be disclosed. A public interest override which generically covers all exemptions in the Act may be stated in the following or similar terms: “Notwithstanding any provision in this Act, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate or disclose or allow access to information, unless the harm to the protected interest outweighs the public interest in disclosure.” Special focus shall be given to the implementation of the public interest test, with emphasis on spreading information on relevant detailed criteria and existing interpretation, where applicable.

### **6.5 Enforcement, Review and Appeals Procedure**

Best practice in international standards dictates that a FOI law will achieve effectiveness if it includes an appeal mechanism which is distinct from government and which is accessible, affordable, timely, independent and specialist.

Therefore, a process for review of the decision of a public authority should be included in FOI legislation and such a process may take several forms. Generally, a review of a decision not to provide access to information may take the form of an internal administrative review, an external review by an independent body, or a review by Courts. Where enforcement mechanisms are weak and ineffectual, they can foster a

culture whereby decisions relating to requests for information are made arbitrarily or not at all. If applicants have no confidence in the review procedure where there is denial of access, such applicants may lose faith in the effectiveness of the Act and their ability to access information. This would undermine the entire purpose of the Act.

### 6.5.1 Internal Review

In the first instance where there is an internal administrative review, the public authority as well as the applicant is provided a cost-effective means by which the decision is verified and potentially altered. Generally, public bodies should designate an individual who is responsible for processing the requests and for ensuring that the law is complied with. Normally the original decision will be verified by a senior official within the public authority itself under the internal review process. Experience has shown however that in many countries where the internal review system is established, not only are original decisions mostly upheld, but there is delay in the internal review process as in the United Kingdom where 77 per cent of requests for internal reviews to national bodies in 2005 were fully denied.<sup>30</sup>

### 6.5.2 External Review – Independent Body

The FOI law should provide generally for a right of the applicant to appeal to an independent administrative body from the decision taken on internal review. External review by an independent body divorced from government provides a strong safeguard against the almost routine upholding of decisions which seems to occur in an internal review setting and is more inexpensive than the lengthy review of a denial of access to information by Courts. As such, a review by an independent body serves an important policing function of the use of exemption clauses since public authorities will know that their decisions are subject to independent review. The independent review body may be designated from an already existing body (such as the Ombudsman) or may be constituted and specially established to form an Information Commission or an Administrative Appeal Tribunal. Regardless of the type of independent body identified, it must be independent with appointment being made by representative bodies rather than being ministerial appointments. The following set of principles may be useful in the establishment of the independent body:

Individuals appointed to such a body should be required to meet strict standards of professionalism, independence and competence, and be subject to strict conflict of interest rules. The procedure by which the administrative body processes appeals over requests for information which have been refused should be designed to operate rapidly and with costs as little as is reasonably possible. This ensures that all members of the public can access this procedure and that excessive delays do not undermine the whole purpose of requesting information in the first place. The administrative body should be granted full powers to investigate any appeal, including the ability to compel witnesses and, importantly, to require the public body to provide it with any information or record for its consideration, *in camera* where necessary and justified. Upon the conclusion of an investigation, the administrative body should have the power to dismiss the appeal, to require the public body to disclose the information, to adjust any charges levied by the public body, to fine public bodies for obstructive behavior where warranted and/or to impose costs on public bodies in relation to the appeal. The administrative body should also have the power to refer to Courts any cases which disclose evidence of criminal obstruction of access to or willful destruction of records. Both the applicant and the public body should be able to appeal to the Courts against decisions of the administrative body. Such appeals should include full power to review the case on its merits and not be limited to the question of whether the administrative

<sup>30</sup> Banisar, David, "Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws", Privacy International, 2006 available at [www.freedominfo.org/documents/global\\_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf) at p. 23.

body has acted reasonably. This will ensure that due attention is given to resolving difficult questions and that a consistent approach to freedom of expression issues is promoted.<sup>31</sup>

In many countries, with Offices of the Ombudsman established to oversee the administration of government, the Ombudsman may fulfill this crucial function of reviewing decisions while maintaining his independence. This also allows small countries to maximize functions and reduce the costs which would be incurred in establishing independent commissions. Further, functions of review of decisions may also be subsumed under Commissions already established which deal with data protection. The current trend in this area is to constitute an independent Information Commission.

The manner in which independent review has been dealt with varies from one country to the next. In Canada, the powers of the Commission are similar to those of an Ombudsman. In the United Kingdom, the Commission may issue decisions which are binding but this is not normally the case with the Ombudsman. The United Kingdom has both a Commission and a Review Panel with the Panel overruling decisions of the Commission on many occasions. Countries like Australia, however, have established special appeal tribunals to review decisions.

In the Beneficiary Member States under review, Antigua and Barbuda's FOIA specifically established the office of Information Commissioner. The functions of the Information Commissioner are to monitor and report on compliance by public authorities with their obligations, make recommendations for reforms of a general or specific nature to facilitate compliance with the Act, undertake or promote the training of officials of public authorities and other persons on the right to information and the effective implementation of the Act, refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences and publicize the requirements of the Act and the rights and obligations under the Act. The Commissioner is not subject to the direction or control of any individual.

Furthermore, a person who has made a request for information may apply to the Commissioner in writing for a decision that a public authority has failed to comply with an obligation under Part 3 (Right of Access) including refusing to indicate whether or not it holds a record, refusing to communicate information, failing to respond to a request for information within the time specified by the Act, failing to provide a notice in writing of its response to a request for information, charging an excessive fee or failing to communicate information forthwith or in the time requested. The Commissioner shall decide an application within a period of thirty days after giving both the complainant and the relevant public authority an opportunity to put their views in writing. The Commissioner is also at liberty to summarily reject an application that is frivolous and vexatious. Ultimately, the Commissioner may either dismiss the application or require the public authority or private body to take such steps as may be necessary to bring it into compliance. The Commissioner shall provide a copy of the decision to both the complainant and the public authority and inform them of the right to review the decision. In coming to its decision, the Commissioner has the power to investigate and to issue orders requiring the production of evidence and compelling witnesses to testify.

Either the complainant or the public authority may apply to the High Court for a review of the Commissioner's decision. Where the time to appeal to the High Court has expired, the decision of the Commissioner becomes binding. The situation of Antigua and Barbuda shows that it has a tiered process of internal review, external review by the Information Commissioner and ultimately an appeal to the High Court for review of the Commissioner's decision.

In the case of Belize, internal review is provided for whereby an original decision is reviewed by a Minister or Principal Officer.

<sup>31</sup> Mendel, Toby (Ed.), "The Public's Right to Know: Principles on Freedom of Information Legislation" Article 19, Global Campaign for Free Expression, International Standards Series, London, 1999 at p. 14.

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Insofar as an external review is concerned, applications may be made to the Ombudsman against decisions of a public authority refusing to grant access to a document in accordance with a request or deferring the provision of access to a document. Any decision of the Ombudsman has the same effect as a decision of a Ministry or prescribed authority. However, where it is established that a document is an exempt document the Ombudsman does not have power to decide that access to the document is to be granted. Similarly, where an exemption certificate is provided by a Ministry, the power of the Ombudsman does not extend to reviewing the decision to give the certificate. The Ombudsman may request production of an exempt document for inspection by him only. Furthermore, the Ombudsman has the same powers as a Magistrate with respect of the attendance and examination of witnesses.

Any party dissatisfied with a decision of the Ombudsman may appeal to the Supreme Court for a review. Like, Antigua and Barbuda, Belize has a three tiered process even though the designations vary.

The Dominican Republic Act provides for an internal review in Article 27 where it is stated that, where the applicant is not satisfied with the decision of the entity or person to whom the request for information was made, such person may appeal this decision before the highest hierarchical authority of the relevant entity or body for a final determination on the granting of the requested information or data.

External review is provided for in Article 28 of the Act in that if a person is not satisfied with the decision of the hierarchical entity that person may appeal to the Supreme Administrative Court within 15 working days. The Dominican Republic also provides for an application by the aggrieved person to the Contentious Administrative Court for *Habeas corpus*.

Jamaica's system provides for an internal review as well as an appeal from the internal review to an Appeals Tribunal. The Appeals Tribunal is a body of five persons appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. The Appeal Tribunal may make any decision which could have been made on the original application. It has been noted that in practice, the Appeals Tribunal has proven difficult for users and burdensome for public authorities.<sup>32</sup>

In both Saint Vincent and the Grenadines and Trinidad and Tobago, there is no provision for internal review. Nor is there provision for an independent tribunal or commission to review decisions. Rather, both Acts speak to the right of a person aggrieved by a decision of a public authority to apply to the High Court for judicial review of the decision. The Court is to make a decision in Chambers unless directed otherwise.

### 6.5.3 Appeal to Court

The final level of appeal to the Courts should be available both to the applicant and the public authority where there is a review of the decision of a public authority by an independent body. A direct appeal to the Court from a decision of a public authority, as with Saint Vincent and the Grenadines and Trinidad and Tobago may not be as efficient as the other tiered processes since the Court is the only external review body and is costly for applicants and public authorities alike.

<sup>32</sup> The Carter Center, "Observations of the Access to Information Act 2002 in Jamaica", March 2006 at p. 9, available at [www.cartercenter.org/resources/pdfs/peace/americas/observations\\_amendments\\_jamaica2006.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/observations_amendments_jamaica2006.pdf).

**Recommendations**

Enforcement regimes of FOI laws are important for the effectiveness of FOI. International best practice dictates that provision should be made for an internal review of the original decision by a designated higher authority within the public authority; provision should also be made for an individual right of appeal to an independent administrative body (either existing or specially established for the purpose) from a refusal by a public authority to disclose information and that provision be made for both the applicant and the public authority to have a right of appeal to the Courts against decisions of the administrative body.

Any independent commission established should be implemented with full consideration of the following issues:

- Qualifications of the Commissioner(s) and appointment and removal process, with a view to ensuring independence from Government;
- Parameters of the Commission’s appeal remit;
- Investigatory powers, including the ability to review all documents and power to initiate its own investigations;
- Decision-making powers, including the power to make binding determinations, compel parties to take action, enforce compliance with orders and impose sanctions;
- Procedures, including time limits for decisions, form of notices of appeal of decisions; delegation of powers etc.

**6.6 Protection for Whistleblowers**

Individuals who release information on wrong-doing are often termed whistleblowers. In countries such as the United Kingdom, South Africa, Ghana, Canada, Japan, New Zealand and the United States, comprehensive “whistle-blowing” laws have been enacted to protect individuals who “blow the whistle” on wrongdoing. Best practice indicates, however, that at a minimum and in the absence of comprehensive whistle-blowing laws, a country should include a provision in FOI legislation to protect individuals from sanctions for calling out wrong-doing. Importantly, these laws help to build a culture of accountability whereby officials are aware that their wrong-doing and illicit activities may be revealed and at the same time protect individuals from victimization where wrong-doing is exposed. Modern FOI legislation routinely includes whistle-blower provisions regarding public bodies. Undoubtedly, this protection allows a free flow of information to the public about government wrong-doing. In some countries, a condition to whistle-blowing is that information of wrong-doing must be released to specified individuals or oversight bodies. Such an approach may cut down on the “leakage” of information by persons for private gain. However, such an approach should be carefully drafted so that the purpose of the “whistle-blower” provision is not defeated.

Of the Beneficiary Member States under review, only the Antigua and Barbuda Freedom of Information Act has a variation of a whistle-blower provision which provides at section 47 as follows:

*47. (1) A person may disclose information to the Commissioner or to my other authority on the wrong-doing by a public authority concerning–*

- (a) a serious threat to the health or safety of an individual or a serious threat to the public or the environment;*
- (b) the commission of a criminal offence;*
- (c) failure to comply with a legal obligation;*
- (d) a miscarriage of justice;*

(e) *corruption, dishonesty or serious maladministration; abuse of authority or neglect in the performance of official duty;*

(g) *injustice to an individual;*

(h) *unauthorised use of public funds,*

*and that person shall not be liable in any legal proceedings or to any sanction relating to his employment if the information was disclosed in good faith and in the reasonable belief that it was true.*

*(2) A person who, pursuant to subsection (1), discloses information maliciously or without reasonable belief of the truthfulness of that information, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.*

United Nations Standards call for protection from “any legal, administrative, or employment-related sanctions for releasing information on wrong-doing”. The term “wrong-doing” can be defined variously but normally includes “the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body”. The term also encompasses a serious threat to health, safety or the environment whether linked to individual wrong-doing or not. It is not an avenue for persons to leak information for gain, but rather whistleblowers should only benefit from the protection of the provision as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing. The protection from the disclosure should apply even where a person “blows the whistle” where disclosure would, but for the wrong-doing, be in breach of a legal or employment requirement.

#### Recommendations

Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrong-doing once they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing. At a minimum, international best practice endorses the inclusion of a whistle-blower provision in FOI laws. The inclusion of strong whistle-blower protection is an indication of a government’s willingness to subject itself to legitimate scrutiny. An example of whistle-blower protection is found in section 47 of the Article 19 Model FOI law<sup>33</sup> as follows:

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

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.” Besides whistle-blower protection, governments shall adopt anonymity channels for denounces, in order to maximize chances of capturing report on wrong-doings.

## 6.7 Monitoring and Implementation of FOI Legislation

Enactment of FOI legislation is only the first step in achieving the objectives of FOI, including transparency and accountability in government. Countries must also ensure that there is appropriate monitoring and implementation of the legislation as well as proper enforcement mechanisms (the latter of which is

<sup>33</sup> A Model Freedom of Information Law, available at [www.article19.org/pdfs/standards/modelfoilaw.pdf](http://www.article19.org/pdfs/standards/modelfoilaw.pdf).

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discussed in 3.5 above). Implementation strategies are rife with challenges such as “difficulty in adjusting the mindset of the bureaucracy and people who hold the information; a lack of capacity in relation to record keeping and record making; insufficient resources and infrastructure; inadequate staffing in terms of training, specialization, and seniority; and lack of capacity building or incentive systems.”<sup>34</sup>

There are many challenges in implementation which cannot be cured by provisions in FOI legislation and can only be rectified by improving the structures or bureaucracy within which the right to access is facilitated or the culture of implementers of the legislation. There are some issues, however, which may be dealt with legislatively to strengthen the capacity to monitor and implement the legislation. The FOI law must therefore place sufficient emphasis on clear procedures to challenge refusals of information on the basis of an exemption (See 3.5 above); definitive guidelines for the mandatory publication of information whether by class or otherwise (See 3.2 above); time-limits for each stage of the application procedure including specified times for requests (See 3.9 below); sanctions for failure to comply with requests within the prescribed times, or at all; costs for information requests and copying or other production of information (See 3.8 below); and reporting requirements (See 3.2 above). Such an approach will ensure appropriate checks and balances as a part of the monitoring and implementation strategy and will provide overall clarity and certainty to the process which provides greater latitude for immediate action on failures to properly implement.

Inextricably linked to this implementation strategy are changes in information management systems to ensure appropriate record keeping and management (See 3.3 above) for greater identification and retrieval pursuant to a request. Including provisions in a FOI legislation relating to (1) the primacy and overriding nature of FOI legislation above other legislation dealing with the public’s access to information and (2) proper records management, is also crucial particularly where such issues are not dealt with substantively in other laws.<sup>35</sup> In Trinidad and Tobago, the Freedom of Information Act does not take primacy as is noted in section 34 of that Act which states that, “A document is an exempt document if there is in force a written law applying specifically to information of a kind contained in the document and prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.” The FOI legislation of Belize, Jamaica and Saint Vincent and the Grenadines also contain a provision with a similar effect. Antigua and Barbuda’s Act contains no such provision.

In the Beneficiary Member States under review, monitoring and implementation strategies (as opposed to legislative provisions which support implementation) have been utilized to varying degrees of success and in some cases, none at all. An example of a sustained effort at monitoring and implementation is evidenced with the Access to Information Act of Jamaica. Problems with implementation included outdated and disregarded record-keeping systems, overburdened and untrained personnel, under-resourced public agencies, and a prevailing culture of secrecy.<sup>36</sup>

Legislative measures which facilitate a streamlined implementation approach include the existence of a legislated oversight body; concrete principles in relation to costs compliant with international best practice; provisions relating to automatic publication of information, time lines for dealing with requests, sanctions for failure to follow time-lines and proper enforcement mechanisms. Insofar as Jamaica is concerned, the voluntarily established legislated oversight body, namely the Access to Information Unit, has responsibility for coordinating implementation efforts across government agencies and promoting training of officers and enhancing public sensitization among other duties. As one writer commented on the Jamaican experience in this regard:

<sup>34</sup> Newman, Laura & Calland, Richard, **Making the Access to Information Law Work: The Challenges of Implementation** available at [www.cartercenter.org/resources/pdfs/peace/americas/making\\_theLawWork.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/making_theLawWork.pdf) at p. 4.

<sup>35</sup> Newman, Laura & Calland, Richard, **Making the Access to Information Law Work: The Challenges of Implementation** available at [www.cartercenter.org/resources/pdfs/peace/americas/making\\_theLawWork.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/making_theLawWork.pdf) at page 8.

<sup>36</sup> The Carter Center, “Observations of the Access to Information Act 2002 in Jamaica”, March 2006 at page 2, available at [www.cartercenter.org/resources/pdfs/peace/americas/observations\\_amendments\\_jamaica2006.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/observations_amendments_jamaica2006.pdf) at p. 3.

*This Unit served as a link between the implementers and the users, established guidelines and responded to public authority concerns. International experience supports these findings, demonstrating that without a dedicated and specialized oversight body, such as the Jamaica Unit, the compliance rate is lower, the number of requests more limited, and the right to information eroded. Without a continuous oversight body, government efforts are dispersed and diluted with no clarity in responsibilities or guidelines and reduced ability to conduct long-term planning and to promote best practices, thus costing government's more in terms of human and financial resources. For those jurisdictions without an oversight body, there is no one for the agencies to contact for support or with questions and concerns, and the weight of implementation and public education falls squarely on their already overburdened shoulders. The issue, however, is that without mandatory legislation these critical body's may be reduced or eliminated.<sup>37</sup>*

Ensuring that such an oversight body is mandated in the FOI legislation (as opposed to being voluntarily established) with its powers and functions clearly defined within the legislation serves to buttress the implementation efforts to a significant degree. Where resources are scarce, countries may find an existing established body to carry out these oversight functions. In the absence of such an oversight body, international experience has found that “the compliance rate is lower, the number of requests more limited, and the right to information eroded.” Notable is that none of the FOI laws of the Beneficiary Member States under review contain provisions which establish an oversight body. Where such an oversight body exists, it is established voluntarily.

Provisions of phased implementation of FOI legislation are also crucial to success to minimize the burden and chaos which is likely to ensue upon commencement. In Jamaica, for instance, a proposal was made to apply the Access to Information Act to groups of government bodies rather than extend the application of the Act to all entities so as “to ensure a measurable degree of success and minimal chaos upon commencement of the Act.”<sup>38</sup> The Act was amended in 2003 to facilitate the proposal wherein the Act would apply to all entities specified by the Minister of Information by Order within 18 months of commencement of the Act and thereafter to all government entities automatically upon the expiration of 18 months of commencement of the Act. Accompanying training and sensitization, networking, records management practices, and supporting informational and training manuals were introduced during the transitional period.

The Jamaica Act also importantly provides for review of the Act by a Parliamentary Committee of both Houses of Parliament appointed for that purpose, and under the Act the first such review was mandated to occur no later than two years after commencement. This is also an important step in the implementation process as it allows stakeholders to have an input and Parliament to be cognizant of ways in which the Act can be improved to ensure that the purpose and objectives of the Act are being realized.

Implementation of FOI legislation also benefits significantly where government interacts and liaises with civil society groups and the general public. International best practice encourages law-makers to encourage civil society groups and the public to participate in the legislative process. The ways in which this can be done include the establishment of a stakeholder committee to review a draft bill and make recommendations for improvement, providing sensitization workshops or public meetings for the public and inviting submissions, and involving the media (as one of the primary beneficiaries of the law) to raise awareness of the draft bill.

<sup>37</sup> The Carter Center, “Observations of the Access to Information Act 2002 in Jamaica”, March 2006 at page 2, available at [www.cartercenter.org/resources/pdfs/peace/americas/observations\\_amendments\\_jamaica2006.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/observations_amendments_jamaica2006.pdf) at p. 3.

<sup>38</sup> Livingstone, Aylair “The Implementation of the Access to Information Act: The Jamaican Experience – Challenges and Successes”, Resource Paper, National Workshop Organised by Commonwealth Human Rights Initiative, May 24-26, 2005 created by the Access to Information Unit, Office of the Prime Minister, Jamaica.



**Recommendations**

A FOI law should contain provisions which cumulatively ensure the proper framework for effective implementation of the legislation. These provisions may include the existence of a legislated oversight body; concrete principles in relation to costs compliant with international best practice; provisions relating to automatic publication of information, time lines for dealing with requests, sanctions for failure to follow time lines and proper enforcement mechanisms. Apart from the specific legislative provisions, the implementation strategy will be enhanced by the involvement of civil society groups and the public in the legislative process prior to enactment of the legislation, as well as by clear policy-making with respect to issues which circumscribe FOI, such as the applicable conceptual exemptions.

**6.8 Costs or Fees**

It is undoubted that the enactment, implementation and enforcement phases of FOI legislation can be very costly to governments. However, the emerging international best practice in relation to costs is that there should be no fee or charge for the request, search, or compilation of information but that it may be necessary to charge minimal costs for the purpose of off-setting the reproduction of information.

It is important that fees are not applied to the request, search and compilation of information so that the purpose of FOI legislation is not undermined by erecting an obstacle to applicants who may not have the means to pay costs. Furthermore, particularly in cases where public authorities do not have proper records management, maintenance and retrieval systems, it would be unfair for applicants to pay for hours of searching and compilation where such processes are inherently inefficient. Imposing fees for search and compilation may result in the imposition of prohibitive costs particularly where the charging of the costs is discretionary. Some experts justify a no costs approach by arguing that the provision of information is a fundamental government service and are included in taxes levied and should not attract additional costs. A further cost-cutting measure in reducing costs is for FOI legislation to include mandatory automatic publication provisions (See 3.2 above) which will ultimately cut down on the frequency and bulk of requests.

As it relates to reproduction costs for information, fees should be limited to recovering costs of reproduction and should not have as an objective acquiring a profit margin. Further, a maximum limit should be placed on chargeable fees. Even where the law provides for reproduction costs, a provision should be included in it which provides for waiver of the costs in certain circumstances, particularly where imposition would block applicants from receiving information. Such a provision is included in the Australia Act as follows:

*“Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment or the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.”<sup>39</sup>*

With the exception of Belize, all the Beneficiary Member States under review make explicit provision for the charging of fees. In Antigua and Barbuda, the communication of information in relation to a request may be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating information. This provision

<sup>39</sup> Freedom of Information Act 1982 as available at [www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/).

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indicates that the payment of fee may be a condition precedent to the communication of requested information. The Antigua and Barbuda Act also provides that the payment of a fee shall not be required for requests for personal information and requests in the public interest but this provision may be construed narrowly. Regulations are to be made for the fees which are to be paid, the manner in which fees are calculated and the exemption of fees is specified circumstances. Furthermore, a public body shall not require payment of a fee where the cost of collecting the fee exceeds the amount of the fee.

The Dominican Republic Act provides in Article 14 that access to information by the public shall be free of costs if the reproduction of the information is not required and in any event, the fees to be charged by the institutions shall be reasonable and calculated on the basis of the costs of providing the information. Article 15, however, seems to nullify the declaration in 14 that access is free of costs in that it states that the agency may apply rates intended to pay the different costs that the *search and reproduction* of the information require. It is also provided under Article 15 that an agency may establish different costs when the information is requested for use as part of a profit-making activity and may exempt from payment when the request is made by educational, scientific, or non-profit institutions or those associated with activities of public or social interest. Article 16 allows any person prevented from exercising the freedom of access to information to use the habeas corpus remedy.

The Jamaica Act provides that the cost of reproducing any documents containing information in relation to which an application is made shall be borne by the Applicant. Notable is that the provision speaks solely to reproduction and not to application, searching and compilation. Importantly the Jamaica Act also provides that the responsible Minister may waive, reduce or remit the costs for access to an official document where he is satisfied that such waiver, reduction or remission is justifiable.

The Saint Vincent and the Grenadines provision merely provides for the Minister to make regulations to prescribe or alter fees charged by a public authority for the making of a request to access a document; fees payable where access is to be given in the form of printed copies in some other form such as tape, disk, film, electronic means or other material; the manner in which fees payable is to be calculated and the maximum amount it shall not exceed; and exempt any person from payment of fees where the information contained in the document for which access is requested is in the public interest.

The Trinidad and Tobago Act provides definitively that “no fee shall be charged by a public authority for the making of a request for access to an official document.” As it relates to reproduction costs the Act provides that where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee. The Act also specifies that where the time limit of thirty days is not complied with in responding to a request for information, the document shall be free of charge. Such official documents are also free of charge where a public authority fails to give an applicant access to the official document within seven working days of the payment of the relevant fee. Finally, the Act establishes a general guideline for the charging of fees where it provides that the fees payable by the applicant shall be commensurate with the costs incurred in making the document available. This suggests that fees will be charged for the actual production of the document. Even though costs are not charged for the “making of the request” the provision relating to the payment of fees “commensurate with the costs incurred in making the document available” is wide enough to include search and compilation fees. This would mean that a general discretion resides with the public authority which may open up the process to abuses. The provision should include specific terminology such as “copying the document” rather than “making the document available”.

**Recommendations**

The FOI legislation should not charge an applicant fees at the time the application is made. Internal best practice dictates that there should be no fee or charge for a request, search or compilation of information. The legislation should also state that where fees are charged for the provision of information, such fees shall be reasonable and shall not exceed the actual cost of copying the information such as making photocopies or making print outs and shall be set at a maximum limit by the Minister through regulations. A complementary provision which may be useful is for the Act to provide that where time limits have not been met in compliance with requests for information, such information shall be provided free of charge. Finally, the Act should provide for waiver and-or remission of fees where their imposition would cause financial hardship or where disclosure is in the general public interest. The use of technological means which contribute to cost reduction and to provision of information for free shall be encouraged.

**6.9 Time Limits**

In order for the right to information to be practiced effectively, requests for information should be processed fairly and quickly and should be subject to review. As such, public bodies should establish clear procedures and strict time limits by which requests for information are processed. The UN Standards provide that public bodies “establish open, accessible internal systems for ensuring the public’s right to receive information” and the need for “strict time limits for the processing of requests for information”. Notices for refusal of requests should also be given in a timely fashion and include substantive written reasons for any refusals. Ideally, the FOI law should include a deeming provision to the effect that a failure to respond within a specified time is deemed a refusal. Such a provision will ensure that an applicant is not left in limbo and is able invoke review and appeal mechanisms.

Time limits for a response to a request for information exist in all the Beneficiary Member States under review. In Jamaica, Saint Vincent and the Grenadines and Trinidad and Tobago, a response to a request must be given as soon as practicable but no later than thirty days. In Jamaica, the request may be extended by a further period of thirty days but reasons for the extension must be given.

In Antigua and Barbuda the response must be given as soon as practicable but in any event not more than twenty days. In the Antigua and Barbuda Act, however, the official may, by notice in writing within the initial 20 day period, extend the twenty day period to the extent “strictly necessary” and in any case as much as forty working days. The Antigua and Barbuda Act also specifies that where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the official shall provide a response within 48 hours. The Act does include a deeming provision where there is a failure to comply with a request so that the failure is deemed a refusal.

In Belize, the response must be given as soon as practicable but in any event no later than two weeks (14 days) after the request is received. The difference in the approach in time limits between Belize and the other Beneficiary Member States has much to do with the intense level of debate which took place among members of the public, civil society groups, media stakeholders and government officials at the time of enactment in 1994. Civil society groups and journalists argued successfully that the time limit which was originally imposed, which amounted to up to 60 days would render the new law inadequate and useless. As such, prior to its enactment, the bill was extended to shorten the time period for response to requests.

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In the Dominican Republic time frames are provided for the delivery of information. Article 8 provides that all requests for information shall be satisfied within 15 working days. The period may be extended, in an exceptional manner, for 10 additional working days where circumstances interfere with the collection of the requested information. The requested body has to provide written reasons for using the exceptional extension provision before the expiration of the first 15 days.

### **Recommendations**

FOI legislation should make provision for clear procedures and strict time limits in the processing of requests for information. Most countries provide for a maximum of thirty days to process requests but time limits as short of 5 days exist in some jurisdictions. The law should include a deeming provision whereby it is deemed that a request is refused after the expiration of a specific period of time.

## Section VII: Matrix of Legal Provisions – Access to Public Information freedom of Information

**Key:**

- GOOD:** There is legislation adequately which addresses the key issues.
- FAIR:** There is some form of reference to the issues in legislation which does not adequately address the key issues.
- LIMITED:** There is reference on the form of policy or consultation document or draft legislation.
- NONE:** There is no reference in the legislative texts to the key issues.

# Section VII

Country	Type of information or documents and Bodies covered by the FOI laws	Obligation to publish or automatic publication	Records Management or Maintenance	Exemptions	Enforcement, Review and Appeals procedures	Protection for whistle-blowers	Monitoring and Implementation of FOI legislation	Costs or Fees	Time-limits
Antigua and Barbuda	LIMITED	LIMITED	NONE	FAIR	GOOD	GOOD	NONE	GOOD	GOOD
The Bahamas	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Barbados	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Belize	GOOD	LIMITED	NONE	LIMITED	GOOD	NONE	NONE	NONE	GOOD
Dominica	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Dominican Republic	GOOD	GOOD	NONE	FAIR	GOOD	NONE	NONE	GOOD	GOOD
Grenada	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED
Guyana	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED
Haiti	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Jamaica	GOOD	LIMITED	NONE	FAIR	GOOD	NONE	LIMITED	GOOD	FAIR
St. Kitts and Nevis	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED	LIMITED
St. Lucia	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
St. Vincent and the Grenadines	LIMITED	LIMITED	NONE	FAIR	NONE	NONE	NONE	GOOD	GOOD
Suriname	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Trinidad and Tobago	LIMITED	GOOD	NONE	FAIR	NONE	NONE	NONE	GOOD	GOOD

## Current Legislation by Country

Legal Provisions	Antigua & Barbuda	Belize	Dominican Republic	Jamaica	St. Vincent & the Grenadines	Trinidad & Tobago
<p><b>“Records” and “Documents”</b></p>	<p><b>Interpretation.</b></p> <p>2. In this Act, unless the context otherwise requires—<b>“record”</b> has the meaning set out in section 4.</p> <p><b>Records</b></p> <p>4. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified.</p> <p>(2) A public authority holds a record if—</p> <p>(a) the public authority holds the record, other than on behalf of another person; or</p> <p>(b) another person holds the record, on behalf of the public authority.</p>	<p><b>Interpretation.</b></p> <p>3. (1) In this Act, unless the context otherwise requires—</p> <p>....</p> <p><b>“record”</b> shall have the same meaning as assigned to the term <b>“document”</b>.</p> <p><b>Document</b></p> <p>2....<b>“document”</b> includes public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid 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, but does not include library material maintained for reference purposes;</p> <p><b>“record”</b> shall have the same meaning as assigned to the term <b>“document”</b></p>	<p><b>Records and Files Article 2 ...</b> For the purposes of this law, records and files shall mean all those documents preserved or recorded in written, optical, acoustic or any other form, which fulfils aims or objectives of a public character.</p> <p>Draft and project documents which are not of a final nature and consequently do not form part of an administrative process, shall not be considered records and files.</p> <p><b>Article 6. –</b> The Public Administration, both centralized and decentralized, as well as any other body or entity that exercises public functions or implements a public budget, and all the agencies and bodies mentioned in Article 1 of this law are required to provide information contained in written documents, photographs, recordings, magnetic or digital media, or in any other format, which it has created or obtained or which is in its possession</p>	<p><b>Interpretation.</b></p> <p>3. (1) In this Act, unless the context otherwise requires—</p> <p><b>Document</b></p> <p>3. ...<b>“document”</b> includes, in addition to a document in writing-</p> <p>(a) any map, plan, graph or drawing;</p> <p>(b) any photograph;</p> <p>(c) any disc, tape, sound track or other device in which sounds or other data (not being 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;</p> <p>(d) 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</p>	<p><b>Interpretation.</b></p> <p>4. In this Act—</p> <p><b>Document</b></p> <p>4.... <b>“document”</b> means information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, videotape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;</p>	<p><b>Interpretation.</b></p> <p>4. In this Act—</p> <p><b>Document</b></p> <p>4. ...<b>“document”</b> means information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;</p> <p><b>“official document”</b> means a document held by a public authority in connection with its functions as such, whether or not it was created by that authority, and whether or not it was created before the commencement of this Act and, for the purposes of this definition, a document is held by a</p>

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			and under its control. For the purposes of the <u>present law</u> , information shall mean any kind of financial document relating to the public budget or those coming from private financial institutions which serves as basis of an administrative decision, as well as minutes of official meetings.	therefrom; <b>“official document”</b> means a document held by a public authority in connection with its functions as such, whether or not it was created– (a) by that authority; or (b) before the 5th day of January, 2004, <u>and</u> for the purposes of this Act, a document is held by a public authority if it is in its possession, custody or control;		public authority if it is in its possession, custody or power;
<b>Application</b>	<b>Interpretation of “public authority” and “private” body.</b> (N.B. Act applies to public authorities as defined in Act.) <b>3.</b> For the purposes of this Act, a public authority means– (a) the Government; (b) A Ministry of the Government and a department, division or unit, by whatever name known, of a Ministry (c) the Barbuda council established under section 123 of the Constitution and the Barbuda Local Government Act; (d) a body– (i) established by or	<b>Interpretation.</b> (N.B. Act applies to prescribed authorities as defined in Act.) <b>3...“prescribed authority”</b> means– (a) a local authority (a city council, town council or a village council); (b) a public statutory corporation or body; or (c) a body corporate or an unincorporated body, established for a public Purpose, which may be prescribed by the Minister by Order published in the <i>Gazette</i> ;	<b>Right to information and access to files and records of an administrative character.</b> <b>Article 1.</b> – All persons have the right to request and receive complete, accurate, adequate and timely information from any agency of the Dominican State, and from all corporations, limited companies, or companies limited by shares, which have State participation, including: a) centralized public administration agencies and entities; b) autonomous and/or decentralized agencies and entities of the State,	<b>Application of Act</b> <b>5.--(1)</b> Subject to subsection (2), this Act applies to– (a) public authorities which are specified by the Minister by order within eighteen months after the appointed day; and (b) all other public authorities immediately after the expiration of the period of eighteen months referred to in paragraph (a); (c) official documents created by or held by a public authority not earlier than thirty years immediately preceding the	<b>Interpretation.</b> (N.B. Act applies to public authorities as defined in Act.) <b>4.</b> “public authority” includes (a) Parliament, or any committee of Parliament; (b) the Cabinet as constituted under the Constitution; (c) a Ministry or a department or division of a Ministry; (d) a local authority; (e) a public statutory corporation or body; (f) a body corporate or an incorporated body established for a	<b>Interpretation.</b> (N.B. Act applies to public authorities as defined in Act.) <b>4.</b> ....“public authority” means– (a) Parliament, a Joint Select Committee of Parliament or a committee of either House of Parliament; (b) subject to section 5(2), the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a Court of summary jurisdiction; (c) the Cabinet as constituted under the Constitution; (d) a Ministry or a department or



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	<p>under the Constitution or any other law;</p> <ul style="list-style-type: none"> <li>(ii) owned, controlled or substantially financed by the Government from public funds;</li> <li>(iii) carrying out a function conferred by law or by executive action, or a public function conferred by the Government, only to the extent of that function;</li> <li>(e) such other body carrying out a public function as the Minister may, by Order published in the Gazette, designate.</li> </ul>		<p>including the national District and municipal agencies;</p> <ul style="list-style-type: none"> <li>c) autarkical and/or decentralized agencies and entities of the State;</li> <li>d) commercial businesses and societies owned by the State;</li> <li>e) corporations, limited companies or companies limited by shares, which have State participation;</li> <li>f) private agencies and institutions that receive funds from the National Budget for the execution of their objectives;</li> <li>g) the administrative activities of the Legislative Power;</li> <li>h) the administrative activities of the Judicial Power.</li> </ul>	<p>appointed day.</p> <p>(2) The Minister may, by order subject to negative resolution, declare that this Act shall apply to official documents created by or held by a public authority at such date, being earlier than the thirty years referred to in subsection (1) (c), as may be specified in that order.</p> <p>(3) The Minister may, by order subject to affirmative resolution, declare that this Act shall apply to—</p> <ul style="list-style-type: none"> <li>(a) such government companies, other than those specified in paragraph (e) (i) of the definition of “public authority”, as may be specified in the order;</li> <li>(b) any other body or organization which provides services of a public nature which are essential to the welfare of the Jamaican society, or to such aspects of their operations as may be specified in the order.</li> </ul> <p>(4) An order under subsection (3) may be made subject to such exceptions, adaptations or modifications, as the</p>	<p>public purpose, which is owned or controlled by the state;</p> <ul style="list-style-type: none"> <li>(g) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purposes of this Act;</li> </ul>	<p>division of a Ministry;</p> <ul style="list-style-type: none"> <li>(e) the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;</li> <li>(f) a municipal corporation established under the Municipal Corporations Act, 1990;</li> <li>(g) a regional health authority established under the Regional Health Authorities Act, 1994;</li> <li>(h) a statutory body, responsibility for which is assigned to a Minister of Government;</li> <li>(i) a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State;</li> <li>(j) a Service Commission established under the Constitution or other written law; or</li> <li>(k) a body corporate or unincorporated entity— <ul style="list-style-type: none"> <li>(i) in relation to any</li> </ul> </li> </ul>

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				<p>Minister may consider appropriate.</p> <p>(5) The Minister may, by order subject to affirmative resolution, declare that the application of this Act in relation to any government company specified in paragraph (e) (i) of the definition of “public authority” shall be subject to such exceptions, adaptations or modifications as the Minister may consider appropriate....</p> <p>(6).....</p> <p>(7) This Act applies to official documents held in a registry or other office of a Court, being documents that relate only to matters of an administrative nature.</p> <p>...(8).</p>		<p>function which it exercises on behalf of the State;</p> <p>(ii) which is established by virtue of the President’s prerogative, by a Minister of Government in his capacity as such or by another public authority;</p> <p>(iii) which is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control;</p>
<b>Non-Application of Act</b>	<p><b>Non-application of Act.</b></p> <p>7. This Act does not apply to—</p> <p>(a) a commission of enquiry or the proceedings and findings of such a commission, established pursuant to the Commissions of Inquiry Act;</p> <p>(b) such public authority or function of a public</p>	<p><b>Act not to apply to Courts and registries.</b></p> <p>4. For the purposes of this Act—</p> <p>(a) a Court, or the holder of a judicial office or other office pertaining to a Court, in his capacity as the holder of that office, is not to be taken to be included in a</p>	<b>No similar provision.</b>	<p><b>Application of Act</b></p> <p>5. ... (6) This Act shall not apply to—</p> <p>(a) the Governor-General, in relation to the exercise of the powers and duties conferred or imposed on him by or under the Constitution of Jamaica or under any other law;</p>	<p><b>Non-application of Act.</b></p> <p>5. (1) This Act does not apply to:</p> <p>(a) the Governor-General; or</p> <p>(b) a commission of inquiry issued by the Governor-General</p> <p>(2) For the purposes of this Act</p> <p>(a) a Court, or the holder</p>	<p><b>Non-application of Act.</b></p> <p>5. (1) This Act does not apply to—</p> <p>(a) The President;</p> <p>(b) A commission of inquiry issued by the President; or</p> <p>(c) Such public authority or function of a public authority as the President may,</p>

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	<p>authority as the Minister may, by Order subject to negative resolution, of the House of Representatives, determine;</p> <p>(c) a Court, or the holder of a judicial office, or other office pertaining to a Court in its capacity or his capacity as such; or</p> <p>(d) a registry or other office of a Court and the staff of such a registry or other office in their capacity as members of that staff in relation to matters pertaining to the administration of the Court.</p>	<p>Department;</p> <p>(b) a registry or other office of a Court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department.</p> <p><b>Office of the Governor General not to be deemed to be a Department.</b></p> <p>5. The office of the Governor General shall not be deemed to be a Department of Government for purposes of this Act.</p>		<p>(b) the judicial functions of–</p> <p>(i) a Court;</p> <p>(ii) the holder of a judicial office or other office connected with a Court;</p> <p>(c) the security or intelligence services in relation to their strategic or operational intelligence gathering activities;</p> <p>(d) any statutory body or authority as the Minister may specify by order subject to affirmative resolution.</p> <p>...</p> <p>(8) In subsection (6) “security or intelligence services” means–</p> <p>(a) the Jamaica Constabulary Force;</p> <p>(b) the Island Special Constabulary Force;</p> <p>(c) the Rural Police;</p> <p>(d) the Jamaica Defence Force.</p>	<p>of a judicial office or other office pertaining to a Court in his capacity as the holder of that office, shall not be regarded as a public authority;</p> <p>(b) except in a judicial capacity a registry or other office of Court administration, and the staff of such a registry or other office of Court administration in their capacity as members of that staff in relation to those matters which relate to Court administration, shall be regarded as part of a public authority.</p>	<p>by Order subject to negative resolution of Parliament, determine.</p> <p>(2) For the purposes of this Act–</p> <p>(a) in relation to its or his judicial functions, a Court or the holder of a judicial office or other office pertaining to a Court in his capacity as the holder of that office, shall not be regarded as a public authority;</p> <p>(b) a registry or other office of Court Administration, and the staff of such a registry or other office of Court Administration in their capacity as members of that staff in relation to those matters which relate to Court administration, shall be regarded as part of a public authority</p>
<b>Object of the Act</b>	<p><b>Principles and objectives, and construction of Act in relation to other laws.</b></p> <p>6. (1) Within the broad objectives of section 12 of the Constitution, every person has the right, and is free, to receive and to</p>	<p><b>Duty of authorities to act in good faith.</b></p> <p>34. In considering whether or not to claim exemption under this Part, the principal officer of a Ministry or prescribed authority shall</p>	<p><b>No Object section but Preamble states:</b></p> <p>That the right to access government information is one of the sources of development and strengthening of representative demo-</p>	<p><b>Objects of Act.</b></p> <p>2. The objects of this Act are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely–</p>	<p><b>Object of Act.</b></p> <p>3. (1) The object of this Act is to extend the right of members of the public to access information in the possession of public authorities by</p> <p>(a) making available to</p>	<p><b>Object of Act.</b></p> <p>3. (1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by–</p> <p>(a) making available to</p>

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	<p>disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by public authorities (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.</p> <p>(2) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.</p> <p>(3) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice.</p>	<p>act in good faith and use his best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with public interest.</p>	<p>cracy in that it allows citizens to analyze, judge and evaluate the actions of their representatives in a comprehensive manner, and stimulates transparency in the actions of Government and of the Administration; and That to guarantee free access to public information requires a law that regulates its exercise and, <i>inter alia</i>, establishes the accepted exceptions to this universal right, in the event that a real and imminent risk which threatens national security or public order exists.</p>	<p>(a) governmental accountability;</p> <p>(h) transparency; and</p> <p>(....) public participation in national decision-making, by granting to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.</p>	<p>the public information about the operations of public authorities and, in particular, ensuring that the rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices;</p> <p>(b) creating a general right of access to information in documentary form in the possession of public authorities limited only by expectations and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities;</p> <p>(c) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect or misleading.</p> <p>(2) The provisions of this Act shall be interpreted so as to</p>	<p>the public information about the operations of public authorities and, in particular, ensuring that the authorizations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorizations, policies, rules and practices; and</p> <p>(b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.</p> <p>(2) The provisions of this Act shall be interpreted so as to further the object set out</p>

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					further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.	in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.
<b>Publication of information concerning public bodies</b>	<p><b>Guide to using this Act.</b></p> <p><b>8. (1)</b> The Commissioner shall, as soon as practicable, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act and shall disseminate the guide widely in an accessible form.</p> <p><b>(2)</b> The guide published under subsection (1) shall be updated on a regular basis and in any case once every five years.</p> <p><b>Duty to publish basic information.</b></p> <p><b>10. (1)</b> Every public authority shall, in the public interest, publish and disseminate in an accessible form, updated annually, basic information, clearly dated, including–</p> <p><b>(a)</b> an accurate and sufficiently detailed description of its structure, functions, duties and finances;</p>	<p><b>Publication of information concerning documents.</b></p> <p><b>6. (1)</b> The responsible Minister or principal officer of a Ministry or prescribed authority shall–</p> <p><b>(a)</b> cause to be published, as soon as practicable after the commencement of this Act but not later than 12 months after that commencement, in a form approved by the Minister administering this Act–</p> <p><b>(i)</b> a statement setting out particulars of the organization and functions of the Ministry or prescribed authority, as the case may be, indicating as far as practicable, the</p>	<p><b>Publication.</b></p> <p><b>Article 3. –</b> All the actions and activities of centralized and decentralized Public Administration, including those of the Legislative and Judicial Power and information relating to their functions, shall be published, and consequently it shall be mandatory for the Dominican State and all its autonomous, autarkical, centralized and/or decentralized authorities and agencies to present permanent and updated information regarding:</p> <p><b>a)</b> Budgets and estimates of resources and approved expenditure, its development and status of implementation;</p> <p><b>b)</b> Programs and</p>	<p><b>Publication of information by public authority.</b></p> <p><b>4. (1)</b> A public authority shall cause to be published within twelve months of–</p> <p><b>(a)</b> the appointed day;</p> <p><b>(b)</b> its establishment;</p> <p><b>(c)</b> the coming into operation of an order under section 5(1) (a) or (3) which specified that authority; or</p> <p><b>(d)</b> the application of the provisions of this Act to that public authority pursuant to section 5 (1) (h),</p> <p>whichever is later, an initial statement of its organization and functions containing the information specified in the First Schedule.</p> <p><b>(2)</b> The provisions of the First Schedule shall apply for the purposes of making available to the public the document described in that Schedule.</p>	<p><b>Publication of information concerning functions, etc. of public authorities.</b></p> <p><b>7. (1)</b> A public authority shall, with the approval of the Minister</p> <p><b>(a)</b> cause to be published in the <i>Gazette</i> as soon as practicable, but not later than twelve months, after the date of availability of the forms approved by the Minister</p> <p><b>(i)</b> a statement setting out the particulars of the organisation and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation</p>	<p><b>Publication of information concerning functions, etc. of public authorities.</b></p> <p><b>7. (1)</b> A public authority shall, with the approval of the Minister–</p> <p><b>(a)</b> cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in Trinidad and Tobago as soon as practicable after the commencement of this Act–</p> <p><b>(i)</b> a statement setting out the particulars of the organization and functions of the public authority, indicating, as far as practicable, the decision making powers and other powers affecting members of the</p>

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	<p>(b) relevant details concerning any services it provides directly to members of the public;</p> <p>(c) any direct request or complaints mechanism available to members of the public regarding acts or a failure to act by that authority, together with a summary of any request, complaints or other direct actions by members of the public and that authority's response;</p> <p>(d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes, and the procedure to be followed in making a request for information;</p> <p>(e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;</p> <p>(f) any regulations, policies, rules, guides or manuals regarding the discharge by that authority of its functions;</p> <p>(g) the content of all decisions and policies it has adopted which</p>	<p>decision-making powers and other powers affecting members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation with or representations by, bodies and persons outside the Government administration in relation to the formulation of policy in, or the administration of, the Ministry or prescribed authority; and</p> <p>(ii) a statement of the categories of documents that are maintained in the possession of such Ministry, or prescribed authority;</p> <p>(b) within 12 months after the publication of the statement under subparagraph (i) or (ii) of paragraph (a), that is the first statement published under that subparagraph, and</p>	<p>projects, their budgets, deadlines, implementation and supervision;</p> <p>c) Invitations to tender, competition, purchases, expenditure and results;</p> <p>d) List of officials, legislators, magistrates, employees, categories, functions, and remuneration and sworn asset declarations when so required by law;</p> <p>e) List of beneficiaries of assistance programs, subsidies, scholarships, pensions and retirements;</p> <p>f) Financial statements of the public debt, their expiration and payments;</p> <p>g) Laws, decrees, resolutions, dispositions, regulatory frameworks and any other form of regulatory measures;</p> <p>h) Official indices, statistics and values;</p> <p>i) Legal and contractual regulatory</p>	<p>(3) The information required under subsection (1) shall be published in such manner and shall be updated with such frequency as may be prescribed.</p> <p>(4) The Minister may amend the First Schedule by order subject to affirmative resolution.</p> <p><b>Interpretation.</b></p> <p>3. In this Act, unless the context otherwise requires— “appointed day” means the 5th day of January, 2004;</p>	<p>with or representations by, bodies and persons outside the Government administration in relation to the formulation of policy in, or the administration of, the public authority;</p> <p>(ii) a statement of categories of documents that are maintained in the possession of the public authority;</p> <p>(iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;</p> <p>(iv) a statement of the procedure to be followed by a person when a request for access to document is made to a public authority;</p> <p>(b) during the year commencing on the first day of January next following the</p>	<p>public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority;</p> <p>(ii) a statement of the categories of documents that are maintained in the possession of the public authority;</p> <p>(iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;</p> <p>(iv) a statement listing the literature available by way of subscription services;</p> <p>(v) a statement of the procedure to be</p>

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	<p>affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and</p> <p>(h) any mechanism or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority.</p> <p>(2) The Minister may, by direction in writing, authorize the publication in a single document of any statements required to be published in pursuance of this Part by public authority together with the statements required to be published by any other public authority for which the first-mentioned authority is responsible; and where a direction has been issued that other public authority shall be treated as having complied with this Part.</p>	<p>thereafter at intervals of not more than 12 months, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.</p> <p>(2) A form approved by the Minister under sub-section (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under Part III of this Act.</p> <p>(3) The information to be published in accordance with this section may be published in the <i>Gazette</i>.</p> <p>(4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.</p> <p>(5) Subsection (1) applies in relation to a</p>	<p>frameworks for rendering of public services, conditions, negotiations, table of charges, and sanctions;</p> <p>j) Any other information that special laws require to be made available to the public.</p> <p><b>Article 4</b></p> <p>It shall be mandatory for the Dominican States and all its authorities, agencies and entities listed in Article 1 of the present law to provide information required by this law, and which is required to be permanently updated, and any information that may be especially required by interested persons. To comply with these objectives, the maximum authorities are required to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means.</p> <p>The duty to provide information to</p>		<p>publication, in respect of a public authority, of the statement published under that subparagraph (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.</p> <p>(2) A form approved by the Minister under subsection (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under this Act.</p> <p>(3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.</p> <p>(4) Where a public authority comes into existence on or after the date of commencement of</p>	<p>followed by a person when a request for access to a document is made to a public authority;</p> <p>(vi) a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, notices under section 10, requests for access to documents under section 13 and applications under section 36;</p> <p>(vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;</p> <p>(viii) if the public authority maintains a library or reading for public use, a statement of that</p>

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		<p>Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.</p>	<p>requesting persons extends to all legally established agencies, and those in the process of formation, which are recipients of public funds, including established political parties or those in the process of formation, in the case of which the information shall include the identity of contributors, origin and destination of operational and administration funds.</p> <p><b>Article 5.</b> The computerization and incorporation of all the centralized and decentralized public agencies of the State, including the National District and the municipalities, and their incorporation into the internet-based communication system or into any other system of a similar nature which may be established in the future, is hereby ordered with the aim of guaranteeing thereby direct access to State information by the public. All authorities and agencies of the State shall ensure the</p>		<p>this Act, it shall comply with subsection (1) as soon as practicable after the date it so comes into existence.</p>	<p>fact including details of the address and hours of opening of the library or reading room; and (b) during the year commencing on 1st January next following the publication, in respect of a public authority, of the statements under paragraph (a) that are the statements first published under that paragraph, and during each succeeding year, cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in Trinidad and Tobago statements bringing up to date the information contained in the previous statements.</p> <p>(2) Nothing in this section requires the publication of exempt information.</p> <p>(3) Where a public authority is created on or after the commencement of this Act, the public authority shall comply with</p>



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			<p>publication of their respective web pages with the following objectives:</p> <ul style="list-style-type: none"> <li>a) Dissemination of information, organization, members, operating rules, projects, management reports, database;</li> <li>b) Exchange and Customer or User Services Center, enquiries, complaints and suggestions;</li> <li>c) Bilateral procedures or transactions.</li> </ul> <p>The information referred to in the preceding paragraph shall be freely accessible to the public without the need for a request.</p> <p>Manner of conducting publications through public and private media and through other electronic means and mechanisms.</p> <p><b>Article 24.</b> – The entities or persons who perform public functions or who administer State resources shall provide in their budgets the funds necessary to publish the draft regulations and acts</p>			<p>subsection (1), as soon as practicable after its creation.</p> <p>(4) Where a statement has not been published in accordance with subsection (1), the Minister shall promptly give reasons, to be published in the <i>Gazette</i>, for the failure to publish.</p>

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			<p>of general nature referred to in the previous Article, through the mass media with wide national coverage.</p> <p>Where the relevant entity or person has a web portal or a web page, they shall provide therein a specific space where citizens can obtain information on draft regulations, regulation of services, of acts and communications of a general nature which, in one way or the other, determine the manner of protection of the services and access by persons of the said entity. The contents of said information shall be up to date and explanatory, and in a language that is understood by the common citizen.</p> <p><b>Article 25.</b> – The entities and persons who perform public functions or who administer public resources may be relieved from the duty to publish draft regulations and acts of a general nature regarding the provisions of services in the following cases:</p> <p>a) For obvious reasons of overriding public</p>			

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			<p>interest;</p> <p>b) When it can affect the internal security of the State or the country's international relations;</p> <p>c) When an early publication may cause general misinformation or confusion in the public.</p> <p>d) When because of the nature of the issue being regulated in the act of a general nature it is not convenient to publish the text thereof since it may provoke a negative effect that is harmful to the intended purpose of the regulation;</p> <p>e) Where it has been duly proven that urgency compels the relevant administration or person executing public budgets to act immediately, by approving the [regulatory] disposition of a general nature through the channels foreseen in the</p>			

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			relevant legislation, without the requirement of prior publication of the draft.			
<b>Certain documents to be available for inspection and purchase</b>	<b>No similar provision.</b>	<p><b>Certain documents to be available for inspection and purchase.</b></p> <p><b>7. (1)</b> This section applies to documents that are provided by the Ministry or prescribed authority for the use of, or are used by the Ministry or prescribed authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the Ministry or prescribed 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, being–</p> <p><b>(a)</b> manuals or other documents containing interpretations, rules, guidelines, practices or precedents; or</p> <p><b>(b)</b> documents containing particulars of such a</p>		<p><b>FIRST SCHEDULE. Information to be published by public authorities.</b></p> <p><b>1.</b> ...</p> <p><b>2.</b> The principal officer of the authority shall-</p> <p><b>(a)</b> cause copies of such of the documents 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;</p> <p><b>(b)</b> within twelve months after the publication of the statement under paragraph 1 (d) and thereafter at intervals of not more than twelve months, cause to be published in the Gazette, statements bringing up to date information contained in the previous statement or statements.</p> <p><b>3.</b> The principal officer is not required to comply fully with paragraph 2 (a) before the expiration of</p>	<p><b>Certain documents to be available for inspection and purchase.</b></p> <p><b>8. (1)</b> This section applies to documents that are provided by the public authority for the use of, or are used by, the public authority or its officers in making decisions or recommendations, under the public authority, with respect to enactment or scheme administered by the public 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, being</p> <p><b>(a)</b> manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the public authority;</p>	<p><b>Certain documents to be available for inspection and purchase.</b></p> <p><b>8. (71)</b> This section applies to documents that are provided by a public authority for the use or guidance of the public authority or its officers–</p> <p><b>(a)</b> in making decisions or recommendations, or in providing advice to persons outside the public authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, being–</p> <p><b>(i)</b> documents containing interpretations or particulars of written laws or schemes administered by the public authority, not being particulars contained in another written law; or</p> <p><b>(ii)</b> manuals, rules of procedure,</p>

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		<p>scheme, not being particulars contained in an enactment or published under this Act, but not including documents that are available to the public as published otherwise than by a Ministry or prescribed authority.</p> <p>(2) The principal officer shall—</p> <p>(a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;</p> <p>(b) not later than 12 months after the commencement of this Act, cause to be published in the <i>Gazette</i>, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may</p>		<p>two months after the appointed day but shall before that time comply with that paragraph so far as is practicable.</p> <p>4. This Schedule does not require a document of the kind specified in paragraph 1 ( c ) containing exempt matter to be made available in accordance with paragraph 2 but, if such a document is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter and cause the document so prepared to be dealt with in accordance with paragraph 2.</p>	<p>(b) documents containing particulars of such a scheme, not being particulars contained in any other enactment; and</p> <p>(c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme, but not including documents that are available to the public as published otherwise than by the public authority or as published by another public authority.</p> <p>(2) A public authority shall</p> <p>(a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;</p> <p>(b) not later than twelve months after the date of commencement of this Act, cause to be published in the <i>Gazette</i>, a statement (which may take the form of an index)</p>	<p>statements of policy, records of decision, letters of advice to persons outside the public authority, or similar documents containing rules, policies, guidelines, practices or precedents; and</p> <p>(b) in enforcing written laws or schemes administered by the public authority where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of, the written laws or schemes.</p> <p>(2) A public authority shall—</p> <p>(a) as soon as practicable after the commencement of this Act—</p> <p>(i) cause copies of all documents to which this section applies in respect of the public authority to be made available</p>

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		<p>be purchased; and</p> <p>(c) within 12 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 12 months, cause to be published in the <i>Gazette</i>, statements bringing up to date information contained in the previous statement or statements.</p> <p>(3) The principal officer is not required to comply fully with paragraph (2) (a) before the expiration of 12 months after the commencement of this Act, but shall, before that time, comply with that paragraph so far as is practicable.</p> <p>(4) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer shall, if practicable, cause to be prepared a</p>			<p>specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and</p> <p>(c) within twelve months after the date of the first publication of the statement under paragraph (b) and thereafter at intervals of not more than twelve months, cause to be published in the <i>Gazette</i>, statements bringing up to date information contained in the previous statement or statements.</p> <p>(3) The public authority may not comply fully with paragraph 2(a) before the expiration of twelve months from the date of commencement of this Act, but shall, before that time, comply with that paragraph as far as is practicable.</p> <p>(4) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be</p>	<p>for inspection and for purchase by members of the public; and</p> <p>(ii) with the approval of the Minister, cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in Trinidad and Tobago, a statement (which may be in the form of an index) specifying the documents that are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and</p> <p>(b) during twelve months after the publication of the first statement under paragraph (a) and thereafter at intervals of twelve months, with the approval of the Minister cause to be published in the <i>Gazette</i> and in a daily Trinidad newspaper circulating in</p>

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		<p>corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).</p> <p>(5) Subsections (2) and (3) apply in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.</p>			<p>made available in accordance with subsection (2), but, if such a document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).</p> <p>(5) Where a public authority comes into existence on or after the date of commencement of this Act, subsections (2) and (3) shall apply in relation to that public authority as if the references in those subsections to the date of commencement of this Act were references to the date the public authority so comes into existence.</p>	<p>Trinidad and Tobago, statements bringing up to date the information contained in the previous statement or statements.</p> <p>(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such document is not so made available, the public authority shall, except impracticable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).</p> <p>(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.</p>

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						<p>(5) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.</p> <p>(6) A public authority that comes into existence on or after the commencement of this Act shall comply–</p> <p>(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which it came into existence and not later than twelve months after that day; and</p> <p>(b) with the provisions of subsection (2)(b) as if the reference to “first publication” in that subsection were a reference to first publication in compliance with this subsection.</p>



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<b>Unpublished documents not to prejudice public.</b>	No similar provision.	<p><b>Unpublished documents not to prejudice public.</b></p> <p>8. If a document required to be made available in accordance with section 7, being a document containing a rule, guideline or practice relating to a function of a Ministry or prescribed authority, was not made available and included in a statement in the <i>Gazette</i>, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.</p>		No similar provision.	<p>Unpublished documents not to prejudice public.</p> <p>9. If a document required to be made available in accordance with section 8, being a document containing a rule, guideline or practice relating to a function of a public authority, was not made available and included in a statement in the <i>Gazette</i>, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.</p>	No similar provision.
<b>Information officers of public authorities.</b>	<p><b>Information officers of public authorities.</b></p> <p>9. (1) Every public authority shall designate one of its officers as an information officer and ensure that members of the public have easy access to the information officer, including his or her name,</p>	<p><b>Interpretation.</b></p> <p>3. In this Act, unless the context otherwise requires— ... “principal officer” means— (a) in relation to a Ministry, the Permanent Secretary</p>		No similar provision.	No similar provision.	<p><b>Interpretation.</b></p> <p>4. In this Act— “designated officer”, in relation to a public authority, means the person referred to in section 7(1)(a)(vi); 7 (1) A public authority shall, with the approval of the Minister—</p>

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	<p>function and contact details.</p> <p>(2) The information officer shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities–</p> <p>(a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to the provision of information pursuant to this Act;</p> <p>(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal.</p>	<p>of that Ministry,</p> <p>(b) in relation to a Department, the Head of that Department,</p> <p>and</p> <p>(c) in relation to a prescribed authority, the chief executive officer, general manager or other similar officer of that authority;</p>				<p>(a) cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in Trinidad and Tobago as soon as practicable after the commencement of this Act–</p> <p>...</p> <p>(iv) for the initial receipt of, and action upon, notices under section 10, requests for access to documents under section 13 and applications under section 36;</p>
<b>Maintenance of records</b>	<p><b>Maintenance of records.</b></p> <p>12. (1) Every public authority shall maintain its records in a manner which facilitates the right of access to information, as provided for in this Act, and in accordance with the code of Practice issued pursuant to subsection (3).</p>	<b>No similar provision.</b>		<b>No similar provision.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>

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	<p>(2) Every public authority shall establish and maintain adequate procedures for the correction of personal information held by it.</p> <p>(3) The Commissioner shall, after appropriate consultation with interested parties, issue and, from time to time, update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the Archives and Records Office established under the Archives and Records Act.</p>					
<b>Training of officials</b>	<p><b>Training of officials</b></p> <p>13. Every public authority shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.</p>	No similar provision.		No similar provision.	No similar provision.	No similar provision.
<b>Statement of possession of certain documents to be published</b>	No similar provision.	No similar provision.	<p><b>Duties of the State, its authorities and institutions:</b></p> <p><b>Article 4.</b> – It shall be mandatory for the Dominican States and all its authorities, agencies and entities listed in Article 1 of the present law to provide information required by this law, and which is</p>	No similar provision.	No similar provision.	<p><b>Statement of possession of certain documents to be published</b></p> <p>9. (1) This section applies, in respect of a public authority, to any document that is–</p> <p>(a) a report, or a statement containing the advice or recommendations, of a body or entity esta-</p>

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			<p>required to be permanently updated, and any information that may be especially required by interested persons. To comply with these objectives, the maximum authorities are required to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means. The duty to provide information to requesting persons extends to all legally established agencies, and those in the process of formation, which are recipients of public funds, including established political parties or those in the process of formation, in the case of which the information shall include the identity of contributors, origin and destination of operational and administration funds.</p> <p><b>Article 5.</b> – The computerization and incorporation of all the centralized and</p>			<p>blished within the public authority;</p> <p>(b) a report, or statement containing the advice or recommendations, of a body or entity established outside the public authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the public authority or to the responsible Minister of that public authority;</p> <p>(c) a report, or a statement containing the advice or recommendations, of an interdepartmental Committee whose membership includes an officer of the public authority;</p> <p>(d) a report, or a statement containing the advice or recommendations, of a committee established within the public authority to submit a report,</p>

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			<p>decentralized public agencies of the State, including the National District and the municipalities, and their incorporation into the internet-based communication system or into any other system of a similar nature which may be established in the future, is hereby ordered with the aim of guaranteeing thereby direct access to State information by the public. All authorities and agencies of the State shall ensure the publication of their respective web pages with the following objectives:</p> <ul style="list-style-type: none"> <li>a) Dissemination of information: organization, members, operating rules, projects, management reports, database;</li> <li>b) Exchange and Customer or User Services Center: enquiries, complaints and suggestions;</li> <li>c) Bilateral procedures or transactions.</li> </ul> <p>The information referred to in the preceding paragraph shall be freely</p>			<p>provide advice or make recommendations to the responsible Minister of that public authority or to another officer of the public authority who is not a member committee;</p> <ul style="list-style-type: none"> <li>(e) a report (including a report concerning the results of studies, surveys or tests) prepared for the public authority by a scientific or technical expert, whether employed within the public authority or not, including a report expressing the opinion of such an expert on scientific or technical matters;</li> <li>(f) a report prepared for the public authority by a consultant who was paid for preparing the report;</li> <li>(g) a report prepared within the public authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of</li> </ul>

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			accessible to the public without the need for a request.			<p>establishing a new or proposed Government policy, programme or project;</p> <p>(h) a report on the performance or efficiency of the public authority, or of an office, division or branch of the public authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the public authority;</p> <p>(i) a report containing final plans or proposals for the re-organization of the functions of the public authority, the establishment of a new policy, programme or project to be administered by the public authority, or the alteration of an existing policy programme or project administered by the public authority, whether or not the plans or proposals are subject</p>

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						<p>to approval by an officer of the public authority, another public authority, the responsible Minister of the public authority or Cabinet;</p> <p><i>(j)</i> a statement prepared within the public authority and containing policy directions for the drafting of legislation;</p> <p><i>(k)</i> a report of a test carried out within the public authority on a product for the purpose of purchasing equipment;</p> <p><i>(l)</i> an environmental impact statement prepared within the public authority; and</p> <p><i>(m)</i> a valuation report prepared for the public authority by a valuator, whether or not the valuator is an officer of the public authority.</p> <p><i>(2)</i> A public authority shall, with the approval of the Minister—</p> <p><i>(a)</i> cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in</p>

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						<p>Trinidad and Tobago as soon as practicable after the commencement of this Act, a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of this Act and are in the possession of the public authority;</p> <p>(b) within twelve months after publication of the statement required under paragraph (a) and thereafter at intervals of twelve months, cause to be published in the <i>Gazette</i> and in a daily newspaper circulating in Trinidad and Tobago, statements bringing up to date the information contained in the previous statement or statements.</p> <p>(3) This section does not require a document of the kind referred to in subsection (1) containing</p>



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						<p>exempt information to be referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.</p> <p>(4) A public authority that comes into existence on or after the commencement of this Act shall comply—</p> <p>(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the public authority comes into existence and not later than twelve months after that day; and</p> <p>(b) with the provisions of subsection (2)(b) as if the reference to “first publication” in that subsection were a reference to first publication in compliance with this subsection.</p>

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Notice requiring public authority to specify a document in the statement	No similar provision	No similar provision	No similar provision.	No similar provision	No similar provision	<p><b>Notice requiring public authority to specify a document in the statement</b></p> <p><b>10. (1)</b> A person may serve upon a public authority a notice in writing stating that, in the opinion of the person, a statement published by the public authority under section 8(2)(a) or (b) or section 9(2)(a) or (b) does not specify a document as described in section 8(1) or 9(1) that was required to be specified in the statement.</p> <p><b>(2)</b> The public authority shall–</p> <p><b>(a)</b> make a decision within twenty-one days of receiving a notice and publish the decision in relation to the document referred to in subsection (1), no later than seven days thereafter in the <i>Gazette</i>;</p> <p><b>(b)</b> cause the person to be given notice in writing of its decision.</p>

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						<p>(3) Where the decision is adverse to the person's claim, the notice shall—</p> <p>(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and</p> <p>(b) inform the person of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.</p>
<b>Right of access to information</b>	<p><b>Right of access.</b></p> <p><b>15. (1)</b> Notwithstanding any law to the contrary and subject to the provisions of this Act, every person has the right to obtain, on request, access to information.</p> <p>(2) Nothing in this Act shall prevent a public authority from giving access to documents or information other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or</p>	<p><b>Right to access.</b></p> <p><b>9.</b> Subject to this Act, every person shall have a right to obtain access in accordance with this Act to a document of a Ministry or prescribed authority, other than an exempt document.</p>	<p><b>Right to information and to access the files and records of an administrative character.</b></p> <p><b>Article 2.</b> – The right to information consists of the freedom to access the information contained in records and files of the public administration, as well as the right to be informed periodically and upon request, of the activities developed by entities and persons exercising</p>	<p><b>Right of access.</b></p> <p><b>6. (1)</b> Subject to the provisions of this Act, every person shall have a right to obtain access to an official document, other than an exempt document.</p> <p>(2) The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Minister may specify by order, subject to</p>	<p><b>Right of access.</b></p> <p><b>10.</b> Subject to this Act, every person shall have a right of access in accordance with this Act, to an official document other than an exempt document.</p>	<p><b>Right of access.</b></p> <p><b>11. (1)</b> Notwithstanding any law to the contrary and subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document.</p> <p>(2) Nothing in this Act shall prevent a public authority from;</p> <p>(a) giving access to documents or information;</p> <p>(b) amending documents, other than as required by</p>

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	order of the Court.		public functions. <u>Provided</u> that such access does not affect national security, or public order, or public health or morals or a third person's right to privacy and relationships, or the rights to reputation of others. It also consists of the freedom to seek, request, receive and disseminate information regarding State administration and to enquire from persons and entities exercising public functions and the right to obtain copies of documents that contain information on the exercise of their authorized activities, with the only limitations, restriction and conditions established by the present law.	affirmative resolution. (3) An applicant for access to an official document shall not be required to give any reason for requesting access to that document. (4) Where an official document 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 document shall be obtained in accordance with the provisions of that enactment or those procedures, as the case may be.		this Act where it has the discretion to do so or where it is required to do so by any written law or order of a Court.
<b>Procedure for obtaining access to information</b>	<b>Requests for information.</b> 17. (1) For the purposes of section 15, a request for information shall be made by the applicant in writing addressed to a senior official or the information officer of a public authority or private body and in sufficient detail to facilitate a determination,	<b>Procedure for obtaining access to certain documents.</b> 10. Where— (a) a document is open to public access, as part of a public register or otherwise, in accordance with another	<b>Of the procedure to exercise the right and access to information.</b> <b>Article 7.</b> – The application for access to information shall be made in writing and shall include, as a minimum, the following requirements for its	<b>Application for access.</b> 7. (1) A person who wishes to obtain access to an official document shall make an application to the public authority for access which holds that document. (2) An application under subsection (1)–	<b>Access to certain documents.</b> 11. Where (a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or (b) a document is	<b>Requests for access.</b> 13. (1) A person who wishes to obtain access to an official document shall make a request in the form set out in the Schedule, to the relevant public authority for access to the document. (2) A request shall

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	<p>with reasonable effort, whether or not the authority holds a record containing that information.</p> <p>(2) Where a request for information does not comply with the provisions of subsection (1), the official who receives the request shall, subject to subsection (5), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with subsection (1).</p> <p>(3) A person who is unable, because of illiteracy or disability, to make a written request for information may make an oral request, and the official who receives the oral request shall, subject to subsection (5), reduce it to writing, and include his name and position within the public authority, and give a copy thereof to the person who made the request.</p>	<p>enactment; or</p> <p>(b) a document is available for purchase by the public in accordance with arrangements made by a Ministry or prescribed authority, the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.</p> <p><b>Requests for access.</b></p> <p><b>12. (1)</b> A person who wishes to obtain access to a document of a Ministry or prescribed authority shall make a request in writing to the Ministry or prescribed authority for access to the document.</p> <p>(2) Subject to subsection (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Ministry or prescribed authority, as the case may be, to identify the document.</p> <p>(3) Where a request is expressed to relate to all documents, or to all documents of a specified</p>	<p>processing:</p> <p>a) Complete name and merits of the person making the application;</p> <p>b) Clear and precise identification of the data and information being requested;</p> <p>c) Identification of the public authority that possesses the information;</p> <p>d) Motivation of the reasons for requesting the data and information;</p> <p>e) Place or medium to receive notifications.</p> <p><b>Paragraph I.</b> – If the request does not contain the required data, the Administration shall inform the requesting person accordingly so that s/he can correct and complete the data, and for this purpose the applicant shall have the assistance of the relevant office designated by the Administration’s agency to receive applications.</p> <p><b>Paragraph II.</b> – If the application is made to an office that is not authorized to provide the information or which</p>	<p>(a) may be made in writing or transmitted by telephone or other electronic means;</p> <p>(b) shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify it.</p> <p>(3) A public authority to which an application is made shall–</p> <p>(a) upon request, assist the applicant in identifying the documents to which the application relates;</p> <p>(b) acknowledge receipt of every application in the prescribed manner;</p> <p>(c) grant to the applicant, access to the document specified in the application if it is not an exempt document.</p> <p>(4) A public authority shall respond to an application as soon as practicable but not later than–</p> <p>(a) thirty days after the date of receipt of the application; or</p> <p>(b) in the case of an application transferred</p>	<p>available for purchase by the public in accordance with arrangements made by a public authority, the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.</p> <p><b>Requests for access.</b></p> <p><b>13. (1)</b> A person who wishes to obtain access to a document of a public authority shall make a request in writing to the public authority for access to the document.</p> <p>(2) A request shall identify the document or shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public authority to identify the document.</p> <p>(3) A request may specify in which of the forms of access set out in section 20 the applicant wishes to be given access.</p> <p>(4) Subject to section 22, a request may be made for access to all documents of a particular description that contain</p>	<p>identify the official document, or provide sufficient information to enable the designated officer of the public authority, or an employee of the public authority who is familiar with the relevant documents, to identify the document with reasonable effort.</p> <p>(3) A request may specify in which of the forms described in section 18 the applicant wishes to be given access.</p> <p>(4) Subject to section 21, a request under this section may be made for access to all records of a particular description or all records relating to a particular subject.</p> <p>(5) An application for access to an official document held by a public authority referred to in section 4(j)(i) or (iii) shall be made to the responsible Minister.</p>

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		<p>class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the Ministry or prescribed authority.</p> <p>(4) It is the duty of a Ministry or prescribed authority, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate Ministry or prescribed authority, to make a request in a manner that complies with this section or to direct a request to the appropriate Ministry or specified authority.</p> <p>(5) Where a request in writing is made to a</p>	<p>simply does not have the information, that office shall send the application to the competent administration for processing in accordance with the present law. At no time shall the making of a request to an unauthorized office signify that a request for access to information by an interested person will be denied or filed away.</p> <p><b>Paragraph III.</b> – If the application must be denied for any of the reasons foreseen in the present law, this denial must be communicated in writing to the applicant within five (5) working days from the date of receipt of the application.</p> <p><b>Paragraph IV.</b> – The Public Administration, both centralized and decentralized as well as any other agency or entity that exercises public functions or implements a public budget, are required to provide citizens with simple and accessible information on the arrangements and procedures they should follow to apply for the</p>	<p>to it by another authority pursuant to section 8, thirty days after the date of the receipt by that authority, so, however, that an authority may extend the period of thirty days for a further period, not exceeding thirty days, in any case where there is reasonable cause for such extension.</p> <p>(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 days, it shall state the reasons therefor, and the options available to an aggrieved applicant.</p>	<p>information of a specified kind or which relate to a particular subject matter.</p>	

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		<p>Ministry or prescribed authority for access to a document, the Ministry or prescribed authority, as the case may be, shall not refuse to comply with the request on the ground—</p> <p>(a) that the request does not comply with subsection (2); or</p> <p>(b) that, in the case of a request of the kind referred to in subsection (3), compliance with the request would interfere unreasonably with the operations of the Ministry or prescribed authority, as the case may be, without first giving the applicant a reasonable opportunity of consultation with the Ministry or prescribed authority with a view to the making of a request in a form that would remove the ground for refusal.</p>	<p>required information, the competent authorities or bodies, the mode of making the application, the manner of filling the required forms, as well as the dependency to which they can go to request guidance or to make complaints, enquiries or to protest against the services provided or on the exercise of functions or authorities in charge of the entities or persons concerned.</p>			

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Access procedure not to apply to certain documents	<p><b>Access procedure not to apply to certain documents.</b></p> <p><b>16. (1)</b> A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to—</p> <p>(a) a document which contains information that is open to public access, as part of a public register or other document, in accordance with any other written law, where that access is subject to a fee or any other charge;</p> <p>(b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;</p> <p>(c) a document that is available for public inspection in a registry maintained by the Registrar or other public authority;</p> <p>(d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.</p> <p>(1) a person making a request for information to a</p>	<p><b>Access to documents apart from this Act.</b></p> <p><b>11.</b> Nothing in this Act is intended to prevent or discourage Ministries and prescribed authorities from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.</p>		<p>No similar provision.</p>	<p><b>Access to documents otherwise than under this Act.</b></p> <p><b>12.</b> Nothing in this Act shall prevent a public authority from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where it has the discretion to do so or is required by law to do so.</p>	<p><b>Access procedure not to apply to certain documents.</b></p> <p><b>12.</b> A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to—</p> <p>(a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another written law, where that access is subject to a fee or other charge;</p> <p>(b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;</p> <p>(c) a document that is available for public inspection in a registry maintained by the Registrar General or other public authority;</p> <p>(d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a</p>



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	<p>public authority shall be entitled, subject only to the provisions of this Part and Part IV of this Act –</p> <p>(a) to be informed whether or not the public authority holds a record containing that information or a record from which that information may be derived; and</p> <p>(b) if the public authority does hold such a record, to have that information communicated to him.</p>					document of a public authority.
<b>Transfer of requests.</b>	<p><b>If a record is not held.</b></p> <p><b>22. (1)</b> Where an official who receives a request for information believes on reasonable grounds that the request relates to information that is not contained in any record held by the public authority, the official may transfer the request to the information officer for purposes of compliance with this section.</p> <p><b>(2)</b> Where an information officer receives a request pursuant to subsection (1), he shall confirm whether or not the public authority holds a record containing the information and, if it does not, he shall, if he knows of</p>	<p><b>Transfer of requests.</b></p> <p><b>13. (1)</b> Where–</p> <p>(a) a request is made to a Ministry or prescribed authority for access to a document; and</p> <p>(b) the document is not in the possession of that Ministry or prescribed authority but is in the possession of another Ministry or prescribed authority or the subject-matter of the document is more closely connected with the functions of another Ministry or prescribed authority than with those of</p>	<p><b>Of the procedure to exercise the right and access to information.</b></p> <p><b>Article 7. Paragraph II</b></p> <p>Paragraph II. – If the application is made to an office that is not authorized to provide the information or which simply does not have the information, that office shall send the application to the competent administration for processing in accordance with the present law. At no time shall the making of a request to an unauthorized office signify that a request for access to information by an interested person will be denied or filed away.</p>	<p><b>Transfer of requests.</b></p> <p><b>8. (1)</b> Where an application is made to a public authority for an official document–</p> <p>(a) which is held by another public authority; or</p> <p>(b) the subject matter of which is more closely connected with the functions of another public authority,</p> <p>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.</p> <p><b>(2)</b> A transfer of an</p>	<p><b>Transfer of request for access.</b></p> <p><b>15. (1)</b> Where a request is made to a public authority for access to a document and the request has not been directed to the appropriate public authority, the public authority to which the request is made shall transfer the request to the appropriate public authority and inform the person making the request accordingly.</p> <p><b>(2)</b> Where a request is transferred to a public authority in accordance with this section, it shall be deemed to be a request made to that public authority and received on</p>	<p><b>(Cf.) Duty to assist applicants.</b></p> <p><b>14. (1)</b> A public authority shall take reasonable steps to assist any person who–</p> <p>(a) wishes to make a request under section 13; or</p> <p>(b) has made a request which does not comply with the requirements of section 13(2), to make a request in a manner which complies with that section.</p> <p><b>(2)</b> Where a request in writing is made to a public authority for access to an official document, the public</p>

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	<p>another public authority which holds the relevant record, as soon as practicable—</p> <p>(a) transfer the request to that public authority and inform the applicant of such transfer; or</p> <p>(b) indicate to the applicant which public authority holds the relevant record;</p> <p>whichever would be likely to ensure more expeditious access to the information.</p> <p>(3) Where a request is transferred pursuant to subsection 2(a), the time limit for responding to requests under section 18 shall begin to run from the date of the transfer.</p> <p><b>17 (5)</b></p>	<p>the Ministry or prescribed authority to which the request is made, the Ministry or prescribed authority to which the request is made may transfer the request to the other Ministry or prescribed authority and inform the person making the request accordingly and, if it is necessary to do so in order to enable the other Ministry or prescribed authority to deal with the request, send the document to the other Ministry or prescribed authority.</p> <p>(2) Where a request is transferred to a Ministry or prescribed authority in accordance with this section, it shall be deemed to be a request made to that Ministry or prescribed authority and received at the time at which it was originally received.</p>		<p>application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen days after the date of receipt of the application.</p>	<p>the date on which it was originally received.</p>	<p>authority shall not refuse to comply with the request on the ground that the request does not comply with section 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that does comply with that section.</p> <p>(3) Without prejudice to section 21, a public authority shall take reasonable steps to assist any person in the exercise of any other right under this Act.</p>

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<p><b>Time limits for responding to requests.</b></p>	<p><b>Time limits for responding to requests.</b></p> <p><b>18.</b> (1) Subject to subsections (2) and (3), an official of a public authority must respond to a request for information as soon as practicable and in any event within twenty working days of receipt of the request if the request has been approved and the applicant has paid the fees required to be paid under section 20.</p> <p>(2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the official shall provide a response within 48 hours.</p> <p>(3) The official of a public authority may, by notice in writing within the initial period of twenty days extend the period in subsection (1) to the extent strictly necessary, and in any case to not more than forty working days, where the request is for a large number of records or requires a search through a large number of records and where compliance within 20 working days would unreasonably interfere with the operations of the public authority.</p>	<p><b>Time within which formal requests to be decided.</b></p> <p><b>16.</b> If a request to a Ministry or prescribed authority—</p> <p>(a) is made in writing and is expressed to be in pursuance of this Act; and</p> <p>(b) is sent by post to the Ministry or prescribed authority, or delivered to an officer of the Ministry or prescribed authority, at an address of the Ministry or prescribed authority, as the case may be, to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,</p> <p>the Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than <i>two weeks</i> after the day on which the request is received by or on behalf of the Ministry or</p>	<p><b>Time-frame for delivery of information.</b></p> <p><b>Article 8.</b> – All requests for information in accordance with the present law shall be satisfied within fifteen (15) working days. This period may be extended, in an exceptional manner, for ten (10) additional working days where circumstances interfere with the collection of the requested information. In that case, the requested body, by communication signed by the relevant authority and before the expiration of the fifteen-day deadline, shall communicate the reasons for making use of the exceptional extension.</p> <p><b>Article 9.</b> – The failure to observe the deadlines established in the preceding Article, as well as any conduct which violates, limits, impedes, restricts or obstructs the freedom to access information as provided for under the present law, shall constitute a serious fault of the officer in the execution</p>	<p><b>Application for access.</b></p> <p><b>7. ...</b>(4) A public authority shall respond to an application as soon as practicable but not later than—</p> <p>(a) thirty days after the date of receipt of the application; or</p> <p>(b) in the case of an application transferred to it by another authority pursuant to section 8, thirty days after the date of the receipt by that authority, so, however, that an authority may extend the period of thirty days for a further period, not exceeding thirty days, in any case where there is reasonable cause for such extension.</p> <p>(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 days, it shall state the reasons therefor, and the options available to an aggrieved applicant.</p>	<p><b>Time limit for determining requests.</b></p> <p><b>16.</b> A public authority shall take reasonable steps to enable an applicant to be notified of the decision on his request (including a decision for deferral of access under section 21) as soon as practicable but in any case not later than thirty days from the date on which the request is duly made.</p> <p><b>Access to documents.</b></p> <p><b>17.</b> Where a request for access to a document is duly made and</p> <p>(a) the request is approved by the public authority; and</p> <p>(b) subject to section 19, any fee required to be paid before access is granted has been paid,</p> <p>access to the document shall be given forthwith in accordance with this Act.</p>	<p><b>Time limit for determining requests.</b></p> <p><b>15.</b> A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.</p>

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	<p>(4) Failure to comply with the time limits prescribed or permitted under this section is deemed to be a refusal of the request.</p>	<p>prescribed authority.  <b>Access to documents to be given on request.</b>  <b>15. (1)</b> Where a request for access to a document is duly made, and payment is made of any charge that is required to be paid before access is granted, access to the document shall be given in accordance with this Act.  <b>(2)</b> The expression “duly made” occurring in subsection (1) means that the request shall be in writing.</p>	<p>of his duties, without prejudice to the application of the relevant sanctions regime.  <b>Deemed refusal:</b>  <b>Article 10.</b> – If the body or entity to which a request for information is made fails to meet the deadlines for delivery of the requested information or to offer legal reasons that impede its delivery thereof, it shall be considered a denial of the information and consequently, a violation of the present law. Accordingly, the sanctions provided for in the present law shall, consequently, be applied to the relevant officers.</p>			
<p><b>Requests involving use of computers, etc.</b></p>	<p><b>No similar provision.</b></p>	<p><b>Requests involving use of computers, etc.</b>  <b>14. (1)</b> Where—  <b>(a)</b> a request (including a request of the kind described in subsection 12 (3)) is duly made to a Ministry or prescribed authority;  <b>(b)</b> it appears from the request that the desire of the appli-</p>		<p><b>No similar provision.</b></p>	<p><b>No similar provision.</b></p>	<p><b>No similar provision.</b></p>

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		<p>cant is for information that is not available in discrete form in documents of the Ministry or prescribed authority; and</p> <p>(c) the Ministry or prescribed authority could produce a written document containing the information in discrete form by—</p> <p>(i) the use of a computer or other equipment that is ordinarily available to the Ministry or prescribed authority for retrieving or collating stored information; or</p> <p>(ii) the making of a transcript from a sound recording held in the Ministry or prescribed authority, the Ministry or prescribed authority shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the Ministry or prescribed authority had such a document in its possession.</p> <p>(2) A Ministry or</p>				

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		prescribed authority is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the Ministry or prescribed authority.				
<b>Notice of response.</b>	<p><b>Notice of response.</b></p> <p>19. (1) The response pursuant to section 18 to a request for information shall be made in writing and state—</p> <ul style="list-style-type: none"> <li>(a) the applicable fee, if any, pursuant to section 20, in relation to any part of the request which is granted, and the form in which the information will be communicated;</li> <li>(b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part IV;</li> <li>(c) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and</li> <li>(d) the right of appeal to the Commissioner or to a judicial review</li> </ul>	<b>Related provisions</b>		<b>Related provisions</b>	<b>Related provisions.</b>	<b>Related provisions.</b>

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	<p>available to the applicant.</p> <p>(2) The response pursuant to section 18 to a request for information shall be made in writing and state—</p> <p>(a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 20, and the form in which the information will be communicated; and</p> <p>(b) in relation to any part of the request which is not granted, adequate reasons for the refusal.</p> <p>(3) In relation to a request or any part of a request that is granted, communication of the information must take place forthwith, subject only to section 20.</p>					
<b>Forms of access.</b>	<p><b>Means of communicating the information.</b></p> <p><b>21. (1)</b> Where a request indicates a preference as to the form of communication of information provided in subsection (2), a public authority communicating information pursuant to a request for information shall, subject to subsection (3), do so in accordance with the preference indicated by</p>	<p><b>Forms of access.</b></p> <p><b>17. (1)</b> Access to a document may be given to a person in one or more of the following forms:</p> <p>(a) a reasonable opportunity to inspect the document;</p> <p>(b) provision by the Ministry or prescribed authority</p>	<p><b>Manner of delivery of requested information.</b></p> <p><b>Article 11. –</b> The requested information may be delivered in person, by telephone, facsimile, regular, certified or electronic mail, or through formats available in the web page that the administration has prepared for this purpose pursuant to</p>	<p><b>Forms of access.</b></p> <p><b>9. (1)</b> Access to an official document may be granted to an applicant in one or more of the following forms (a) the applicant may be afforded a reasonable opportunity to inspect the document;</p> <p>(b) the authority concerned may furnish the applicant with a copy of the document;</p>	<p><b>Forms of access.</b></p> <p><b>20. (1)</b> Access to a document may be given to a person in one or more of the following forms:</p> <p>(a) a reasonable opportunity to inspect the document;</p> <p>(b) provision by the public authority of a copy of the document;</p> <p>(c) in the case of a document that is an</p>	<p><b>Forms of access.</b></p> <p><b>18. (1)</b> Where a document to which access is required to be under this Act is held by a public authority in printed form, the public authority shall give access to it by supplying a copy of it to the applicant or, if the applicant so requests, by making it available to the</p>

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	<p>the applicant.</p> <p>(2) An applicant may, in a request for information, indicate the following preferences as to the form of communication of information—</p> <p>(a) a true copy of the record in permanent or other form;</p> <p>(b) an opportunity to inspect the record, where necessary using equipment normally available to the public authority;</p> <p>(c) an opportunity to copy the record;</p> <p>(d) a transcript of the record in print, electronic, sound or visual form;</p> <p>(e) a transcript of the content of a record, in print, electronic, sound or visual form, where such transcript is capable of being produced using equipment normally available to the authority; or a transcript of the record from shorthand or other codified form.</p> <p>(3) A public authority shall not be required to communicate information in the form indicated by the</p>	<p>of a copy of the document;</p> <p>(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;</p> <p>(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the Ministry or prescribed authority of a written transcript of the words recorded or contained in the document.</p> <p>(2) Subject to subsection (3) and to section 19, where the applicant has requested access in a particular form, access shall be given in that form.</p>	<p>Article 1 of this law.</p> <p><b>Proof of mode of delivery of the information.</b></p> <p><b>Article 12.</b> – A system for proving the effective delivery of the information to the citizen shall be duly established taking into account the relevant technical developments, such as encryption rules, electronic signature, certificates of authenticity and electronic reports delivery manuals.</p>	<p>(c) in the case of a document 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;</p> <p>(d) in the case of a document by which or in which words are—</p> <p>(i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or</p> <p>(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 document.</p> <p>(2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.</p> <p>(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</p>	<p>article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;</p> <p>(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the public authority of a written transcript of the words recorded or contained in the document.</p> <p>(2) Subject to subsection (3) and to section 18, where the applicant has requested access in a particular form, access shall be given in that form.</p> <p>(3) If the form of access requested by the applicant—</p> <p>(a) would interfere unreasonably with the operations of the public authority; or</p> <p>(b) would be detrimental</p>	<p>applicant for inspection.</p> <p>(2) Where a document to which access is required to be given under this Act is held by a public authority other than in printed form, the public authority shall, if the applicant so requests, give access to it—</p> <p>(a) by supplying a copy of it to the applicant;</p> <p>(b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the applicant to hear or view those sounds or visual images;</p> <p>(c) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by supplying a printed transcript of the words recorded or contained in the</p>



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	<p>person making the request where to do so would–</p> <p>(a) unreasonably interfere with the operations of the public authority; or</p> <p>(b) adversely affect the preservation of the record.</p> <p>(4) Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.</p>	<p>(3) If the form of access requested by the applicant–</p> <p>(a) would interfere unreasonably with the operations of the Ministry or prescribed authority; or</p> <p>(b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or</p> <p>(c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document, access in that form may be refused and access given in another form.</p>		<p>requested would–</p> <p>(a) be detrimental to the preservation of the document, or be inappropriate, having regard to its physical state;</p> <p>(b) constitute an infringement of copyright subsisting in any matter contained in the document.</p> <p>(4) Copies of documents to which access is granted shall be authenticated in the prescribed manner.</p>	<p>to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or</p> <p>(c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document, access in that form may be refused and access given in another form.</p>	<p>document.</p> <p>(3) Subject to this section and to section 16(2), where the applicant has requested access in a particular form, access shall be given in that form.</p> <p>(4) If the form of access requested by the applicant–</p> <p>(a) would interfere unreasonably with the operations of the public authority;</p> <p>(b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or</p> <p>(c) would involve an infringement of copyright subsisting in a person other than the State, access in that form shall be refused but access may be given in another form.</p>
<b>Deferment of access.</b>	<b>No similar provision.</b>	<p><b>Deferment of access.</b></p> <p>18. (1) A Ministry or prescribed authority which receives a request may defer the provision of access to the</p>		<p><b>Assistance and deferment of access.</b></p> <p>10. (1) Where the information provided by the applicant in relation to the document</p>	<p><b>Deferral of access.</b></p> <p>21. (1) A public authority which receives a request may defer the provision of access to the document concerned until the</p>	<p><b>Deferment of access.</b></p> <p>19. (1) A public authority which receives a request may defer the provision of access to the document concerned if</p>

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		<p>document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.</p> <p>(2) Where the provision of access to a document is deferred in accordance with subsection (1), the Ministry or prescribed authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.</p>		<p>is not such as is 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 document can be identified.</p> <p>(2) A public authority may defer the grant of access to an official document–</p> <p>(a) if publication of the document within a particular period is required under the provisions of any enactment, until the expiration of that period;</p> <p>(b) if the document was prepared for presentation to Parliament 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 the person or body;</p> <p>(c) if the premature</p>	<p>happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.</p> <p>(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.</p>	<p>the document has been prepared–</p> <p>(a) for presentation to Parliament;</p> <p>(b) for release to the media; or</p> <p>(c) solely for inclusion, in the same or in an amended form in a document to be prepared for a purpose specified in paragraph (a) or (b), and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.</p> <p>(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.</p>

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				<p>release of the document 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 document would not be contrary to the public interest.</p> <p>(3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen 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.</p>		
<b>Deletion of exempt matter</b>	<p><b>Severability of information.</b></p> <p>25. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception specified in this Part, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the person making the request.</p>	<p><b>Deletion of exempt matter.</b></p> <p>19. (1) Where—</p> <p>(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;</p> <p>(b) it is practicable for the Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not</p>		<p><b>Deletion of exempt matter.</b></p> <p>11. (1) Where an application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom.</p> <p>(2) A public authority which grants access to a copy of an official document in accordance with this section shall</p>	<p><b>Deletion of exempt information.</b></p> <p>18. (1) Where</p> <p>(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document; and</p> <p>(b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document;</p>	<p><b>Giving of access and deletion of exempt information.</b></p> <p>16. (1) Subject to this Act, where—</p> <p>(a) a request is duly made by an applicant to a public authority for access to an official document;</p> <p>(b) the request is approved by the public authority; and</p> <p>(c) any fee prescribed under section 17 that is required to be paid</p>

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		<p>an exempt document; and</p> <p>(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy, the Ministry or prescribed authority shall grant access to such a copy of the document.</p> <p>(2) Where access is granted to a copy of a document in accordance with subsection (1)–</p> <p>(a) the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any matter deleted is exempt matter; and</p> <p>(b) section 21 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the Ministry or prescribed authority to furnish him with a notice in writing in accordance with that section.</p>		<p>inform the applicant–</p> <p>(a) that it is such a copy; and</p> <p>(b) of the statutory provision by virtue of which such deleted matter is exempt matter.</p>	<p>and</p> <p>(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,</p> <p>the public authority shall give the applicant access to such a copy of the document.</p> <p>(2) Where access is granted to a copy of a document in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any information deleted is exempt information.</p>	<p>before access is granted has been paid,</p> <p>the public authority shall forthwith give the applicant access to the official document.</p> <p>(2) Where–</p> <p>(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;</p> <p>(b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and</p> <p>(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy, the public authority shall give the applicant access to such a copy of the document.</p>

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<b>Fees</b>	<p><b>Fees.</b></p> <p><b>20. (1)</b> The communication of information pursuant to a request may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.</p> <p><b>(2)</b> Payment of a fee shall not be required for requests for personal information, and requests in the public interest.</p> <p><b>(3)</b> The Minister may, after consultation with the Commissioner, make Regulations providing—</p> <p><b>(a)</b> for the fees to be paid;</p> <p><b>(b)</b> for the manner in which fees are to be calculated;</p> <p><b>(c)</b> that no fee is to be charged in cases specified in the Regulations; and</p> <p><b>(d)</b> for any other matter relating to fees.</p> <p><b>(4)</b> A public body shall not require payment of a fee pursuant to subsection (1) where the cost of collecting that fee would exceed the amount of the fee.</p>	<p><b>No similar provision</b></p>	<p><b>Free of cost.</b></p> <p><b>Article 14.</b> – Public access to information shall be free if the reproduction thereof is not required. In any event, the fees to be charged by the institutions shall be reasonable and calculated on the basis of the costs of providing the information.</p> <p><b>Article 15.</b> – The agency may apply rates intended to pay the different costs that the search and reproduction of the information require, but that shall not imply the lessening of the exercise of the freedom to access public information. It may also establish different costs when the information is requested for use as part of a profit-making activity; and may exempt from payment when the request is made by educational, scientific, or non-profit institutions or those associated with activities of public or social interest.</p> <p><b>Article 16.</b> – Any person who is prevented from exercising the right of access to information</p>	<p><b>Fees, etc.</b></p> <p><b>12. (1)</b> The cost of reproducing any documents containing information in relation to which an application is made under this Act shall be borne by the applicant.</p> <p><b>(2)</b> The responsible Minister may waive, reduce or remit, the cost specified in subsection (1) for access to an official document where he is satisfied that such waiver, reduction or remission is justifiable.</p>	<p><b>Fees.</b></p> <p><b>19.</b> The Minister may from time to time by regulation prescribe or alter</p> <p><b>(a)</b> the fees to be charged by a public authority for the making of a request for access to a document;</p> <p><b>(b)</b> the fees payable where access to a document is to be given in the form of printed copies in some other form such, as on tape, disk, film, electronic means or other material;</p> <p><b>(c)</b> the manner in which any fees payable under this Act is to be calculated and the maximum amount it shall not exceed; and</p> <p><b>(d)</b> exempt any person or category of persons from paying any fees under this Act, where the information contained in the document for which access is requested is in the public interest.</p>	<p><b>Fees for access to documents.</b></p> <p><b>17. (1)</b> No fee shall be charged by a public authority for the making of a request for access to an official document.</p> <p><b>(2)</b> Where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee.</p> <p><b>(3)</b> Notwithstanding subsection (2), where a public authority fails to comply with section 15, any access to official documents to which the applicant is entitled pursuant to his request shall be provided free of charge.</p> <p><b>(4)</b> Notwithstanding subsection (2), where a public authority fails to give an applicant access to an official document within seven working days of the payment of the relevant fee pursuant to section 16(1)(c), the applicant shall, in addition to access to the official document requested, be entitled to</p>

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			may use the <i>habeas corpus</i> remedy preserved by Article 30 of the present law.			a refund of the fee paid. (5) The fees payable by the applicant shall be commensurate with the cost incurred in making documents available.
<b>Decision to be made by authorized person.</b>	<b>No similar provision.</b>	<b>Decision to be made by authorized person.</b> 20. A decision in respect of a request made to a Ministry or prescribed authority may be made, on behalf of the Ministry or prescribed authority, by the responsible Minister or the principal officer of the Ministry or prescribed authority or, subject to the regulations, by an officer of the Ministry or prescribed authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the responsible Minister or the principal officer of the Ministry or prescribed authority.		<b>No similar provision.</b>	<b>Decisions to be made by authorized persons.</b> 23. A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the chief executive officer of the public authority or, subject to the regulations, by an officer of the public authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the chief executive officer of the public authority.	<b>Decision to be made by authorized person.</b> 22. (1) A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the Responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the Responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer. (2) Where a request is made to a public authority for a document, and no arrangements in respect of documents of that type have been made and published under the regulations, a decision on

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						that request shall, for the purpose of enabling an application for judicial review to be made, be deemed to have been made by the Responsible Minister of the public authority.
<b>Reasons and other particulars of decisions to be given.</b>	<p><b>Notice of response.</b></p> <p><b>19. (1)</b> The response pursuant to section 18 to a request for Notice of information shall be made in writing and state—</p> <p>(a) the applicable fee, if any, pursuant to section 20, in relation to any part of the request which is granted, and the form in which the information will be communicated;</p> <p>(b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part IV;</p> <p>(c) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and</p> <p>(d) the right of appeal to the Commissioner or to a judicial review</p>	<p><b>Reasons and other particulars of decisions to be given.</b></p> <p><b>21. (1)</b> Where, in relation to a request for access to a document of a Ministry or prescribed authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred, the Ministry or prescribed authority shall cause the applicant to be given notice in writing of the decision, and the notice shall—</p> <p>(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;</p> <p>(b) where the decision relates to a</p>	<p><b>Administrative and jurisdictional recourses.</b></p> <p><b>Article 26.</b> – The general principle that must always be respected is that the information must be provided within the specified timeframe and that all denials to provide information must be made in writing, indicating therein the legal basis for said denials.</p> <p><b>Paragraph I.</b> – When the information is denied on the ground of reservation or confidentiality of the information, the circumstances must be explained to the citizen, indicating the legal basis therefor.</p> <p><b>Paragraph II.</b> – When the denial is based on reservations, [the applicant has] the right to appeal this decision before the highest hierarchical authority of the relevant entity or body for a final determination on the</p>	<p><b>Application for access.</b></p> <p><b>7.... (5)</b> 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 days, it shall state the reasons therefor, and the options available to an aggrieved applicant.</p>	<p><b>Reasons for decisions to be given.</b></p> <p><b>24. (1)</b> Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall</p> <p>(a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;</p> <p>(b) where the decision relates to a public authority, state the name and designation of the person giving</p>	<p><b>Reasons to be given for deferment or refusal.</b></p> <p><b>23. (1)</b> Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall—</p> <p>(a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;</p> <p>(b) where the decision relates to a public</p>

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	<p>available to the applicant.</p> <p>(2) The response pursuant to section 18 to a request for information shall be made in writing and state—</p> <p>(a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 20, and the form in which the information will be communicated; and</p> <p>(b) in relation to any part of the request which is not granted, adequate reasons for the refusal.</p> <p>(3) In relation to a request or any part of a request that is granted, communication of the information must take place forthwith, subject only to section 20.</p>	<p>document of any Ministry or prescribed authority, state the name and designation of the person giving the decision; and</p> <p>(c) inform the applicant of his right to apply for a review of the decision.</p> <p>(2) A Ministry or prescribed authority is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.</p>	<p>granting of the requested data or information.</p>		<p>the decision;</p> <p>(c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 18, state that the document is a copy of a document from which exempt information has been deleted;</p> <p>(d) where the decision is to the effect that the document does not exist, state that a thorough and diligent search was made to locate the document;</p> <p>(e) inform the applicant of his right to apply to Court for a review of the decision and the time within which the application for review is required to be made.</p> <p>(2) A public authority is not required to include in a notice under subsection (1) any matter that is not of such a nature that its inclusion in a document to be an exempt document.</p>	<p>authority, state the name and designation of the person giving the decision;</p> <p>(c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 16(2), state that the document is a copy of a document from which exempt information has been deleted;</p> <p>(d) inform the applicant of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made;</p> <p>(e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.</p> <p>(2) In a notice under</p>



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						<p>subsection (1), a public authority–</p> <p>(a) shall not be required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;</p> <p>(b) if the decision relates to a request for access to a document which is an exempt document under section 24, 25 or 28 or which, if it existed, would be an exempt document under section 24, 25 or 28, may state the decision in terms which neither confirm or deny the existence of any document.</p>
<b>Vexatious, repetitive or unreasonable requests</b>	<p><b>Vexatious, repetitive or unreasonable requests.</b></p> <p>23. (1) A public authority is not required to comply with a request for information which is vexatious or unreasonable or where it has recently complied with a substantially similar request from the same person.</p> <p>(2) A public authority is</p>					

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	not required to comply with a request for information where to do so would unreasonably affect its financial or other resources.					
<b>Secrecy provisions in public contracts prohibited and invalidated</b>		<p><b>Secrecy provisions in public contracts prohibited and invalidated.</b></p> <p><b>21A. (1)</b> No public contract or other public document shall contain a provision to the effect that the contract thereof shall be kept confidential.</p> <p><b>(2)</b> Every secrecy provision in a public contract or other public document, whether such public contract or other public document exists at the date of commencement of the Freedom of Information (Amendment) Act 2008 or is executed in the future, which prohibits or restricts its disclosure to the public, shall be wholly void and of no effect, and the public construed for all purposes as if such a secrecy provision did not exist.</p>				

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<b>Punishment for refusal or neglect to provide access</b>		<p><b>Punishment for refusal or neglect to provide access.</b></p> <p><b>21B.</b> Every principal officer of a Ministry, Department or prescribed authority who refuses or neglects without cause to provide access to public documents in accordance with the provisions of this Act shall be guilty of an offence against discipline and shall be liable to a fine not exceeding one thousand dollars by the authority responsible for exercising disciplinary control over such officer, or such other penalty, including dismissal, as the said authority may consider appropriate in all the circumstances of the case.</p>				
<b>Public interest to override all other considerations</b>	<p><b>Public interest to override all other considerations.</b></p> <p><b>24.</b> Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm that would result from the refusal outweighs the</p>				<p><b>Disclosure of exempt document in the public interest.</b></p> <p><b>35.</b> Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant</p> <p>(a) abuse of authority or</p>	<p><b>Disclosure of exempt document in the public interest.</b></p> <p><b>35.</b> Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant–</p> <p>(a) abuse of authority or</p>

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	public interest in the disclosure of that information.				neglect in the performance of official duty; (b) injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorised use of public funds; <u>has or is likely</u> to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.	neglect in the performance of official duty; (b) injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorized use of public funds, <u>has or is likely</u> to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.
<b>Cabinet documents</b>	<b>Policy making and operations of public authorities.</b> 33. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to— (a) cause serious prejudice to the effective formulation or development of Government policy; (b) seriously frustrate the success of a policy, by premature disclosure of that policy;	<b>Cabinet documents.</b> 23. (1) A document is an exempt document if it is— (a) a document that has been submitted to the Cabinet for its consideration or is proposed to be submitted; or (b) an official record of the Cabinet; or (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or (d) a document the	<b>Limitation to access based on overriding public interests.</b> <b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively: ... h) When the information in question refers to advice, recommendations or opinions generated	<b>Cabinet documents.</b> 15. (1) An official document is exempt from disclosure if it is a Cabinet document, that is to say— (a) it is a Cabinet Submission, Cabinet Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted ; (b) it is a Cabinet Decision, or other official record of any deliberation of	<b>Cabinet documents.</b> 25. (1) A document is an exempt document if it is— (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister of Government to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet; (b) an official record of any deliberation or	<b>Cabinet documents.</b> 24. (1) A document is an exempt document if it is— (a) the official record of any deliberation or decision of Cabinet; (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is

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	<p>(c) significantly undermine the deliberative process in a public authority by inhibiting the free and frank provision of advice or exchange of views; or</p> <p>(d) significantly undermine the effectiveness of a testing or auditing procedure used by a public authority.</p> <p>(2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, which is–</p> <p>(a) the official record of any deliberation or decision of Cabinet;</p> <p>(b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by the Cabinet and which is related to issues that are or have been before Cabinet;</p> <p>(c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;</p>	<p>disclosure of which would involve disclosure of any deliberation or advice of the Cabinet, other than a document by which a decision of the Cabinet was officially published.</p> <p>(2) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.</p> <p>(3) Where a document is a document referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.</p>	<p>as part of the process of deliberations and consultations prior to a government decision. Once the governmental decision has been made, this particular exception shall cease if the administration opts to make express reference to said advice, recommendations or opinions;</p>	<p>the Cabinet.</p> <p>(2) Subsection (1) does not apply to–</p> <p>(a) any document appended to a Cabinet document that contains material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature; or</p> <p>(b) a document by which a decision of the Cabinet has been officially published.</p>	<p>decision of the Cabinet;</p> <p>(c) a document that is a draft of a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or</p> <p>(d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.</p> <p>(2) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.</p> <p>(3) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes</p>	<p>related to issues that are or have been before Cabinet;</p> <p>(c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;</p> <p>(d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or</p> <p>(e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.</p> <p>(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence.</p> <p>(3) Subsection (1) does not apply to a</p>

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	<p>(d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or</p> <p>(e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.</p> <p>(3) Subsections (1) and (2) do not apply to facts, analyses of facts, technical or scientific data or statistical information unless the disclosure would involve the disclosure of any deliberation or decision of Cabinet.</p>	<p>(4) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.</p>			<p>conclusively that it is an exempt document of that kind.</p> <p>(4) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.</p> <p>(5) In this section, any reference to “Cabinet” shall be read as including a reference to a committee of the Cabinet.</p>	<p>document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.</p> <p>(4) For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request would, if it existed be one of a kind referred to in subsection (1), establishes that, if such a document exists, it is an exempt document.</p> <p>(5) In this section—</p> <p>(a) “Cabinet” includes a committee or subcommittee of Cabinet;</p> <p>(b) a reference to a document includes a reference to a document whether created before or after the commencement of this Act.</p>

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Documents affecting national security, defence, and international relations	<p><b>Defence and security.</b></p> <p><b>31.</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of Antigua and Barbuda.</p>	<p><b>Documents affecting national security, defence, and international relations.</b></p> <p><b>22. (1)</b> A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure—</p> <p>(a) would prejudice the security, defence or international relations of Belize; or</p> <p>(b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Belize.</p> <p><b>(2)</b> Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish</p>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p> <p>...</p> <p>a) Information associated with the defence or security of the State which has been classified as “reserved” by law or decree of the Executive Power, or when it can affect the international relations of the country;</p>	<p><b>Documents affecting security, defence or international relations.</b></p> <p><b>14.</b> Official documents are exempt from disclosure if—</p> <p>(a) the disclosure thereof would prejudice the security, defence or international relations of Jamaica;</p> <p>(b) those documents contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.</p>	<p><b>Documents affecting national security, defence and international relations</b></p> <p><b>26. (1)</b> A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure</p> <p>(a) would prejudice the security, defence or international relations of Saint Vincent and the Grenadines;</p> <p>(b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Saint Vincent and the Grenadines.</p> <p><b>(2)</b> Where a responsible Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an</p>	<p><b>Defence and security documents.</b></p> <p><b>25. (1)</b> A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago.</p> <p><b>(2)</b> A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the lawful activities of the security or intelligence services.</p> <p><b>(3)</b> For the purposes of this Act, a certificate signed by the Minister certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1) or (2), established that if such a document exists, it is an exempt document.</p> <p><b>International relations documents</b></p> <p><b>26.</b> A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure—</p>

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		<p>conclusively that the document is an exempt document referred to in subsection (1).</p> <p>(3) Where a Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.</p> <p>(4) The responsible Minister may delegate his powers under this section to the principal officer of the Ministry or the prescribed authority, as the case may be.</p>			<p>exempt document referred to in subsection (1).</p> <p>(3) Where a responsible Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.</p>	<p>(a) would prejudice relations between the Government of the Republic of Trinidad and Tobago and the government of any other State;</p> <p>(b) would prejudice relations between the Government of the Republic of Trinidad and Tobago and an international organization of States or a body thereof;</p> <p>(c) would divulge any information or matter communicated in confidence by or on behalf of the government of another State to the Government of the Republic of Trinidad and Tobago or to a person receiving a communication on behalf of the government of that State; or</p> <p>(d) would divulge any information communicated in confidence by or on behalf of an international organization of States or a body</p>



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						thereof to the Government of the Republic of Trinidad and Tobago or to a person receiving a communication on behalf of that international organization or body.
<b>Documents affecting enforcement and administration of law</b>	<p><b>Law enforcement.</b></p> <p>30. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to—</p> <ul style="list-style-type: none"> <li>(a) the prevention or detection of crime;</li> <li>(b) the apprehension or prosecution of offenders;</li> <li>(c) the administration of justice;</li> <li>(d) the assessment or collection of any tax or duty;</li> <li>(e) the operation of immigration controls; or</li> <li>(f) the assessment by a public authority of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.</li> </ul>	<p><b>Documents affecting enforcement and administration of law</b></p> <p>24. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—</p> <ul style="list-style-type: none"> <li>(a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;</li> <li>(b) prejudice the fair trial of a person or the impartial adjudication of a particular case;</li> <li>(c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the</li> </ul>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p> <p>...</p> <ul style="list-style-type: none"> <li>f) Information that may damage strategies of the State in proceedings of administrative investigations, if disseminated;</li> </ul>	<p><b>Documents relating to law enforcement.</b></p> <p>16. Official documents relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to—</p> <ul style="list-style-type: none"> <li>(a) endanger any person's life or safety;</li> <li>(b) prejudice— <ul style="list-style-type: none"> <li>(i) the conduct of an investigation of a breach or possible breach of the law; or</li> <li>(ii) the fair trial of any person or the impartial adjudication of a particular case;</li> </ul> </li> <li>(c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;</li> <li>(d) reveal lawful methods or procedures for</li> </ul>	<p><b>Documents affecting enforcement or administration of the law.</b></p> <p>27. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to</p> <ul style="list-style-type: none"> <li>(a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;</li> <li>(b) prejudice the fair trial of a person or the impartial adjudication of a particular case before a Court of law or a tribunal established by law;</li> <li>(c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the</li> </ul>	<p><b>Law enforcement documents.</b></p> <p>28. (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—</p> <ul style="list-style-type: none"> <li>(a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;</li> <li>(b) prejudice the fair trial of a person or the impartial adjudication of a particular case;</li> <li>(c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or</li> </ul>

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		<p>law;</p> <p>(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or</p> <p>(e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.</p>		<p>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 method or procedures;</p> <p>(e) facilitate the escape of a person from lawful detention; or</p> <p>(f) jeopardize the security of any correctional facilities.</p>	<p>law;</p> <p>(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or</p> <p>(e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.</p>	<p>administration of the law;</p> <p>(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or</p> <p>(e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.</p> <p>(2) This section does not apply to any document that is—</p> <p>(a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;</p>

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						<p>(b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;</p> <p>(c) a document containing any general outline of the structure of any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;</p> <p>(d) a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, or enforcing or administering, the law;</p> <p>(e) a report prepared in the course of routine law enforcement inspections or investigations by a public authority which has the function of enforcing</p>

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						<p>and regulating compliance with a particular law other than the criminal law;</p> <p>(f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation, if it is in the public interest that access to the document should be granted under this Act.</p>
Documents to which secrecy provisions of enactments apply	No similar provision.	<p><b>Documents to which secrecy provisions of enactments apply</b></p> <p>25. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.</p>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p> <p>...</p> <p>e) Information classified as “Secret” to protect scientific, technological, communications,</p>	<p><b>Provisions re other Acts.</b></p> <p>35. (1) Where access to an official document is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.</p> <p>(2) Subject to subsection (3), nothing in this Act shall affect the provisions of any other Act other than the Official Secrets Act, relating to the</p>	<p><b>Documents to which secrecy provisions apply.</b></p> <p>29. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.</p>	<p><b>Documents to which secrecy provisions apply.</b></p> <p>34. A document is an exempt document if there is in force a written law applying specifically to information of a kind contained in the document and prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.</p>

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			<p>industrial or financial strategies and projects, because its revelation may damage the national interest;</p> <p>j) Information that does not allow violation of secrecy in particular cases, as imposed by laws or judicial or administrative decisions;</p>	<p>non-disclosure of information.</p> <p>(3) For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.</p>		
<p><b>Documents concerning the economy and documents concerning operations of Ministries, etc.</b></p>	<p><b>Documents affecting national economy.</b> 30. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.</p> <p><b>Public economic interests.</b> 32. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the Government to manage the economy of Antigua and Barbuda.</p>	<p><del>(REPEALED) by Freedom of Information (Amendment) Act No. 7 of 2008</del></p> <p><b>Certain documents concerning operations of Ministries, etc.</b> 26. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial, property or staff management interests of the Government or a prescribed authority or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of a</p>	<p><b>Limitation to access based on overriding public interests.</b> Article 17. – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively: ... b) When the extemporaneous delivery of the information may affect the success of a public measure; c) When the information may affect the functioning of the banking or financial</p>	<p><b>Documents affecting national economy.</b> 18. (1) An official document of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Jamaican economy, or the Government's ability to manage the Jamaican economy. (2) The types of documents referred to in subsection (1) include but are not limited to, documents relating to taxes, duties or rates, interest rates, monetary policy and exchange rate policy or currency or</p>	<p><b>Documents affecting national economy.</b> 32. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy. (2) The kinds of documents to which subsection (1) may apply include but are not restricted to, documents containing information relating to– (a) currency or exchange rates; (b) interest rates; (c) taxes, including duties of customs or of excise;</p>	<p><b>Documents affecting the economy, commercial affairs and certain documents concerning operations of public authorities.</b> 33. (1) A document is an exempt document if– (a) its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Trinidad and Tobago, including but not limited to, the premature disclosure of proposed introduction,</p>

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	<p>(2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of the public authority or another public authority.</p> <p>(3) Subsections (1) and (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.</p>	Ministry or prescribed authority.	systems;	exchange rates.	<p>(d) the regulation or supervision of banking, insurance and other financial institutions;</p> <p>(e) proposals for expenditure;</p> <p>(f) foreign investment in Saint Vincent and the Grenadines</p> <p>(g) borrowings by the Government.</p>	<p>abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;</p> <p>(b) its disclosure under this Act would be contrary to the financial interests of the public authority by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public authority for the acquisition or disposal of property or the supply of goods or services;</p> <p>(c) its disclosure under this Act, by revealing information to a competitor of the public authority, would be likely to prejudice the lawful commercial activities of the public authority;</p> <p>(d) subject to subsection (4), it contains information obtained by a public authority from a third party</p>

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						<p>who has consistently treated it as confidential and the disclosure of that information to a competitor of a third party, would be likely to prejudice the lawful commercial or professional activities of the third party;</p> <p>(e) its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personal management and assessment interests</p>

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						<p>of the State or of a public authority.</p> <p>(2) Subsections (2)(c) and (d) do not apply to the disclosure of information which—</p> <p>(a) relates to the quality, suitability or safety of the goods or services supplied by the public authority if the prejudice referred to in subsection (1)(c) or (d), as the case may be, would be likely to result from the exercise of more informed choice by persons seeking to acquire those goods or services; or</p> <p>(b) consists of the results of any investigation carried out by, or any information supplied to, the public authority concerning a public safety hazard.</p> <p>(3) For the purposes of subsection (2)(b) “public safety hazard” includes the hazard to the public associated with any product which is offered for sale or otherwise available to the public, or with any</p>



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						<p>substance which is released into the environment or workplace or is present in food intended for human consumption, or with any form of public transport, or with any installation or manufacturing process or substance used therein, and for the purposes of this subsection “the public” includes persons in their place of work.</p> <p>(4) A document referred to in subsection (1)(d) is not an exempt document if the third party has consented to its disclosure to the applicant.</p>
<p><b>Documents affecting personal privacy</b></p>	<p><b>Personal information.</b>  <b>26. (1)</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a third party who is a natural person.                      (2) Subsection (1) does not apply if—                      (a) the third party has effectively consented to the disclosure of the</p>	<p><i>(REPEALED) by Freedom of Information (Amendment) Act No. 7 of 2008</i></p> <p><b>Documents affecting personal privacy.</b>  <b>27. (1)</b> A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).                      (2) Subject to subsection (3), the</p>	<p><b>Limitation to access based on overriding public interests.</b>  <b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:                      ...                      k) Information that may damage or affect the right to privacy of persons or endanger</p>	<p><b>Documents affecting personal privacy.</b>  <b>22. (1)</b> Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.                      (2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs</p>	<p><b>Documents affecting personal privacy.</b>  <b>30. (1)</b> A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).                      (2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the</p>	<p><b>Documents affecting personal privacy.</b>  <b>30. (1)</b> A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).                      (2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only</p>

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	<p>information;</p> <p>(b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;</p> <p>(c) the third party has been deceased for more than 20 years; or</p> <p>(d) the third party is or was an official of a public authority and the information relates to his function in that capacity.</p>	<p>provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.</p> <p>(3) Where a request is made to a Ministry or prescribed authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer may direct that the document containing that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.</p>	<p>their lives or security if disclosed;</p> <p><b>Limitation to access based on overriding private interests.</b></p> <p><b>Article 18.</b> – A request by an interested party for information may be refused if it can affect overriding private interests and rights, which shall be understood to occur in the following circumstances:</p> <p>When it refers to personal information which, if published, may result in the invasion of a person’s privacy. This notwithstanding, the Administration may provide this data and information if the applicant can prove through his application that the information is of public interest and will assist in the illustration of an on-going investigation in the hands of another body of the public administration.</p> <p>When access to the requested information may affect the right to</p>	<p>the document relates.</p>	<p>document of matters relating to that person.</p> <p>(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual’s next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.</p>	<p>of the inclusion in the document of matter relating to that person.</p> <p>(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual’s next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.</p> <p>(4) Nothing in this Act shall be taken to require a public authority to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the</p>

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			<p>intellectual property, especially the copyrights, of a citizen.</p> <p>When it refers to personal data, it shall be provided only where there is express and unequivocal proof that the affected person consents that said data be provided or where a law demands its publication.</p>			<p>existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section.</p>
Consent in certain circumstances	No similar provision.	No similar provision.	<p><b>Special circumstances in which the consent of the person or entity with copyrights to information or data is obtained.</b></p> <p><b>Article 19.</b> – When access to information depends on the authorization or consent of a third party who is protected by the right or reservation or informational self-determination in accordance with Articles 2 and 16 of this law, information may be provided when the express consent of the affected person has been obtained. This consent may also be requested by the administration from the affected person when the applicant or requesting person so</p>	No similar provision.	No similar provision.	No similar provision.

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			requires. If within fifteen (15) days, or twenty-five (25) days where the special extension is utilized, the administration dealing with the request has not received proof that the consent referred to in this Article has been obtained, it shall be inferred for all legal purposes that the consent has been denied.			
<b>Provision of information between bodies or authorities</b>	<b>No similar provision.</b>	<b>No similar provision.</b>	<b>Providing information and data among bodies of the administration.</b> <b>Article 20.</b> – When the information required is not personal data, especially those protected by the right of informational self-determination of the citizen, the administrations referred to in Article 1 of this law may allow direct access to the reserved information gathered in their collections, provided that, as a consequence, these are used for the normal course of responsibilities of the requesting entities and bodies and that the principle of suitability for the public purpose, which provided the basis	<b>No similar provision.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>

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			<p>for granting of the information, is respected.</p> <p><b>Paragraph I.</b> – In any event, the bodies of the requesting administration shall not only respect the principle of suitability, but also the reservation principle with respect to the information and documents they receive.</p> <p><b>Paragraph II.</b> – Access to personal data and information that is protected by the legal reservation principle may only be admitted when the application is based on arguments made on the principle of necessity, suitability and necessity in the strict sense, which govern the area of justified injury to fundamental rights.</p>			
<p><b>Documents affecting legal proceedings or subject to legal professional privilege</b></p>	<p><b>Legal privilege.</b>  <b>27.</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.</p>	<p><b>Documents affecting legal proceedings or subject to legal professional privilege.</b>  <b>28. (1)</b> A document is an exempt document if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Government of Belize or of a prescribed</p>	<p><b>Limitation to access based on overriding public interests.</b>  <b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p>	<p><b>Documents subject to legal privilege, etc.</b>  <b>17.</b> An official document 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–</p>	<p><b>Documents affecting legal proceedings or subject to legal professional privilege.</b>  <b>28. (1)</b> A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.</p>	<p><b>Documents affecting legal proceedings or subject to legal professional privilege.</b>  <b>29. (1)</b> A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.</p>

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		<p>authority in or in relation to pending or likely legal proceedings.</p> <p>(2) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.</p> <p>(3) A document of the kind referred to in section 7 (1) is not an exempt document by virtue of subsection (2) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 7 (1).</p>	<p>...</p> <p>d) When the delivery of said information may compromise the procedural strategy prepared by the administration in the proceedings of a judicial cause or the duty of secrecy that must be obeyed by the attorney-at-law or an official who represents the State with respect to the interests of its representation;</p>	<p>(i) constitute an actionable breach of confidence;</p> <p>(ii) be in contempt of Court; or</p> <p>(iii) infringe the privileges of Parliament.</p>	<p>(2) A document of the kind referred to in section 8 (1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).</p>	<p>(2) A document of the kind referred to in section 8(1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).</p>
<p><b>Documents relating to trade secrets</b></p>	<p><b>Commercial and confidential information.</b></p> <p><b>28.</b> A public authority may refuse to communicate information if–</p> <p>(a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;</p> <p>(b) the information was obtained in confidence from a third party and–</p>	<p><b>(REPEALED) by Freedom of Information (Amendment) Act No. 7 of 2008</b></p> <p><b>Documents relating to trade secrets, etc.</b></p> <p><b>29. (1)</b> A document is an exempt document if its disclosure under this Act would disclose information concerning a person in respect of his business or professional affairs or concerning a</p>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p> <p>...</p> <p>i) When the</p>	<p><b>Documents relating to business affairs, etc.</b></p> <p><b>20. (1)</b> Subject to subsection (2), an official document is exempt from disclosure if–</p> <p>(a) its disclosure would reveal–</p> <p>(i) trade secrets;</p> <p>(ii) any other information of a commercial value, which value would be, or could reasonably be</p>	<p><b>Documents relating to trade secrets, business affairs, etc.</b></p> <p><b>31. (1)</b> A document is an exempt document if its disclosure under this Act would disclose:</p> <p>(a) trade secrets;</p> <p>(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or</p>	<p><b>Documents relating to trade secrets.</b></p> <p><b>31. (1)</b> A document is an exempt document if its disclosure under this Act would disclose information acquired by a public authority from a business, commercial or financial undertaking, and–</p> <p>(a) the information relates to trade secrets or other</p>

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	<p>(i) it contains a trade secret; or</p> <p>(ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or</p> <p>(c) the information was obtained in confidence from another State or an international organization, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organization.</p>	<p>business, commercial or financial undertaking, and—</p> <p>(a) the information relates to trade secrets or to other matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or</p> <p>(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or a prescribed authority to obtain similar information in the future.</p> <p>(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs or of information</p>	<p>information refers to private- or State-owned commercial, industrial, scientific, or technical secrets, or to reserved or confidential industrial or commercial information belonging to third parties that the administration has received with regard to procedures or actions undertaken to obtain a permit, authorization or any other procedure, and that has been delivered with that sole purpose, and its revelation may cause economic harm;</p>	<p>expected to be, destroyed or diminished if the information were disclosed;</p> <p>(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.</p> <p>(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.</p>	<p>diminished if the information were disclosed; or</p> <p>(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an undertaking, being information—</p> <p>(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that undertaking in respect of its lawful business, commercial or financial affairs; or</p> <p>(ii) the disclosure of the information under this Act would be contrary to public interest by reason that the disclosure would be reasonably likely to prejudice the ability of the Government or a public authority to</p>	<p>matters of a business, commercial or financial nature; or</p> <p>(b) the disclosure of the information under this Act would be likely to expose the undertaking to disadvantage.</p> <p>(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of paragraph (b) of subsection (1), a public authority may take account of any of the following considerations:</p> <p>(a) whether information is generally available to competitors of the undertaking;</p> <p>(b) whether the information would be exempt information if it were generated by a public authority;</p> <p>(c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and</p> <p>(d) whether there are</p>

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		concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.			<p>obtain similar information in the future for the purpose of administration of the law.</p> <p>(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning</p> <ul style="list-style-type: none"> <li>(a) the business or professional affairs of that person; or</li> <li>(b) the business, commercial or financial affairs of an undertaking of which that person, or a person on behalf that person made the request, is the proprietor.</li> </ul>	<p>any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of regulation by a public authority of corporate practices or environmental controls, and of any consideration or considerations which in the opinion of the public authority is or are relevant.</p> <p>(3) Prior to making a determination under subsection (1) as to whether the disclosure of information would expose an undertaking to disadvantage, a public authority shall notify the undertaking which has supplied the relevant document or documents that the public authority has received a request for access to the document and shall-</p> <ul style="list-style-type: none"> <li>(a) seek the undertaking's view as to whether disclosure should</li> </ul>



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						<p>occur; and</p> <p>(b) notify the undertaking where the public authority after consultation has decided to disclose the document and in such a case notify the undertaking of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.</p> <p>(4) A document is an exempt document if—</p> <p>(a) it contains—</p> <ul style="list-style-type: none"> <li>(i) a trade secret of a public authority; or</li> <li>(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature, that would if disclosed under this Act be likely to expose the public authority to disadvantage;</li> </ul> <p>(b) it contains the results of scientific or technical research undertaken by a</p>

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						<p>public authority, and–</p> <ul style="list-style-type: none"> <li>(i) the research could lead to a patentable invention;</li> <li>(ii) the disclosure of the results of an incomplete state under this Act would be reasonably likely to expose a business, commercial or financial undertaking unreasonably to disadvantage;</li> <li>(iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the public authority unreasonably to disadvantage; or</li> </ul> <p>(c) it is an examination paper, a paper submitted by a student in the course of an examination, an examiner’s report or similar document and the use or uses for which the document was prepared have not been completed.</p>

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Documents containing material obtained in confidence.	<p><b>Commercial and confidential information.</b></p> <p><b>28.</b> A public authority may refuse to communicate information if–</p> <p>(a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;</p> <p>(b) the information was obtained in confidence from a third party and–</p> <p>(i) it contains a trade secret; or</p> <p>(ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or</p> <p>(c) the information was obtained in confidence from another State or an international organization, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organization.</p>	<p><b>(REPEALED) by Freedom of Information (Amendment) Act No. 7 of 2008</b></p> <p><b>Documents containing material obtained in confidence.</b></p> <p><b>31.</b> A document is an exempt document if its disclosure would constitute a breach of confidence.</p>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:</p> <p>...</p> <p>g) When knowledge of the information in question may damage the principle of equality between bidders, or information defined as confidential in tender documents as per the terms of national legislation in the areas of administrative contracting and complementary provisions;</p> <p><b>Expiration period for legal reservation of confidential information on the basis of overriding public interest.</b></p> <p><b>Article 21.</b> – Where provision to the contrary is not made in the</p>	<p><b>Documents subject to legal privilege, etc.</b></p> <p><b>17.</b> An official document is exempt from disclosure if–</p> <p>...</p> <p>(a)...</p> <p>(b) the disclosure thereof would–</p> <p>(i) constitute an actionable breach of confidence;</p> <p>(ii) be in contempt of Court; or</p> <p>(iii) infringe the privileges of Parliament.</p>	<p><b>Documents containing material obtained in confidence.</b></p> <p><b>33. (1)</b> A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and</p> <p>(a) the information would be exempt information if it were generated by a public authority; or</p> <p>(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.</p> <p>(2) This section does not apply to information–</p> <p>(a) acquired by a public authority from a business, commercial or financial undertaking; and</p> <p>(b) that relates to trade secrets or other</p>	<p><b>Documents containing material obtained in confidence.</b></p> <p><b>32. (1)</b> A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and–</p> <p>(a) the information would be exempt information if it were generated by a public authority; or</p> <p>(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.</p> <p>(2) This section does not apply to information–</p> <p>(a) acquired by a public authority from a business, commercial or financial</p>

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			specific laws regulating confidential materials, it shall be considered that the period of the legal reservation on confidential information and data, reserved in accordance with Article 5 of this law regarding actions and measures of the entities and bodies referred to in Article 1 of the present law, is for five years. Once this period has expired, the citizen has the right to access this information and the relevant authorities or offices are required to provide the means to issue the relevant copies.		matters of a business, commercial or financial nature.	undertaking; and (b) that relates to trade secrets or other matters of a business, commercial or financial nature.
<b>Documents the disclosure of which would be contempt of National Assembly or contempt of Court.</b>	<b>No similar provision.</b>	<b>Documents the disclosure of which would be contempt of National Assembly or contempt of Court.</b>  32. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown— (a) be in contempt of Court; (b) be contrary to an order made or direction given by a		<b>Documents subject to legal privilege, etc.</b> 17. An official document is exempt from disclosure if— ... (a)... (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.	<b>Documents disclosure of which would be contempt of Court or contempt of Parliament.</b>  34. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the state— (a) be in contempt of Court; (b) be contrary to an order made or given by a commission or by a tribunal or other person or body having	<b>No similar provision.</b>

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		<p>commission or by a tribunal or other person or body having power to take evidence on oath; or</p> <p>(c) infringe the privileges of the National Assembly.</p>			<p>power to take evidence on oath;</p> <p>(c) infringe the privileges of Parliament.</p>	
<p><b>Disclosure of exempt document in the public interest</b></p>	<p><b>Public interest to override all other considerations.</b></p> <p>24. Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm that would result from the refusal outweighs the public interest in the disclosure of that information.</p>	<p><b>Crown privilege in judicial proceedings not affected.</b></p> <p>33. Nothing in this Act shall affect any rule of law which authorizes the withholding of any document by the Crown in or in relation to a judicial proceeding on the ground that the publication or disclosure of the document would be injurious to the public interest.</p>		<p><b>No similar provision.</b></p>	<p><b>Disclosure of exempt document in the public interest.</b></p> <p>35. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant—</p> <p>(a) abuse of authority or neglect in the performance of official duty;</p> <p>(b) injustice to an individual;</p> <p>(c) danger to the health or safety of an individual or of the public; or</p> <p>(d) unauthorised use of public funds;</p> <p><u>has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.</u></p>	<p><b>Disclosure of exempt document in the public interest.</b></p> <p>35. Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant—</p> <p>(a) abuse of authority or neglect in the performance of official duty;</p> <p>(b) injustice to an individual;</p> <p>(c) danger to the health or safety of an individual or of the public; or</p> <p>(d) unauthorized use of public funds,</p> <p><u>has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.</u></p>

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Duty of authorities to act in good faith	No similar provision.	<p><b>Duty of authorities to act in good faith.</b></p> <p>34. In considering whether or not to claim exemption under this Part, the principal officer of a Ministry or prescribed authority shall act in good faith and use his best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with public interest.</p>		No similar provision.	<p><b>Duty of authorities to act in good faith.</b></p> <p>36. (1) The Minister may, in consultation with a public authority, by order, declare a document to which sections 25 to 35 are not applicable, to be an exempt document for the purposes of this Act on the grounds of national interest.</p> <p>(2) In considering whether or not to claim exemption under this Part, the public authority shall act in good faith and use its best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with national or public interest.</p>	No similar provision.
Documents relating to heritage sites, etc.	No similar provision.	No similar provision.		<p><b>Documents relating to heritage sites, etc.</b></p> <p>21. (1) Subject to subsection (2), an official document 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—</p> <p>(a) any historical, archaeological or anthropological resources;</p>	No similar provision.	No similar provision.

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				<p>(b) anything declared to be a national monument, designated as protected national heritage or protected by a preservation notice under the Jamaica National Heritage Trust Act;</p> <p>(c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;</p> <p>(d) any other rare or endangered living resource.</p> <p>(2) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.</p>		
<b>Health and safety</b>	<p><b>Health and safety.</b></p> <p>29. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any person.</p>	<p>Documents affecting personal privacy.</p> <p>27... (3) Where a request is made to a Ministry or prescribed authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and</p>	<p><b>Limitation to access based on overriding public interests.</b></p> <p><b>Article 17.</b> – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established</p>	<p><b>Documents relating to enforcement.</b></p> <p>16. Official documents relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to–</p> <p>(a) endanger any person's life or safety;...</p>	<p><b>Disclosure of exempt document in the public interest.</b></p> <p>35. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant–</p> <p>(a) abuse of authority or</p>	<p><b>Disclosure of exempt document in the public interest.</b></p> <p>35. Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant–</p> <p>(a) abuse of authority or</p>

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		it appears to the principal officer that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer may direct that the document containing that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.	exhaustively: ...  l) Information which would endanger public health and security, the environment and the public interest in general, if published.		neglect in the performance of official duty;  (b) injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorised use of public fund;  <u>has or is likely</u> to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.	neglect in the performance of official duty;  (b) injustice to an individual; (c) danger to the health or safety of an individual or of the public; or (d) unauthorized use of public funds,  <u>has or is likely</u> to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.
<b>Rights of Mass Media and special protections.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>	<b>Rights of the mass media to access public information.</b> <b>Article 22.</b> – Investigations by journalists and of the mass media on the actions, efforts and accomplishments of public responsibility conferred on the bodies and entities listed in Article 1 of this law are expressions of a social function of transcending value for the exercise of the right to receive accurate, complete and	<b>No similar provision.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>



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			<p>duly investigated information, in accordance with the constitutional requirements governing the freedom of information and access to public sources.</p> <p><b>Paragraph I.</b> – By virtue of the nature of its activities aimed at securing the fundamental rights of information, the freedom of expression and the promotion of public freedoms, the mass media shall receive special protection and support from public authorities.</p> <p><b>Paragraph II.</b> – In light of this duty of protection and support for the mass media and journalists in general, they must be guaranteed access to documents, administration records and other illustrative elements of conduct of the said entities and persons, without any restrictions different from those contemplated under the present law with respect to overriding public and private interests.</p>			

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<p><b>Protection against actions for defamation or breach of confidence</b></p>	<p><b>Exemption from personal liability.</b>  <b>44... (2)</b> The Commissioner may, d h g an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.</p>	<p><b>Protection against actions for defamation or breach of confidence.</b>  <b>44. (1)</b> Where access has been given to a document and—  <b>(a)</b> the access was required by this Act to be given; or  <b>(b)</b> the access was authorized by a Minister, or by an officer having authority, in accordance with section 20 or 36, to make decisions in respect of requests, in the <i>bona fide</i> belief that the access was required by this Act to be given, no action for defamation or breach of confidence lies by reason of the authorizing or giving of the access, against the Government or a prescribed authority or against the Minister or officer who authorized the access or any person who gave the access.  <b>(2)</b> The giving of access to a document (including an exempt document) in consequence of a</p>		<p><b>Protection from liability re defamation, breach of confidence or copyright.</b>  <b>33. (1)</b> Nothing in this Act shall be construed as authorizing the disclosure of any official document—  <b>(a)</b> containing any defamatory matter; or  <b>(b)</b> the disclosure of which would be in breach of confidence or of copyright.  <b>(2)</b> Where access to a document referred to in subsection (1) is granted in the <i>bona fide</i> belief that the grant of such access is required by this Act, no action for defamation, breach of confidence or breach of copyright shall lie against—  <b>(a)</b> the Government or any public authority, any Minister or any public officer involved in the grant of such access, by reason of the grant of access or of any republication of that document; or  <b>(b)</b> the author of the document or any other person who supplied the document to the Government or the public authority, in</p>	<p><b>Protection against actions for defamation or breach of confidence.</b>  <b>37. (1)</b> Where access has been given to a document and—  <b>(a)</b> the access was required by this Act to be given; or  <b>(b)</b> the access was authorised by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the <i>bona fide</i> belief that the access was required by this Act to be given, no action for defamation or breach of confidence shall lie by reason of the authorising or giving of the access, against the Government or a public authority or against the officer who authorised the access or any person who gave the access.  <b>(2)</b> The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of</p>	<p><b>Protection against action for defamation.</b>  <b>38. (1)</b> Where access to a document has been given in accordance with the requirements of this Act or in good faith, in the belief that it was required to be given in accordance with this Act, unless malice is proved—  <b>(a)</b> no action for defamation, breach of confidence or infringement of copyright may be brought against the public authority or against the responsible Minister, or an officer or employee of the public authority as a result of the giving of access;  <b>(b)</b> no action for defamation or breach of confidence may be brought, in respect of any publication involved in the giving of access by the public authority, against—  <b>(i)</b> any person who was the author of the document; or  <b>(ii)</b> any person as a</p>

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		<p>request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the access was given.</p>		<p>respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the document.</p> <p>(3) The grant of access to an official document in accordance with this Act shall not be construed as authorization or approval–</p> <p>(a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the document or its contents by the person to whom access is granted;</p> <p>(b) for the purposes of the Copyright Act, of the doing by that person of any act comprised within the copyright in any work contained in the document, as follows–</p> <p>(i) any literary, dramatic, musical or artistic work;</p> <p>(ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or</p>	<p>confidence, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the access was given.</p>	<p>result of that person having supplied the document or the information contained in it to the public authority;</p> <p>(c) no person shall be guilty of an offence by reason only of having authorized, or having been involved in the giving of the access.</p> <p>(2) The giving of access to a document, including an exempt document, in consequence of a request shall not be taken for the purposes of the law relating to defamation, breach of confidence or copyright, to constitute an authorization or approval of the publication of the document or its contents by the person to whom access is given.</p> <p>(3) Nothing in this Act affects any privilege, whether qualified or absolute, which may attach at common law to the publishing of a statement.</p>

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				(iii) a published edition of a literary, dramatic, musical or artistic work.		
<b>Exemption from liability</b>	<p><b>Exemption from personal liability.</b></p> <p>44. (1) In coming to a decision pursuant to section 42 or 43 the Commissioner shall have the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.</p>	<p><b>Protection in respect of offences.</b></p> <p>45. Where access has been given to a document and—</p> <p>(a) the access was required by this Act to be given; or</p> <p>(b) the access was authorized by a Minister or by an officer having authority, in accordance with section 20 or 36, to make decisions in respect of requests, in the <i>bona fide</i> belief that the access was required by this Act to be given, neither the person authorizing the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorizing or giving of the access.</p>		<p><b>Provisions re other Acts.</b></p> <p>35. (1) Where access to an official document is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.</p> <p>(2) Subject to subsection (3), nothing in this Act shall affect the provisions of any other Act other than the Official Secrets Act, relating to the non-disclosure of information.</p> <p>(3) For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.</p>	<p><b>Protection in respect of offences.</b></p> <p>38. Where access has been given to a document and</p> <p>(a) the access was required by this Act to be given; or</p> <p>(b) the access was authorised by a Minister or by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the <i>bona fide</i> belief that the access was required by this Act to be given,</p> <p>neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving of the access.</p>	<p><b>Protection against action for defamation.</b></p> <p>38. (1) Where access to a document has been given in accordance with the requirements of this Act or in good faith, in the belief that it was required to be given in accordance with this Act, unless malice is proved—</p> <p>(a)...</p> <p>(b)...</p> <p>(c) no person shall be guilty of an offence by reason only of having authorized, or having been involved in the giving of the access.</p>

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<b>Establishment of Commissioner or Ombudsman</b>	<p><b>Appointment of Information Commissioner.</b></p> <p><b>35. (1)</b> The Governor-General, acting on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution, shall appoint an Information Commissioner for the purposes of this Act, on such terms and conditions as may be specified in the instrument of his appointment.</p> <p><b>(2)</b> A person shall not be qualified to hold office as Commissioner if that person—</p> <p><b>(a)</b> is a member of the House of Representatives or a member of the Senate;</p> <p><b>(b)</b> holds or is acting in a public office;</p> <p><b>(c)</b> is an undischarged bankrupt, having been declared bankrupt under any law;</p> <p><b>(d)</b> has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or</p> <p><b>(e)</b> holds office in, or is an employee of, a political party or is a political activist.</p>	<p><b>No similar provision. Ombudsman appointed by the Ombudsman Act.</b></p>		<p><b>No similar provision. Review conducted by responsible Minister of relevant Public Authority.</b></p>	<p><b>No similar provision.</b></p>	<p><b>No similar provision.</b></p>

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	<p>(3) The Commissioner shall hold office for a term of three years and may be re-appointed for a further term of three years, but shall not hold office for more than two consecutive terms.</p> <p>(4) The Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.</p> <p><b>Appointment of staff.</b></p> <p>36. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.</p> <p><b>Functions of Commissioner.</b></p> <p>37. In addition to any other functions under this Act, the functions of the</p>					

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	<p>Commissioner shall be–</p> <ul style="list-style-type: none"> <li>(a) to monitor and report on the compliance by public authorities with their obligations;</li> <li>(b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;</li> <li>(c) to undertake or promote the training of officials of public authorities and other persons on the right to information and the effective implementation of this Act;</li> <li>(d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences; and</li> <li>(e) to publicize the requirements of this Act and the rights and obligations under the Act.</li> </ul> <p><b>Independence of Commissioner and employees of Commissioner’s Office.</b></p> <p><b>38. (1)</b> In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority.</p>					

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	<p>(2) All officers and employees of the Office of the Commissioner and any other persons authorised to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.</p>					
<p><b>Internal review.</b></p>	<p><b>Complaints to Commissioner.</b>  <b>41.</b> A person who has made a request for information may apply in writing to the Commissioner for a decision that a public authority has failed to comply with an obligation under Part 111, including the following:  <b>(a)</b> refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 16;  <b>(b)</b> failing to respond to a request for information within the time limits established in section 18;  <b>(c)</b> failing to provide a</p>	<p><b>Applications to Ombudsman.</b>  <b>35. (1)</b> Application may be made to the Ombudsman for review of a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document.  <b>(2)</b> Subject to subsection (3), in proceedings under this Part, the Ombudsman has power, in addition to any other power, to review any decision that has been made by a Ministry or prescribed authority in respect of the request and to decide any matter in</p>	<p><b>Hierarchical recourse before the public administration.</b>  <b>Article 27.</b> – Where the applicant is not satisfied with the decision of the entity or person to whom the request for information was made, such person may appeal this decision before the highest hierarchical authority of the relevant entity or body for a final determination on the granting of the requested data or information.</p>	<p><b>Interpretation.</b>  <b>29.</b> In this Part and Part VI "relevant decision" means a referred to in section 30 (1) or (2), as the case may require.  <b>Internal review.</b>  <b>30. (1)</b> An applicant for access to an official document may, in accordance with subsection (4), apply for an internal review of a decision by a public authority to–  <b>(a)</b> refuse to grant access to the document;  <b>(b)</b> grant access only to some of the documents specified in an application;  <b>(c)</b> defer the grant of</p>	<p><b>No similar provision.</b></p>	<p><b>No similar provision.</b></p>



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	<p>notice in writing of its response to a request for information, in accordance with section 19;</p> <p>(d) failing to communicate information forthwith, contrary to section 19 (3);</p> <p>(e) charging an excessive fee, contrary to section 20; or failing to communicate information in the form requested, contrary to section 2 1.</p> <p><b>Decisions on complaints.</b></p> <p>42. (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 41 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public authority or private body an opportunity to provide their views in writing.</p> <p>(2) The Commissioner may summarily reject an application—</p> <p>(a) which is frivolous, vexatious or unreasonable; or</p> <p>(b) if the applicant has failed to seek or use any other remedies established by the</p>	<p>relation to the request that, under this Act, could have been or could be decided by a Ministry or prescribed authority, and any decision of the Ombudsman under this section has the same effect as a decision of the Ministry or prescribed authority.</p> <p>(3) Where, in proceedings under this section, it is established that a document is an exempt document, the Ombudsman does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.</p> <p>(4) Where, under a provision of Part IV, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is an exempt document and such a certificate has been given in respect of a document, the powers of the Ombudsman do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of</p>		<p>access to the document;</p> <p>(d) charge a fee for action taken or as to the amount of the fee.</p> <p>(2) An applicant for amendment or annotation of a personal record may, in accordance with subsection (4), apply for a review of a decision by a public authority to refuse to make that amendment or annotation.</p> <p>(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 Act shall be regarded as a refusal to do so.</p> <p>(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 responsible Minister, a Permanent Secretary or the principal officer of the public authority concerned.</p> <p><b>Procedure re internal review.</b></p> <p>31. (1) An internal review</p>		

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	<p>relevant public which are available to him.</p> <p>(3) In an application pursuant to section 41, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under Part 111.</p> <p>(4) In a decision pursuant to subsection (1), the Commissioner may—</p> <p>(a) dismiss the application; or</p> <p>(b) require the public authority or private body to take such steps as may be necessary to bring it into compliance with its obligations pursuant to Part 11.</p> <p>(5) The Commissioner shall provide a copy of the decision to the complainant and the public authority together with information regarding the right of the parties to a review of the Commissioner's decision.</p> <p><b>Direct implementation of decision.</b></p> <p>43. (1) Where Commissioner decides that a public authority has failed to comply with an obligation pursuant to Part 11, the Commissioner may require the public authority to take such steps as may be</p>	<p>the certificate.</p> <p>(5) The powers of the Ombudsman under this section extend to matters relating to fees and charges payable under this Act in relation to a request.</p> <p><b>Internal review.</b></p> <p>36. (1) Where a decision has been made, in relation to a request to a Ministry or prescribed authority, otherwise than by the responsible Minister or principal officer (not being a decision on a review under this section), the applicant may, within 28 days after the day on which notice of the decision was given to the applicant in accordance with section 21, apply to the responsible Minister or principal officer concerned for a review of the decision in accordance with this section.</p> <p>(2) A person is not entitled to apply to the Ombudsman for a review of a decision in relation to which subsection (1) applies unless—</p> <p>(a) he has made an application under that subsection in</p>		<p>shall be conducted—</p> <p>(a) by the responsible Minister in relation to documents referred to in sections 14, 15, 16 and 18;</p> <p>(b) in any other case, by the Permanent Secretary in the relevant Ministry or the principal officer of the public authority whose decision is subject to review.</p> <p>(2) An application for internal review shall be made—</p> <p>(a) within thirty 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 days, as the public authority may permit; or</p> <p>(b) where no such notification has been given, within thirty days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the authority.</p>		

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	<p>necessary to bring it into compliance with its obligations under Part 11, including the following–</p> <ul style="list-style-type: none"> <li>(a) appointing an information officer;</li> <li>(b) publishing the relevant information and categories of information;</li> <li>(c) making relevant changes to its practices in relation to the keeping, management and destruction of records, and the transfer of records to the Archives and Records Office;</li> <li>(d) enhancing the provision of training on the right to information for its officials;</li> <li>(e) providing the Commissioner with an annual report, in compliance with section 14.</li> </ul> <p>(2) The Commissioner shall serve notice of the decision, to the public authority together with information regarding the right of the public authority to a review of the Commissioner's decision.</p> <p><b>Commissioner's powers to investigate.</b></p> <p>44. (1) In coming to a</p>	<p>relation to the decision; and</p> <ul style="list-style-type: none"> <li>(b) he has been informed of the result of the review or a period of 14 days has elapsed since the day on which he made that application.</li> </ul> <p>(3) Where an application for a review of a decision is made to the responsible Minister or the principal officer in accordance with subsection (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and to make a fresh decision on the original application.</p> <p><b>Time for application to Ombudsman.</b></p> <p>37. (1) Where–</p> <ul style="list-style-type: none"> <li>(a) an application for review of a decision has been made in accordance with section 36; and</li> <li>(b) the application for review is refused or the applicant has not been informed of the</li> </ul>		<p>(3) A person who conducts an internal review–</p> <ul style="list-style-type: none"> <li>(a) may take any decision in relation to the application which could have been taken on an original application;</li> <li>(b) shall take that decision within a period of thirty days after the date of receipt of the application.</li> </ul>		

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	<p>decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.</p> <p>(2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.</p>	<p>result of the review within 14 days after the day on which he made that application, the applicant may apply to the Ombudsman for review of the decision refusing to grant access to a document, within 21 days of the date on which he is notified of the decision refusing the review or within 21 days after the expiry of the period of 14 days mentioned in paragraph (b) of subsection (1) above.</p> <p>(2) Where—</p> <p>(a) a request has been made to a Ministry or prescribed authority in accordance with section 16; and</p> <p>(b) a period of 14 days has elapsed since the day on which the request was received by or on behalf of the Ministry or prescribed authority; and</p> <p>(c) notice of a decision on the request has not been received by the applicant, the</p>				

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		<p>principal officer shall, for the purpose of enabling an application to be made to the Ombudsman under section 35, be deemed to have made on the last day of that period, a decision refusing to grant access to the document, and the applicant may apply to the Ombudsman to grant access to the document in question within 21 days of the expiry of the said period of 14 days.</p> <p>(3) Before dealing further with an application made by virtue of this section, the Ombudsman may, on the application of the Ministry or prescribed authority concerned, allow further time to the Ministry or prescribed authority to deal with the request.</p> <p>(4) Notwithstanding the period of limitation mentioned in this section, the Ombudsman may, in his discretion, grant further time to the applicant if he is of the</p>				

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		<p>opinion that there has been no unreasonable delay in making the application.</p> <p><b>Burden of proof.</b></p> <p>38. In proceedings under this Part, the Ministry or prescribed authority to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Ombudsman should give a decision adverse to the applicant.</p> <p><b>Power of Ombudsman to make orders.</b></p> <p>39. In proceedings under this Part, the Ombudsman shall make such order as he thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of exempt matter.</p> <p><b>Production of exempt documents.</b></p> <p>40. (1) Where there are proceedings before the Ombudsman under this Act in relation to a document that is claimed to be an exempt</p>				

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		<p>document, and the Ombudsman is not satisfied, by evidence on affidavit or otherwise that the document is an exempt document, he may require the document to be produced for inspection by him only and if, upon the inspection, he is satisfied that the document is an exempt document, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document or disclosing the contents of the document to any other person.</p> <p>(2) The Ombudsman may require the production, for inspection by him only, of an exempt document for the purposes of determining whether it is practicable for a Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a</p>				

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		<p>requirement, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document, or disclosing the contents of the document to any other person.</p> <p>(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), the Ombudsman is not empowered in any proceedings to require the production of a document in respect of which there is in force a certificate under section 22 or 23.</p> <p>(4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the document concerned in the manner provided in section 22 (3) or 23 (3), subsection (3) of this section does not prevent the Ombudsman from requiring the production, in proceedings before him under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.</p>				



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		<p><b>Evidence of certificates.</b></p> <p>41. In proceedings before the Ombudsman under this Part, evidence of a certificate under section 22 or 23, including evidence of the identity or nature of the document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the document to which it relates.</p> <p><b>Power of Ombudsman in relation to witnesses, etc.</b></p> <p>42. For the purposes of performing his functions under this Act, the Ombudsman shall have the same powers as a Magistrate in respect of the attendance and examination of witnesses.</p>				
<p><b>Review of decisions of Ombudsman or Commissioner or Appeal</b></p>	<p><b>Review of Commissioner’s decisions and orders.</b></p> <p>45. (1) The complainant, or the relevant public authority may, within 28 days, apply to the High Court for a review of a decision of the Commissioner pursuant to section 42 or 43, or an order pursuant to section 44 (1).</p>	<p><b>Appeals against Ombudsman’s decision.</b></p> <p>43. Any party dissatisfied with a decision of the Ombudsman under this Act may appeal to the Supreme Court, and in every such case the provisions of Part X of the Supreme Court of</p>	<p><b>Recourse to the contentious administrative Court.</b></p> <p><b>Article 28.</b> – If [the person is] neither satisfied with the decision of the hierarchical entity, [he/she] may recur to the Supreme</p>	<p><b>Appeal.</b></p> <p>32. (1) An appeal shall lie pursuant to subsections (2) and (3), to the Tribunal established for that purpose, constituted in accordance with the Second Schedule.</p> <p>(2) A person may lodge an appeal–</p>	<p><b>Judicial review.</b></p> <p>39. (1) Any person aggrieved by a decision of a public authority under this Act may apply to the High Court for judicial review of the decision.</p> <p>(2) Notwithstanding any other law to the contrary, where an</p>	<p><b>Judicial review.</b></p> <p>39. (1) For the removal of doubt, a person aggrieved by a decision of a public authority under this Act may apply to the High Court for judicial review of the decision.</p> <p>(2) Notwithstanding</p>

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	<p>(2) In any review of a decision pursuant to subsection (l), the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Part 111.</p> <p><b>Commissioners decisions and orders binding.</b></p> <p>46. On the expiry of the period of 28 days referred to in section 45 or such longer period as the Commissioner may, pursuant to a decision or order under section 42 or 43 determine, the decision of the Commissioner shall become binding.</p>	<p>Judicature Act and the rules made thereunder shall <i>mutatis mutandis</i> apply.</p>	<p>Administrative Court within fifteen (15) working days.</p> <p><b>Habeas corpus remedy. Article 29.</b> – Where the entity or the person to whom a request for information has been made does not provide same within the established timeframe, or where the hierarchical superior body or entity has not issued its judgment on the matter within the established timeframe, the interested person may apply for <i>habeas corpus</i> before the Contentious Administrative Court for the purpose of guaranteeing the freedom of information established under the present law.</p> <p><b>Paragraph I.</b> – The affected person shall apply for <i>habeas corpus</i> and shall specify therein the steps taken and the harm that the delay may cause him. He shall also present copies of the writings through which he has applied for the information or has filed for the hierarchical recourse.</p> <p><b>Paragraph II.</b> – If the</p>	<p>(a) where internal review under section 30 is applicable–</p> <ul style="list-style-type: none"> <li>(i) against a decision taken on such review;</li> <li>(ii) if the time specified in section 3 1 (2) (b) has expired without the applicant being notified of a decision;</li> </ul> <p>(b) in any other case, against a relevant decision in relation to any of the matters referred to in paragraphs (a) to (c) of section 30 ( 1 ) or section 30 (2), and accordingly section 30 (3) shall apply with necessary modifications to an appeal under this paragraph.</p> <p>(3) An appeal shall be made–</p> <ul style="list-style-type: none"> <li>(a) by the lodgment of a document within sixty days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or</li> <li>(b) where no notification has been given within the period required by this Act, within sixty</li> </ul>	<p>application for judicial review of a decision of a public authority under this Act is made under subsection (1), that application shall be heard and determined by a Judge in Chambers, unless the Court directs otherwise.</p> <p>(3) In this section “decision of a public authority” includes the failure of a public authority to comply with provisions of this Act.</p>	<p>any other law to the contrary, where an application for judicial review of a decision of a public authority under this Act is made to the High Court, that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of the parties, directs otherwise.</p> <p>(3) In this action, “decision of a public authority” includes the failure of a public authority to comply with section 15 or 16(1).</p>

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			<p>recourse is accepted, the Court shall require the relevant body of the public administration to inform on the reasons for the delay and shall set a short and final timeframe for a response. Once the request has been answered or the timeframe for so doing has expired, the Court shall deliver its corresponding resolution in light of the violated freedom and shall establish therein a timeframe for the body of the Public Administration to resolve the issue regarding the request for information.</p>	<p>days after the expiration of that period.</p> <p>(4) Where an appeal is not made within the period specified in subsection (2), the Appeal Tribunal may extend that period if it is satisfied that the appellant's delay in so doing is not unreasonable.</p> <p>(5) On the hearing of an appeal, the onus of proving that the relevant decision was justified or that a decision adverse to the appellant should be made by the Appeal Tribunal, shall lie on the public authority which made the relevant decision.</p> <p>(6) On hearing an appeal, the Appeal Tribunal—</p> <p>(a) may subject to paragraph</p> <p>(b) make any decision which could have been made on the original application;</p> <p>(c) shall not nullify a certificate issued under section 23.</p> <p>(7) The Appeal Tribunal may call for and inspect an exempt document, so, however, that, where it does so, it</p>		

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				shall take such steps as are necessary to ensure that the document is inspected only by members of staff of the Appeal Tribunal acting in that capacity.		
<b>Annual reports.</b>	<p><b>Annual reports.</b>  <b>39. (1)</b> The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the Office of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.</p> <p><b>(2)</b> The Minister shall cause a copy of each annual report Submitted pursuant to subsection (1) to be laid before the House of Representatives as soon as practicable after he has received the report.</p>	<p><b>Reports to National Assembly.</b>  <b>46. (1)</b> The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31st December, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the National Assembly.</p> <p><b>(2)</b> Each Ministry or prescribed authority shall furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.</p>		<p><b>Reports.</b>  <b>36. (1)</b> The Minister shall, as soon as practicable after the end of each year (but not later than the 30th of June in the following year) prepare a report of the operation of this Act during the year, containing the matters specified in subsection (4).</p> <p><b>(2)</b> The report referred to in subsection (1) shall be laid on the Table of the House of Representatives and of the Senate.</p> <p><b>(3)</b> Each public authority shall submit to the Minister, quarterly reports on the matters specified in subsection (4).</p> <p><b>(4)</b> The matters referred to in subsections (1) and (3) are—</p> <p><b>(a)</b> the number of applications for access received, granted, deferred, refused or granted, subject to deletions;</p> <p><b>(b)</b> the categories of</p>	<p><b>Report to Parliament.</b>  <b>40. (1)</b> The Minister shall, as soon as practicable after the thirty-first of December of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before Parliament.</p> <p><b>(2)</b> Each responsible Minister shall, in relation to the public authorities within his portfolio, furnish to the Minister such information as he requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.</p>	<p><b>Report to Parliament.</b>  <b>40. (1)</b> The Minister shall, as soon as practicable after the end of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of Parliament.</p> <p><b>(2)</b> Each responsible Minister shall, in relation to the public authorities within his portfolio, furnish to the Minister such information as he requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.</p> <p><b>(3)</b> A report under this section shall include in respect of the year to which the report relates the following:</p>

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				<p>exemptions claimed and the numbers of each category;</p> <p>(c) the number of applications received for–</p> <p>(i) amendment of personal records;</p> <p>(ii) annotation of personal records;</p> <p>(d) the number of–</p> <p>(i) applications for internal review of relevant decisions;</p> <p>(ii) appeals against relevant decisions, and the rate of success or failure thereof</p> <p>(e) such other matters as are considered relevant.</p>		<p>(a) the number of requests made to each public authority;</p> <p>(b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;</p> <p>(c) the number of applications for judicial review of decisions under this Act and the outcome of those applications;</p> <p>(d) the number of complaints made to the Ombudsman with respect to the operation of this Act and the nature of those complaints;</p> <p>(e) the number of notices served upon each public authority under section 10(1) and the number of decisions by the public authority which were adverse to the person’s claim;</p>

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						<p>(f) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;</p> <p>(g) the amount of charges collected by each public authority under this Act;</p> <p>(h) particulars of any reading room or other facility provided by each public authority for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility; and</p> <p>(i) any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act.</p>
<b>Regulations</b>	<p><b>Regulations.</b></p> <p>49. (1) The Minister may, after consultation with the Commissioner, make Regulations for the purpose of giving effect to the provisions of this Act.</p> <p>(2) Regulations made</p>	<p><b>Regulations.</b></p> <p>47. (1) The Minister may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be</p>	<p><b>Final provisions.</b></p> <p>Article 31. – Access to information regarding files and records of an administrative nature which are regulated by special laws shall be applied for and provided</p>	<p><b>Regulations</b></p> <p>37. The Minister may make regulations generally for giving effect to the provisions and purposes of this Act and such regulations shall be subject to affirmative resolution.</p>	<p><b>Regulations.</b></p> <p>41. (1) The Minister may from time to time make or alter regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to</p>	<p><b>Regulations.</b></p> <p>41. (1) The Minister may make regulations for giving effect to the purposes of this Act and for prescribing anything required or authorized by this Act to be</p>

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	<p>pursuant to this section shall be subject to negative resolution of the House of Representatives.</p>	<p>prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to—</p> <p>(a) charges for access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and</p> <p>(b) the officers who may give decisions on behalf of a Ministry or prescribed authority.</p> <p>(2) The Ombudsman may, with the approval of the Minister, make regulations for the better carrying out of his functions under this Act, and, in particular, in relation to the procedure to be followed for conducting reviews of the decisions refusing access to documents.</p> <p>(3) All regulations made under this Act shall be laid before the National Assembly as soon as may be after the</p>	<p>in accordance with the dictates and procedures established by said laws. This notwithstanding, the provisions of Articles 27, 28, 29, 30, and 31 of the present law relating to administrative and jurisdictional recourses shall apply.</p> <p><b>Article 32.</b> – Within ninety (90) days from the date of enactment of the present law, the Executive Power shall dictate its regulations for implementation. Within that timeframe, it shall take the necessary measures to establish the conditions for operation which guarantee the fulfilment of all the provisions contained in the present law.</p>		<p>be prescribed.</p> <p>(2) Notwithstanding the generality of subsection (1), regulations made under this section may prescribe—</p> <p>(a) the fees in respect of access to documents (including the provision of copies or transcripts) in accordance with this Act;</p> <p>(b) the officers who may make decisions on behalf of a public authority;</p> <p>(c) requirements concerning the furnishing of information and keeping of records for the purposes of section 40.</p> <p>(3) All regulations made under this Act shall be laid before Parliament as soon as may be after the making thereof and shall be subject to negative resolution.</p>	<p>prescribed.</p> <p>(2) Regulations made under this section shall be subject to negative resolution of Parliament.</p>

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		making thereof and shall be subject to negative resolution.				
<b>Offences</b>	<p><b>Offences.</b></p> <p><b>48. (1)</b> A person shall not wilfully–</p> <p>(a) obstruct access to any record contrary to Part I11 of this Act;</p> <p>(b) obstruct the performance by a public authority of a duty pursuant to Part I11 of this Act;</p> <p>(c) interfere with the work of the Commissioner;</p> <p>(d) destroy, mutilate, remove or in any way alter a record with intent to prevent the disclosure of information contained therein; or</p> <p>(e) fail to comply with a decision or an order of the Commissioner made pursuant to section 42 or 43.</p> <p>(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both.</p>	<b>No similar provision.</b>	<p><b>Of criminal and administrative sanctions concerning impediment or obstruction to access information.</b></p> <p><b>Article 30.</b> – The relevant public official or entity that arbitrarily denies, obstructs or impedes access by the applicant to the required information shall be punished with a term of imprisonment of between six months and two years and disqualification from exercising public duties for five years.</p>	<p><b>Offence.</b></p> <p><b>34. (1)</b> A person commits an offence, if in relation to an official document to which a right of access is conferred under this Act he–</p> <p>(a) alters or defaces;</p> <p>(b) blocks or erases;</p> <p>(c) destroys; or</p> <p>(d)conceals,</p> <p>the document with the intention of preventing its disclosure.</p> <p>(2) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.</p>	<p><b>Preservation of records or documents.</b></p> <p><b>42. (1)</b> A public authority shall maintain and preserve records or cause to be maintained and preserved records in relation to its functions and a copy of all official documents which are created by it or which come at any time into its possession, custody or power for such period of time as may be prescribed.</p> <p>(2) A person who willfully destroys or damages a record or document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years.</p> <p>(3) A person who knowingly destroys or damages a record or document which is required to be maintained and preserved under subsection (1) while a request for access to the record or document is</p>	<b>No similar provision.</b>



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					pending commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars or imprisonment for a term not exceeding three years.	
<b>Review of Act by Parliamentary Committee</b>	No similar provision.	No similar provision.		<p><b>Review of Act by Parliamentary Committee.</b></p> <p><b>38. (1)</b> This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.</p> <p><b>(2)</b> The first such review shall be conducted not later than two years after the appointed day.</p>	No similar provision.	No similar provision.
<b>Amendment or Annotation of personal information.</b>	No similar provision.	No similar provision.		<p><b>Application for amendment or annotation of personal records.</b></p> <p><b>24. (1)</b> Where a person claims that an official document contains personal information about the person that—</p> <ul style="list-style-type: none"> <li>(a) is incomplete, incorrect, out of date or misleading; and</li> <li>(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</li> </ul>	No similar provision.	<p><b>Correction of personal information.</b></p> <p><b>36. (1)</b> Where a document (whether or not it is one to which access has been given under this Act) contains personal information of an individual and that individual alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that individual, correct the information.</p> <p><b>(2)</b> In subsection (1), “inaccurate” means</p>

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				<p>annotation, as the case may be, of that document.</p> <p>(2) An application under this section shall be in writing and shall specify as far as practicable, the document claimed to be the personal record requiring amendment or annotation, as the case may be, and shall—</p> <p>(a) in the case of an application for amendment, specify—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(ii) the applicant's basis for making that claim; and</li> <li>(iii) the nature of the amendment required by the applicant;</li> </ul> <p>(b) in the case of an application for annotation, be accompanied by a statement specifying—</p> <ul style="list-style-type: none"> <li>(i) the matters referred to in paragraph (a) (i) and (ii); and</li> </ul>		<p>incorrect, incomplete, misleading or not relevant to the purpose for which the document is held.</p> <p>(3) For the purpose of this section, information may be corrected by amending, supplementing or deleting it.</p>

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				<p>(ii) the information that would make the record complete, correct, up to date and not misleading.</p> <p><b>Amendment of records.</b>  <b>25. (1)</b> Where, in relation to any application under section 24, a public authority is satisfied as to the truth of the matters stated in the application, it shall amend the document concerned in the prescribed manner.</p> <p>(2) Where a public authority decides not to amend an official document it shall—</p> <p>(a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 24 (2) (b); and</p> <p>(b) annotate the document by adding thereto the statement referred to in paragraph (a).</p> <p><b>Annotation of personal records.</b>  <b>26.</b> Where, in relation to an application for annotation of an official document containing personal information, the public authority—</p> <p>(a) is satisfied as to the</p>		

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				<p>truth of the matters specified in that application, the authority shall annotate the document in the prescribed manner;</p> <p>(b) is not so satisfied, it may refuse to annotate the document.</p> <p><b>Notice of amendments or annotations.</b></p> <p>27. A public authority which amends or annotates an official document pursuant to section 25 or 26, or, as the case may be, decides not to do so, shall take reasonable steps to inform—</p> <p>(a) the applicant; and</p> <p>(b) any other public authority which it is satisfied has made prior use of the document, of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.</p> <p><b>Transfer of applications for amendment or annotation.</b></p> <p>28. The provisions of section 8 shall apply, with such modifications as may</p>		

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				be necessary, to applications for amendments or annotations of personal records		
<b>Broadcasting materials.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>		<b>No similar provision.</b>	<b>No similar provision.</b>	<b>Broadcasting materials.</b> <b>37.</b> Notwithstanding any other provision of this Act, where a request is made for access to a document held by the National Broadcasting Network, that company shall not be required to give access under this Act to any part of the document which discloses the source of any information obtained in the course of making any programme or broadcast.
<b>Non-derogation from privacy Act</b>	<b>No similar provision.</b>	<b>No similar provision.</b>		<b>No similar provision.</b>	<b>Non-derogation from privacy Act.</b> <b>43.</b> Nothing in this Act shall be regarded as authorising any derogation from or non-compliance with any provision of the Privacy Act.	<b>No similar provision.</b>
<b>Whistleblowers</b>	<b>Whistleblowers</b> <b>47. (1)</b> A person may disclose information to the Commissioner or to any other authority on the wrong-doing by a public authority concerning–	<b>No similar provision.</b>		<b>No similar provision.</b>	<b>No similar provision.</b>	<b>No similar provision.</b>

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	<p>(a) a serious threat to the health or safety of an individual or a serious threat to the public or the environment;</p> <p>(b) the commission of a criminal offence;</p> <p>(c) failure to comply with a legal obligation;</p> <p>(d) a miscarriage of justice;</p> <p>(e) corruption, dishonesty or serious maladministration;</p> <p>(f) abuse of authority or neglect in the performance of official duty;</p> <p>(g) injustice to an individual;</p> <p>(h) unauthorised use of public funds,</p> <p>and that person shall not be liable in any legal proceedings or to any sanction relating to his employment if the information was disclosed in good faith and in the reasonable belief that it was true.</p>					

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	(2) A person who, pursuant to subsection (1), discloses information maliciously or without reasonable belief of the truthfulness of that information, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.					





## Section VIII: Policy Guidelines

### 8.1 Internet

The Internet has posed many challenges for policy-making and implementation of freedom of expression and of control of illicit information or communication, as pointed out by jurists:

“In the written press, once some content has been printed there is no way to reedit it on the same place, except the right to rectify or of response, which allows for a new, later publication on the same place. But in the Internet, as we saw in those cases, it is possible to suppress contents (either by deleting information, or suppressing links or hyperlinks, or limiting the contents with passwords and other measures of intellectual property protection). It shall be necessary to reevaluate this new possibility ensured by technology and how it shall affect availability of information, as for access to it and, definitely, as regards freedom of expression.”<sup>40</sup>

The massive amounts of information which currently flow through the Internet makes it often difficult to prevent the flow of illicit contents without, simultaneously, stopping the flow of licit contents. The choice of key words for filtering activities may result in undue censorship of contents which do not have to do with the context intended to be filtered.

On the other hand, the efficacy of filtering is questionable, as one may by-pass filters by means of the use of cryptography, steganography, or of other technical means. Therefore, the cost/benefit of implementing filtering with unlikely benefits (control of illicit contents) and with likely costs (i.e., sacrifice to freedom of expression and to freedom of information), seem to be justifiable only in exceptional cases (child pornography, terrorism), where the repudiation of the nature of the contents is intense to the point that sacrifice of freedom of expression is tolerated.

Subjacent to those discussions is the debate on whether Internet shall be considered, within the geographic borders of a country and within its jurisdiction, a social communication media, such as newspapers, and television or radio broadcasting. There are different opinions on that, having some currents of understanding pointed to the fact that where there is no liable editor in Internet web sites, they shall not be considered and regulated as social communication media<sup>41</sup>. On the other extreme, there are countries<sup>42</sup> where bills of law have been submitted proposing regulation as such, and countries where censorship was established grounded on official, political reasons.

### 8.2 Intellectual Property

Freedom of information may be restrained where considerations of intellectual property are invoked.

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<sup>40</sup> “Con la prensa escrita, una vez que un contenido ha sido impreso no existe forma de reeditarlo en el mismo lugar, salvo del derecho de rectificación o respuesta que permite una nueva publicación posterior en el mismo lugar. Pero en Internet, como vimos en estos casos es posible suprimir contenidos (ya sea borrando información, suprimiendo links o hipervínculos o limitando el contenido con claves de acceso y otras medidas de protección de la propiedad intelectual). Va a ser necesario reevaluar esta nueva facultad permitida por la tecnología y como incidirá en la disponibilidad de información, en el acceso a la misma y en definitiva en la libertad de expresión.” (Leiva, Renato Jijena; Palazzi, Pablo Andrés, Valdés, Julio Téllez, “El derecho y la sociedad de la información: la importancia de Internet en el mundo actual”, Monterrey, TEC, 2003, p. 61-62).

<sup>41</sup> Leiva, ..., p. 88.

<sup>42</sup> Chile; see in [www.saladeprensa.org/art113.htm](http://www.saladeprensa.org/art113.htm).

Given the increasing value of information as an asset, the attempts to classify information as intellectual property has grown significantly. Proprietors of databases may want to obtain return over investment in the development or acquisition of the software and/or in the services of compiling and storing the data:

*“Databases and computer files*

*Both as regards their design and their structure – which is determined by a specific software that supports it – as well as their informational contents or the set of organized data that it stores, they constitute a new and very special economic asset. Any company which possesses one shall wish to protect the investment, usually high, required by their design, and especially, by the process of recompilation and of storage of data.”<sup>43</sup>*

Such situation also relates to how some public information is made available to citizens. Access to old laws published in the Official Gazette may be charged by the company (either public or private) which “exploits” the right to make them available, under the allegation of the investment made in compilation of relevant database and of eventual intellectual property. The same applies to technical standards published by agencies belonging to the Public Administration, which may also charge for copies of the norms, and prohibit private copies. Maps of cities, and associated “georeference” information, may also be charged by state tourism agencies or by other government sectors.

The balance between freedom of access expected with respect to public information such as published laws, official technical standards, and city maps, on one hand, and the interest of remunerating the production, compilation and/or publishing of such information, on the other hand, has gone through debates on the desired extent of state-owned intellectual property, which evidently implies the need of policy-making in such regard.

International laws (such as WIPO’s Treaty of 2006 on copyrights, and European Directive 96/9/CE) give protection to works where the selection or display of data are original in form, and clarify that the data *per se* do not deserve protection. Therefore, country national policy-making on this matter shall also consider the inputs arising from international treaties and conventions (to which such countries may be to signatory).

### 8.3 Alternative Forms of Regulation

As traditional ways of regulation have faced several, important challenges to overcome in what concerns the huge diversity and quantity of information flowing through every kind of media nowadays, some alternative forms of regulation have called the attention of international or regional organizations and of some countries.

Highly illustrative in this regard is Recommendation Rec (2001)8 issued by the Committee of Ministers of the Council of Europe<sup>44</sup>, which is extensively quoted below, given the importance of its scope and contents:

*“COUNCIL OF EUROPE COMMITTEE OF MINISTERS*

*Recommendation Rec(2001)8*

<sup>43</sup> “Las bases o bancos de datos o los ficheros de computadora Tanto en atención a su diseño o estructura – determinado por un software específico que la soporta – como a su contenido informacional o al conjunto de datos organizados que almacena, constituyen un nuevo y muy especial bien económico. Cualquier empresa que posea una querrá proteger la inversión, generalmente alta, que demanda su diseño y especialmente el proceso de recopilar y almacenar los datos.” (Leiva, ..., p. 101).

<sup>44</sup> <https://wcd.coe.int/ViewDoc.jsp?id=220387&Site=CM>

## Section VIII

*of the Committee of Ministers to member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services)*

*(Adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies)*

*(...)*

*Reaffirming that freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community, as expressed in its Declaration on the Freedom of Expression and Information of 1982;*

*(...) Bearing in mind the differences in national criminal law concerning illegal content as well as the differences in what content may be perceived as potentially harmful, especially to minors and their physical, mental and moral development, hereinafter referred to as "harmful content";*

*Bearing in mind that self-regulatory organizations could, in accordance with national circumstances and traditions, be involved in monitoring compliance with certain norms, possibly within a co-regulatory framework, as defined in a particular country;*

*Aware of self-regulatory initiatives for the removal of illegal content and the protection of users against harmful content taken by the new communications and information industries, sometimes in co-operation with the state, as well as of the existence of technical standards and devices enabling users to select and filter content;*

*Desirous to promote and strengthen self-regulation and user protection against illegal or harmful content,*

*Recommends that the governments of member states:*

- 1. implement in their domestic law and/or practice the principles appended to this Recommendation;*
- 2. disseminate widely this Recommendation and its appended principles, where appropriate accompanied by a translation; and*
- 3. bring them in particular to the attention of the media, the new communications and information industries, users and their organizations, as well as of the regulatory authorities for the media and new communications and information services and relevant public authorities.*

*Appendix to Recommendation Rec(2001)8*

*Principles and mechanisms concerning self-regulation and user protection against illegal or harmful content on new communications and information services*

*Chapter I – Self-regulatory organizations*

- 1. Member states should encourage the establishment of organizations which are representative of Internet actors, for example Internet service providers, content providers and users.*
- 2. Member states should encourage such organizations to establish regulatory mechanisms within their remit, in particular with regard to the establishment of codes of conduct and the monitoring of compliance with these codes.*
- 3. Member states should encourage those organizations in the media field with self-regulatory standards to apply them, as far as possible, to the new communications and information services.*
- 4. Member states should encourage such organizations to participate in relevant legislative processes, for instance through consultations, hearings and expert opinions, and in the implementation of relevant norms, in particular by monitoring compliance with these norms.*

5. *Member states should encourage Europe-wide and international co-operation between such organizations.*

#### *Chapter II – Content descriptors*

6. *Member states should encourage the definition of a set of content descriptors, on the widest possible geographical scale and in co-operation with the organisations referred to in Chapter I, which should provide for neutral labelling of content, thus enabling users to make their own judgment concerning such content.*

7. *Such content descriptors should indicate, for example, violent and pornographic content as well as content promoting the use of tobacco or alcohol, gambling services, and content which allows unsupervised and anonymous contacts between minors and adults.*

8. *Content providers should be encouraged to apply these content descriptors, in order to enable users to recognize and filter such content regardless of its origin.*

#### *Chapter III – Content selection tools*

9. *Member states should encourage the development of a wide range of search tools and filtering profiles, which provide users with the ability to select content on the basis of content descriptors.*

10. *Filtering should be applied by users on a voluntary basis.*

11. *relation to content harmful to minors, such as age-verification systems, personal identification codes, passwords, encryption and decoding systems or access through cards with an electronic code.*

#### *Chapter IV – Content complaints systems*

12. *Member states should encourage the establishment of content complaints systems, such as hotlines, which are provided by Internet service providers, content providers, user associations or other institutions. Such content complaints systems should, where necessary for ensuring an adequate response against presumed illegal content, be complemented by hotlines provided by public authorities.*

13. *Member states should encourage the development of common minimum requirements and practices concerning these content complaints systems. Such requirements should include for instance:*

- a. *the provision of a specific permanent Web address;*
- b. *the availability of the content complaints system on a twenty-four-hour basis;*
- c. *the provision of information to the public about the legally responsible persons and entities within the bodies offering content complaints systems;*
- d. *the provision of information to the public about the rules and practices relating to the processing of content complaints, including co-operation with law enforcement authorities with regard to presumed illegal content;*
- e. *the provision of replies to users concerning the processing of their content complaints;*
- f. *the provision of links to other content complaints systems abroad.*

14. *Member states should set up, at the domestic level, an adequate framework for co-operation between content complaints bodies and public authorities with regard to presumed illegal content. For this purpose, member states should define the legal responsibilities and privileges of bodies offering content complaints systems when accessing, copying, collecting and forwarding presumed illegal content to law enforcement authorities.*

15. *Member states should foster Europe-wide and international co-operation between content complaints bodies.*

16. *Member states should undertake all necessary legal and administrative measures for transfrontier co-operation between their relevant law enforcement authorities with regard to complaints and investigations concerning presumed illegal content from abroad.*

*Chapter V – Mediation and arbitration*

17. *Member states should encourage the creation, at the domestic level, of voluntary, fair, independent, accessible and effective bodies or procedures for out-of-court mediation as well as mechanisms for arbitration of disputes concerning content-related matters.*

18. *Member states should encourage Europe-wide and international co-operation between such mediation and arbitration bodies, open access of everyone to such mediation and arbitration procedures irrespective of frontiers, and the mutual recognition and enforcement of out-of-court settlements reached hereby, with due regard to the national ordre public and fundamental procedural safeguards.*

*Chapter VI – User information and awareness*

19. *Member states should encourage the development of quality labels for Internet content, for example for governmental content, educational content and content suitable for children, in order to enable users to recognize or search for such content.*

20. *Member states should encourage public awareness and information about self-regulatory mechanisms, content descriptors, filtering tools, access restriction tools, content complaints systems, and out-of-court mediation and arbitration.”*

Here, a problem has surfaced, on the extent of the legal mandate granted to non-governmental organizations to conduct initiatives such as establishing filters for instant messaging communications, monitor contents of chat sessions in web sites, and others. Depending on the nature of the words or expressions used as filters (some may be quite invasive), as well as on the type of media where they are implemented, a mandate to the private sector may be questionable.

While private regulations focus on etiquette and on regular governance matters<sup>45</sup>, it may be understood as self-regulation of private activities. But where it goes beyond voluntary behavior of each individual party, and cross the borders of fiscalization of conduct of third parties, special attention shall be paid by governments before endorsing such latter sort of “self-regulation”.

Finally, technical standards have been released by international standardization bodies which contain procedural norms regarding electronic monitoring, filtering, and similar activities dealing with control on the free flow of information, in the name of Information Security<sup>46</sup>, Corporate Governance of Information Technology<sup>47</sup>, and others. Such norms usually contain a remark calling attention to the need of complying with legal rules on relevant matters. Hence, it is important to stress that this kind of architecture presupposes combination of “hard law” (legal rules) and “soft law” (standards, non-binding), and not the implementation of standards coupled with arbitrary interpretation of issues which are already regulated by law.

## 8.4 Constitutional Grounding

Freedom of expression may be grounded on different aspects of the constitutional framework. It may be associated with democracy and public opinion, or with the principle of dignity of every human being, or with other values. A FOI law shall specify which is its main constitutional ground, as such option will define its dimension, and feed the task of weighing FOI against other constitutional interests and rights:

*“Definitely, el TC (Constitutional Tribunal) makes a firm political-juridical option which ties the exercise of freedoms of expression and of information to their political dimension. Hence, other possible options stay aside, which could have sustained well diverse configurations of both freedoms. For instance, its content*

<sup>45</sup> For instance, the code of conduct (Code of Ethics of Data Protection in the Internet”) issued by the Spanish Association for Electronic Commerce.

<sup>46</sup> For instance, the ISO 27000 family of norms.

<sup>47</sup> For instance, ISO 38500.

*does not build upon the finality of truth, which could exclude information that is not supported by the “exceptio veritatis”, thus enhancing protection to honor. Neither arises its content from dignity as legal asset, which would extend protection to much wider ends.”<sup>48</sup>*

Grounding freedom of information on public opinion, though, represents a bet in the democracy of communication media, which forms or influences public opinion. Arbitrary interpretation on what corresponds to the public opinion, or political control of communication media may subject freedom of information and of expression to normally undesired distortions.

### 8.5 Freedom of Broadcasting

As commented in Sections 5 and 6, the definition of public service may include the private sector within the scope of FOI regulations, to the extent private companies are invited to perform public service, by means of privatization or in some other context.

Liberalization of telecommunications, or state regulation, are different possibilities which have replaced each other throughout time, as governments address open television broadcasting, cable TV, satellites, etc.

In general, a broader range of regulation is recognized to legislators concerning regulating on broadcasting activities, as opposed to regulating on freedom of information itself:

*“It is worth focusing in the argumentation of the Constitutional Tribunal. Its standpoint consists on recognizing that “the right to broadcast ideas and opinions comprises, in principle, the right to create the material means through which broadcasting can be performed” (STC 12/82/3). Notwithstanding, the Tribunal immediately recognizes that such right to create the material means does not have intensity of protection equal to the primary rights directly guaranteed by Section 20, as they are merely instrumental. As a consequence, “the legislator has much more possibilities of configuration whenever he does not restrain its essential content” (STC 206/90/6, including the possibility to declare certain social communication media as public services.”<sup>49</sup>*

Of course, the Internet represents additional complications in this matter, as “streaming” possibilities may cause the merging of different kinds of media (telephone, tv, radio) into a single, global technological platform. What role and liability shall be attached to ISPs, television broadcasting companies, telecommunications companies, and other players, is a matter of public policy which will certainly affect freedom of information, and the choice on who shall fall under its regulation.

<sup>48</sup> “En definitiva, el TC realiza una firme opción político-jurídica que vincula el ejercicio de las libertades de expresión e información a su dimensión política. Se marginan así, otras posibles opciones que podrían haber sustentado configuraciones bien distintas de ambas libertades. Por ejemplo, su contenido no se construye desde el fin de la verdad, que podría excluir las informaciones que no encontraran la coartada de la “exceptio veritatis”, reforzando así la protección del honor. O tampoco se levanta su contenido a partir del bien jurídico de la dignidad, que extendería la protección a confines mucho más amplios.” (Azpitarte, Miguel, “Libertad de expresión y jurisprudencia constitucional. El caso español”, in “Directos Fundamentais, Informática e Comunicação”, Sarlet, Ingo Wolfgang, Porto Alegre, do Advogado, 2007, p. 256)

<sup>49</sup> “Su punto de partida consiste en reconocer que “el derecho a difundir ideas y opiniones comprende en principio el derecho a crear los medios materiales a través de los cuales la difusión se hace posible” (STC 12/82/3). Sin embargo, inmediatamente, reconoce el Tribunal Constitucional que ese derecho a crear los medios materiales no tiene una intensidad de protección igual a los derechos primarios directamente garantizados por el art. 20, pues le son meramente instrumentales. En consecuencia, “el legislador tiene mucha mayor capacidad de configuración siempre que no restrinja su contenido esencial” (STC 206/90/6), incluida la capacidad para declarar ciertos medios de comunicación social como servicios públicos.” (Azpitarte, p. 266).

## 8.6 “Monopoly” of Information

The right to request rectification of information, or of suspension of its display, are typical rights associated with FOI. The exercise of such rights may be compromised, in the view of information producers, should third parties be able to collect such information in the context of massive gathering of data, and keep them for display, without notice to the producers, or without giving proper chance to exercise above referred rights.

Some countries have discussed the extent to which freedom is to be recognized to companies dedicated to exploit search engines in the Internet (fueled by powerful metatag technologies), or digitalization of books and other sort of publications or writings, or the like, and which may, in practice, lead to restraining the ability of one to exercise freedom of information, freedom of expression, and any associated rights, such as the right of repent .

Although a country shall not necessarily wish, at this point in time, to regulate a matter whose discussions are still subject to advance and mature, attention shall be paid to possible future developments in the sphere of international intellectual property, or consumer protection, treaties or conventions.





## ANNEXES

### Annex 1: Bibliography

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## Annex 2

### Examples of Regional Legislation

See the examples of the most advanced pieces of legislation of individual Beneficiary Member States at [www.itu.int/ITU-D/projects/ITU\\_EC\\_ACP/hipcar/reports/wg2/info-society.html](http://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/reports/wg2/info-society.html)

## BELIZE

### FREEDOM OF INFORMATION ACT

#### CHAPTER 13

#### REVISED EDITION 2000

SHOWING THE LAW AS AT 31ST DECEMBER, 2000

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Chapter 3 of the Laws of Belize, Revised Edition 1980 - 1990.

This edition contains a consolidation of the following laws- Page

#### ARRANGEMENT OF SECTIONS 3

#### FREEDOM OF INFORMATION ACT 7

Amendments in force as at 31st December, 2000.

#### CHAPTER 13

#### FREEDOM OF INFORMATION

#### ARRANGEMENT OF SECTIONS

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33. Crown privilege in judicial proceedings not affected.

34. Duty of authorities to act in good faith.

## **PART V** **Review of Decisions**

35. Applications to Ombudsman.

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## **PART VI** **Miscellaneous**

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46. Reports to National Assembly.

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### **CHAPTER 13**

#### **FREEDOM OF INFORMATION**

[5th May, 1994]

## PART I Preliminary

1. This Act may be cited as the Freedom of Information Act.
2. This Act shall come into operation on a day to be appointed by the Minister by Order published in the *Gazette*.
3. (1) In this Act, unless the context otherwise requires- “applicant” means a person who has made a request; “ Department” means a Department of the Government of Belize; “document” includes public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid 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, but does not include library material maintained for reference purposes; “enactment” means an Act or an instrument (including rules, regulations or bylaws) made under an Act; “exempt document” means a document which, by virtue of a provision of Part IV, is an exempt document; “exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document; “Minister” or “Minister administering this Act” means the Minister who has been assigned responsibility under the Constitution for information; “Ministry” means a Ministry of the Government and includes a Minister, Minister of State and officers and servants of that Ministry; “Ombudsman” means the Ombudsman established under the Ombudsman Act; “prescribed authority” means -
  - (a) a local authority (a city council, town council or a village council);
  - (b) a public statutory corporation or body; or
  - (c) a body corporate or an unincorporated body, established for a public Purpose, which may be prescribed by the Minister by Order published in the *Gazette*;

“principal officer” means -

  - (a) in relation to a Ministry, the Permanent Secretary of that Ministry,
  - (b) in relation to a Department, the Head of that Department, and
  - (c) in relation to a prescribed authority, the chief executive officer, general manager or other similar officer of that authority; “regulations” means regulations made under this Act; “record” shall have the same meaning as assigned to the term “document”; “request” means a request for access to a document or record made in accordance with this Act; “responsible Minister” means -
  - (d) in relation to a Ministry - the Minister who has been assigned responsibility under the Constitution for that Ministry, or
  - (e) in relation to a prescribed authority - the Minister who has been assigned responsibility under the Constitution for the subject-matter of that authority.
- (2) References in this Act to a Ministry shall include a reference to a Department of Government.
4. For the purposes of this Act -
  - (a) a court, or the holder of a judicial office or other office pertaining to a court, in his capacity as the holder of that office, is not to be taken to be included in a Department;
  - (b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff, shall not be taken to be part of a Department.

5. The Office of the Governor-General shall not be deemed to be a Department of Government for the purposes of this Act.

## PART II

### Publication of Certain Documents and Information

6. (1) The responsible Minister or principal officer of a Ministry or prescribed authority shall -

(a) cause to be published, as soon as practicable after the commencement of this Act but not later than 12 months after that commencement, in a form approved by the Minister administering this Act -

(i) a statement setting out particulars of the organization and functions of the Ministry or prescribed authority, as the case may be, indicating as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation with or representations by, bodies and persons outside the Government administration in relation to the formulation of policy in, or the administration of, the Ministry or prescribed authority; and (ii) a statement of the categories of documents that are maintained in the possession of such Ministry, or prescribed authority; and

(b) within 12 months after the publication of the statement under subparagraph (i) or (ii) of paragraph (a), that is the first statement published under that subparagraph, and thereafter at intervals of not more than 12 months, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.

(2) A form approved by the Minister under sub-section (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under Part III of this Act.

(3) The information to be published in accordance with this section may be published in the *Gazette*.

(4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

(5) Subsection (1) applies in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

7. (1) This section applies to documents that are provided by the Ministry or prescribed authority for the use of, or are used by the Ministry or prescribed authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the Ministry or prescribed 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, being -

(a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents; or

(b) documents containing particulars of such a scheme, not being particulars contained in an enactment or published under this Act, but not including documents that are available to the public as published otherwise than by a Ministry or prescribed authority.

(2) The principal officer shall -

(a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public; (b) not later than 12 months after the commencement of this Act, cause to be published in the *Gazette*, a statement (which may take

the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

(c) within 12 months after the publication of the statement under paragraph (b) 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 commencement of this Act, but shall, before that time, comply with that paragraph so far as is practicable.

(4) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) Subsections (2) and (3) apply in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

8. If a document required to be made available in accordance with section 7, being a document containing a rule, guideline or practice relating to a function of a Ministry or prescribed authority, was not made available and included in a statement in the *Gazette*, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

### PART III Access to Documents

9. Subject to this Act, every person shall have a right to obtain access in accordance with this Act to a document of a Ministry or prescribed authority, other than an exempt document.

10. Where -

(a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment;

(b) a document is available for purchase by the public in accordance with arrangements made by a Ministry or prescribed authority, the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

11. Nothing in this Act is intended to prevent or discourage Ministries and prescribed authorities from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

12. (1) A person who wishes to obtain access to a document of a Ministry or prescribed authority shall make a request in writing to the Ministry or prescribed authority for access to the document.

(2) Subject to subsection (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Ministry or prescribed authority, as the case may be, to identify the document.

(3) Where a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the Ministry or prescribed authority.

(4) It is the duty of a Ministry or prescribed authority, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate Ministry or prescribed authority, to make a request in a manner that complies with this section or to direct a request to the appropriate Ministry or specified authority.

(5) Where a request in writing is made to a Ministry or prescribed authority for access to a document, the Ministry or prescribed authority, as the case may be, shall not refuse to comply with the request on the ground -

- (a) that the request does not comply with subsection (2); or
- (b) that, in the case of a request of the kind referred to in subsection (3), compliance with the request would interfere unreasonably with the operations of the Ministry or prescribed authority, as the case may be, without first giving the applicant a reasonable opportunity of consultation with the Ministry or prescribed authority with a view to the making of a request in a form that would remove the ground for refusal.

13. (1) Where -

- (a) a request is made to a Ministry or prescribed authority for access to a document; and
- (b) the document is not in the possession of that Ministry or prescribed authority but is in the possession of another Ministry or prescribed authority or the subject-matter of the document is more closely connected with the functions of another Ministry or prescribed authority than with those of the Ministry or prescribed authority to which the request is made, the Ministry or prescribed authority to which the request is made may transfer the request to the other Ministry or prescribed authority and inform the person making the request accordingly and, if it is necessary to do so in order to enable the other Ministry or prescribed authority to deal with the request, send the document to the other Ministry or prescribed authority.

(2) Where a request is transferred to a Ministry or prescribed authority in accordance with this section, it shall be deemed to be a request made to that Ministry or prescribed authority and received at the time at which it was originally received.

14. (1) Where -

- (a) a request (including a request of the kind described in subsection 12 (3) is duly made to a Ministry or prescribed authority;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the Ministry or prescribed authority; and
- (c) the Ministry or prescribed authority could produce a written document containing the information in discrete form by -



- (i) the use of a computer or other equipment that is ordinarily available to the Ministry or prescribed authority for retrieving or collating stored information; or
- (ii) the making of a transcript from a sound recording held in the Ministry or prescribed authority, the Ministry or prescribed authority shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the Ministry or prescribed authority had such a document in its possession.

(2) A Ministry or prescribed authority is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the Ministry or prescribed authority.

15. (1) Where a request for access to a document is duly made, and payment is made of any charge that is required to be paid before access is granted, access to the document shall be given in accordance with this Act.

(2) The expression “duly made” occurring in subsection (1) means that the request shall be in writing.

16. If a request to a Ministry or prescribed authority -

- (a) is made in writing and is expressed to be in pursuance of this Act; and
- (b) is sent by post to the Ministry or prescribed authority, or delivered to an officer of the Ministry or prescribed authority, at an address of the Ministry or prescribed authority, as the case may be, to which requests made in pursuance of this Act may be sent or delivered in accordance with this section, the Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than *two weeks* after the day on which the request is received by or on behalf of the Ministry or prescribed authority.

17. (1) Access to a document may be given to a person in one or more of the following forms:

- (a) a reasonable opportunity to inspect the document;
- (b) provision by the Ministry or prescribed authority of a copy of the document;
- (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
- (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the Ministry or prescribed authority of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 19, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant -

- (a) would interfere unreasonably with the operations of the Ministry or prescribed authority; or
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document, access in that form may be refused and access given in another form.

18. (1) A Ministry or prescribed authority which receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the Ministry or prescribed authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

19. (1) Where -

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is practicable for the Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy, the Ministry or prescribed authority shall grant access to such a copy of the document.

(2) Where access is granted to a copy of a document in accordance with subsection (1) -

- (a) the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 21 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the Ministry or prescribed authority to furnish him with a notice in writing in accordance with that section.

20. A decision in respect of a request made to a Ministry or prescribed authority may be made, on behalf of the Ministry or prescribed authority, by the responsible Minister or the principal officer of the Ministry or prescribed authority or, subject to the regulations, by an officer of the Ministry or prescribed authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the responsible Minister or the principal officer of the Ministry or prescribed authority.

21. (1) Where, in relation to a request for access to a document of a Ministry or prescribed authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred, the Ministry or prescribed authority shall cause the applicant to be given notice in writing of the decision, and the notice shall -

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a document of any Ministry or prescribed authority, state the name and designation of the person giving the decision; and
- (c) inform the applicant of his right to apply for a review of the decision.

(2) A Ministry or prescribed authority is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

## PART IV Exempt Documents

22. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure -

- (a) would prejudice the security, defence or international relations of Belize; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Belize.

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where a Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) The responsible Minister may delegate his powers under this section to the principal officer of the Ministry or the prescribed authority, as the case may be.

23. (1) A document is an exempt document if it is -

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed to be submitted; or
- (b) an official record of the Cabinet; or
- (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve disclosure of any deliberation or advice of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.

(3) Where a document is a document referred to in paragraph (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) A reference in this section to the Cabinet shall be read as including a reference to a committee of the Cabinet.

24. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to -

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;

- (c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

25. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.

26. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial, property or staff management interests of the Government or a prescribed authority or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of a Ministry or prescribed authority.

27. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

- (2) Subject to subsection (3), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.
- (3) Where a request is made to a Ministry or prescribed authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer may direct that the document containing that information, that would otherwise be given to that person is not to be given to him but is to be given instead to a medical practitioner to be nominated by him.

28. (1) A document is an exempt document if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Government of Belize or of a prescribed authority in or in relation to pending or likely legal proceedings.

- (2) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (3) A document of the kind referred to in section 7 (1) is not an exempt document by virtue of subsection (2) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 7 (1).

29. (1) A document is an exempt document if its disclosure under this Act would disclose information concerning a person in respect of his business or professional affairs or concerning a business, commercial or financial undertaking, and -

- (a) the information relates to trade secrets or to other matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or
- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or a prescribed authority to obtain similar information in the future.

- (2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs or of information concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.
30. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.
31. A document is an exempt document if its disclosure would constitute a breach of confidence.
32. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown -
- (a) be in contempt of court;
  - (b) be contrary to an order made or direction given by a commission or by a tribunal or other person or body having power to take evidence on oath; or
  - (c) infringe the privileges of the National Assembly.
33. Nothing in this Act shall affect any rule of law which authorises the withholding of any document by the Crown in or in relation to a judicial proceeding on the ground that the publication or disclosure of the document would be injurious to the public interest.
34. In considering whether or not to claim exemption under this Part, the principal officer of a Ministry or prescribed authority shall act in good faith and use his best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with public interest.

## PART V

### Review of Decisions

35. (1) Application may be made to the Ombudsman for review of a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document.
- (2) Subject to subsection (3), in proceedings under this Part, the Ombudsman has power, in addition to any other *power*, to review any decision that has been made by a Ministry or prescribed authority in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by a Ministry or prescribed authority, and any decision of the Ombudsman under this section has the same effect as a decision of the Ministry or prescribed authority.
  - (3) Where, in proceedings under this section, it is established that a document is an exempt document, the *Ombudsman* does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.
  - (4) Where, under a provision of Part IV, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is an exempt document and such a certificate has been given in respect of a document, the powers of the Ombudsman do not extend to reviewing the decision to give the certificate or the existence of proper grounds for the giving of the certificate.
  - (5) The powers of the Ombudsman under this section extend to matters relating to fees and charges payable under this Act in relation to a request.
36. (1) Where a decision has been made, in relation to a request to a Ministry or prescribed authority, otherwise than by the responsible Minister or principal officer (not being a decision on a review

under this section), the applicant may, within 28 days after the day on which notice of the decision was given to the applicant in accordance with section 21, apply to the responsible Minister or principal officer concerned for a review of the decision in accordance with this section.

- (2) A person is not entitled to apply to the Ombudsman for a review of a decision in relation to which subsection (1) applies unless -
  - (a) he has made an application under that subsection in relation to the decision; and
  - (b) he has been informed of the result of the review or a period of 14 days has elapsed since the day on which he made that application.
- (3) Where an application for a review of a decision is made to the responsible Minister or the principal officer in accordance with subsection (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and to make a fresh decision on the original application.

37. (1) Where -

- (a) an application for *review* of a decision has been made in accordance with section 36; and
- (b) the application for review is refused or the applicant has not been informed of the result of the review within 14 *days* after the day on which he made that application, the applicant may apply to the Ombudsman for review of the decision refusing to grant access to a document, within 21 days of the date on which he is notified of the decision refusing the review or within 21 days after the expiry of the period of 14 days mentioned in paragraph (b) of subsection (1) above.

(2) Where -

- (a) a request has been made to a Ministry or prescribed authority in accordance with section 16; and
- (b) a period of 14 days has elapsed since the day on which the request was received by or on behalf of the Ministry or prescribed authority; and
- (c) notice of a decision on the request has not been received by the applicant, the principal officer shall, for the purpose of enabling an application to be made to the Ombudsman under section 35, be deemed to have made on the last day of that period, a decision refusing to grant access to the document, and the applicant may apply to the Ombudsman to grant access to the document in question within 21 days of the expiry of the said period of 14 days.
- (3) Before dealing further with an application made by virtue of this section, the Ombudsman may, on the application of the Ministry or prescribed authority concerned, allow further time to the Ministry or prescribed authority to deal with the request.
- (4) Notwithstanding the period of limitation mentioned in this section, the Ombudsman may, in his discretion, grant further time to the applicant if he is of the opinion that there has been no unreasonable delay in making the application.

38. In proceedings under this Part, the Ministry or prescribed authority to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Ombudsman should give a decision adverse to the applicant.

39. In proceedings under this Part, the Ombudsman shall make such order as he thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of exempt matter.

40. (1) Where there are proceedings before the Ombudsman under this Act in relation to a document that is claimed to be an exempt document, and the Ombudsman is not satisfied, by evidence on affidavit or otherwise that the document is an exempt document, he may require the document to be produced for inspection by him only and if, upon the inspection, he is satisfied that the document is an exempt document, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document or disclosing the contents of the document to any other person.

- (2) The Ombudsman may require the production, for inspection by him only, of an exempt document for the purposes of determining whether it is practicable for a Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document, or disclosing the contents of the document to any other person.
- (3) Notwithstanding subsections (1) and (2) but subject to subsection (4) the Ombudsman is not empowered in any proceedings to require the production of a document in respect of which there is in force a certificate under section 22 or 23.
- (4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the document concerned in the manner provided in section 22 (3) or 23 (3), subsection (3) of this section does not prevent the Ombudsman from requiring the production, in proceedings before him under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

41. In proceedings before the Ombudsman under this Part, evidence of a certificate under section 22 or 23, including evidence of the identity or nature of the document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the document to which it relates.

42. For the purposes of performing his functions under this Act, the Ombudsman shall have the same powers as a Magistrate in respect of the attendance and examination of witnesses.

43. Any party dissatisfied with a decision of the Ombudsman under this Act may appeal to the Supreme Court, and in every such case the provisions of Part X of the Supreme Court of Judicature Act and the rules made thereunder shall *mutatis mutandis* apply.

## PART VI Miscellaneous

44. (1) Where access has been given to a document and
- (a) the access was required by this Act to be given; or
  - (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 20 or 36, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given, no action for defamation or breach of confidence lies by reason of the authorizing or giving of the access, against the Government or a prescribed authority or against the Minister or officer who authorised the access or any person who gave the access.
- (2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the access was given.

45. Where access has been given to a document and -
- (a) the access was required by this Act to be given; or
  - (b) the access was authorised by a Minister or by an officer having authority, in accordance with section 20 or 36, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given, neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving of the access.
46. (1) The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31st December, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the National Assembly.
- (2) Each Ministry or prescribed authority shall furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.
47. (1) The Minister may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to -
- (a) charges for access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
  - (b) the officers who may give decisions on behalf of a Ministry or prescribed authority.
- (2) The Ombudsman may, with the approval of the Minister, make regulations for the better carrying out of his functions under this Act, and, in particular, in relation to the procedure to be followed for conducting reviews of the decisions refusing access to documents.
- (3) All regulations made under this Act shall be laid before the National Assembly as soon as may be after the making thereof and shall be subject to negative resolution.



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## FREEDOM OF INFORMATION ACT

### SAINT LUCIA

No. of 2008

#### A BILL ENTITLED

**AN ACT** to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access to information, to provide for effect mechanisms to secure that right and for related matters:

**BE IT ENACTED** by the Queen’s Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

### PART 1 Preliminary

#### Short title and commencement

1. (1) This Act may be cited as the Freedom of Information Act 2008.
- (2) This Act shall come into force on a day to be fixed by the Minister by Order published in the Gazette.

#### Interpretation

2. (1) In this Act-

“Commissioner” means the Information Commissioner, appointed pursuant to Part 5;

“information officer” means a person designated as an information officer pursuant to section 6 (1);

“Minister” means the Minister responsible for the administration of justice;

“official” means any person employed by a public authority, whether permanently or temporarily and whether part-time or full-time;

“person” includes a body corporate or an unincorporated body;

“personal information” means information which relates to an individual who can be identified from that information;

“publish” means make available in a form generally accessible to members of the public authority and includes print, broadcast and electronic forms of dissemination;

“record” has the meaning given to it pursuant to section 15;

“Regulations” means Regulations made pursuant to section 51

- (2) For purposes of this Act, a public authority includes any body –

- (a) established by or under the Constitution;

- (b) established by Statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by Government or the State; or
- (e) carrying out a statutory or public authority function;

Provided that a body referred to in paragraph (e) is public authority only to the extent of its statutory or public functions

(3) The Minister may by Order published in the *Gazette* designate as a public authority a body that carries out a public function.

#### Application

3. This Act binds the Crown.

#### Non-application

4. (1) This Act shall not apply to –
- (a) a commission of inquiry or the proceedings and findings of a commission of inquiry established pursuant to the commission of inquires Act, Cap 17.04.
  - (b) a court, or the holder of a judicial office or other office pertaining to a court in his or her capacity as the holder of that office; or
  - (c) a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration.
- (2) Subject to subsection (3), the Minister may by Order published in *Gazette* declare a public authority to be exempt from the provisions of this Act.
- (3) An Order under subsection (2) shall be subject to the negative resolution of Parliament.

## PART 2 Measures To Promote Openness

#### Guide to using this Act

5. (1) The Commissioner shall, as soon as practicable, compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in an accessible form.
- (2) The guide in subsection (1) shall be updated on a regular basis, as necessary and in any case at least once every five years.

#### Information Officer

- 6 (1) A public authority shall designate one of its officers as an information officer and ensure that members of the public authority have easy access to relevant information concerning the information officer, including his or her name, function and contact details.
- (2) The information officer shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities–
- (a) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and

- (b) to serve as a central contact within the public body for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to information disclosure.

#### **Duty to publish**

7. A public authority shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to –
  - (a) a description of its structure, functions, duties and finances;
  - (b) relevant details concerning any services it provides directly to members of the public authority;
  - (c) any direct request or complaints mechanisms available to members of the public authority regarding acts or a failure to act by that public authority, along with a summary of any requests, complaints or other direct actions by members of the public authority and that public authority's response;
  - (d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
  - (e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
  - (f) any regulations, policies, rules, guides or manuals regarding the discharge by that public authority of its functions;
  - (g) the content of all decisions and policies it has adopted which affect the public authority, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
  - (h) any mechanisms or procedures by which members of the public authority may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority.

#### **Guidance on duty to publish**

8. The Commissioner shall–
  - (a) publish a guide on minimum standards and best practices regarding the duty of a public authority to publish pursuant to section 7; and
  - (b) upon request, provide advice to a public authority regarding the duty to publish.

#### **Maintenance of records**

9. (1) A public authority is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice issued pursuant to subsection (3).
- (2) A public authority shall ensure that adequate procedures are in place for the correction of personal information.
- (3) The Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the Saint Lucia National Archives.

#### **Training of officials**

10. A public authority shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

#### Reports to Commissioner

11. The information officer of a public authority shall annually submit to the Commissioner a report on the activities of the public authority pursuant to, this Act which shall include information about–
- (a) the number of requests for information received, granted in full or in part, and refused;
  - (b) how often and which sections of the Act were relied upon to refuse, in part or in full, requests for information;
  - (c) appeals from refusals to communicate information;
  - (d) fees charged for requests for information;
  - (e) its activities pursuant to section 8, 9 and 10.

## PART 3

### The Right To Access Information Held By Public Authority

#### Freedom of information

12. A person shall have the right to freedom of information, including the right to access information held by a public authority, subject only to the provisions of this Act.

#### General right of access

13. (1) A person making a request for information to a public authority shall be entitled, subject only to the provisions of this Part and to Part 4–
- (a) to be informed whether or not the public authority holds a record containing that information or from which that information may be derived; and
  - (b) if the public authority does hold such a record, to have that information communicated to him or her.
- (2) A person making a request for information to a public authority which holds information necessary for the exercise or protection of any right shall, subject only to the relevant provisions of this Part and Part 4, be entitled to have that information communicated to him or her.

#### Legislation prohibiting or restricting disclosure

14. (1) This Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record by a public authority.
- (2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice.

#### Records

15. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified.
- (2) For purposes of this Act, a public authority holds a record if–
- (a) the public authority holds the record, other than on behalf of another person; or

- (b) another person holds the record, on behalf of the public authority.

### Request for information

16. (1) For purposes of section 13, a request for information is a request in writing to any official of a public authority that is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the public authority holds a record with that information.
- (2) Where a request for information pursuant to section 13(1) does not comply with the provisions of subsection (1), the official who receives the request shall, subject to subsection (4), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with subsection (1).
- (3) A person who is unable, because of illiteracy or disability, to make a written request for information pursuant to section 13(1) may make an oral request, and the official who receives an oral request shall, subject to subsection (4), reduce it to writing, including their name and position within the public authority, and give a copy thereof to the person who made the request.
- (4) An official who receives a request for information may transfer that request to the information officer for purposes of complying with subsection (2) or (3).
- (5) A public authority may specify a form for requests for information, provided that such forms do not unreasonably delay requests or place an undue burden upon those making requests.
- (6) A public authority that receives a request for information shall provide the person making the request with a receipt documenting the request.

### Time limits for responding to requests

17. (1) Subject to subsections (2) and (3), a public authority must respond to a request for information pursuant to section 13 as soon as is reasonably possible and in any event within twenty working days of receipt of the request.
- (2) Where a request for information relates to information that reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.
- (3) A public authority may, by notice in writing within the initial twenty day period, extend the period in subsection (1) to the extent strictly necessary, and in any case to not more than 40 working days, where the request is for a large number of records or requires a search through a large number of records, and where compliance within twenty working days would unreasonably interfere with the activities of the public authority.
- (4) Failure to comply with this section is deemed to be a refusal of the request.

### Notice of response

- 18 (1) The response pursuant to section 17 to a request for information pursuant to section 13(1) must be by notice in writing and state–
- (a) the applicable fee, if any, in relation to any part of the request which is granted, and the form in which the information will be communicated;
- (b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part 4 of this Act;
- (c) in relation to any refusal to indicate whether or not the public authority holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and
- (d) any right of appeal the person who made the request may have.



**Fees**

19. (1) The communication of information pursuant to a request made pursuant to section 13 by a public authority may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.
- (2) Payment of a fee shall not be required for requests for personal information, and requests in the public interest.
- (3) Regulations made pursuant to this section shall, subject to the affirmative resolution of Parliament.
- (a) for the manner in which fees are to be calculated;
- (b) that no fee is to be charged in cases specified in the Regulations; and
- (c) that any fee cannot exceed a certain maximum
- (4) A public authority shall not require payment of a fee pursuant to subsection (1) where the cost of collecting that fee would exceed the amount of the fee.

**Means of communicating information**

20. (1) Where a request indicates a preference as to the form of communication of information contained in subsection (2), a public authority communicating information pursuant to a request for information under section 5 shall, subject to subsection (3), do so in accordance with that preference.
- (2) A request may indicate the following preferences as to the form of communication of information–
- (a) a true copy of the record in permanent or other form;
- (b) an opportunity to inspect the record, where necessary using equipment normally available to the public authority;
- (c) an opportunity to copy the record, using his or her own equipment;
- (d) a written transcript of the words contained in a sound or visual form;
- (e) a transcript of the content of a record, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the public authority; or
- (f) a transcript of the record from shorthand or other codified form.
- (3) A public authority shall not be required to communicate information in the form indicated by the person making the request where to do so would–
- (a) unreasonably interfere with the effective operation of the public authority; or
- (b) be detrimental to the preservation of the record.
- (4) Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.

**If a record is not held**

21. (1) Where an official who receives a request pursuant to section 13(1) believes that that request relates to information that is not contained in any record held by the public authority, the official may transfer the request to the information officer for purposes of compliance with this section

- (2) Where an information officer receives a request pursuant to subsection (1), he or she shall confirm whether or not the public authority holds a record containing the information and, if it does not, shall, if he or she knows of another public authority which holds the relevant record, as soon as practicable, either-
  - (a) transfer the request to that public authority and inform the person making the request of such transfer; or
  - (b) indicate to the person making the request which public authority holds the relevant record; whichever would be likely to ensure more rapid access to the information.
- (3) Where a request is transferred pursuant to subsection (2)(a), the time limit for responding to requests under section 11 shall begin to run from the date of transfer.
- (4) A public authority which receives a request pursuant to section (2) relating to information that is not contained in any record held by the public authority shall notify the person making the request that it does not hold the information.

#### **Vexatious, repetitive or unreasonable requests**

22. (1) A public authority is not required to comply with a request for information which is vexatious or where it has recently complied with a substantially similar request from the same person.
- (2) A public authority is not required to comply with a request for information where to do so would unreasonably divert its resources.

## **PART 4**

### **Exceptions To General Right Of Access**

#### **Public authority interest override**

23. Notwithstanding any provision in this Part, a public authority shall not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest that would result from the refusal outweighs the public interest in disclosure.

#### **Information already publicly available**

24. Notwithstanding any provision in this Part, a public authority shall not refuse to communicate information where the information is already publicly available.

#### **Severability**

25. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the person making the request.

#### **Personal information**

26. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a natural third party.
- (2) Subsection (1) does not apply if-
  - (a) the third party has effectively consented to the disclosure of the information;
  - (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;

- (c) the third party has been deceased for more than 20 years; or
- (d) the third party is or was an official of a public authority and the information relates to his or her function in that capacity.

#### **Legal privilege**

27. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

#### **Commercial and confidential information**

28. A public authority shall refuse to indicate whether or not it holds a record or to communicate information if–
- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
  - (b) the information was obtained in confidence from a third party and –
    - (i) it contains a trade secret; or
    - (ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or
  - (c) the information was obtained in confidence from another State or international organization, and to communicate it would, or would be likely to, seriously prejudice relations with that State or international organization.

#### **Health and safety**

29. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any person.

#### **Law enforcement**

30. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to–
- (a) the prevention or detection of crime;
  - (b) the apprehension or prosecution of offenders;
  - (c) the administration of justice;
  - (d) the assessment or collection of any tax or duty;
  - (e) the operation of immigration controls; or
  - (f) the assessment by a public authority of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

#### **Defence and security**

31. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of Saint Lucia.

#### **Public authority economic interests**

32. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the Government to manage the economy of Saint Lucia.
- (2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of a public authority.
- (3) Subsection (1) and (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

#### **Policy making and operations of public authority bodies**

33. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to–
- (a) cause serious prejudice to the effective formulation or development of government policy;
  - (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
  - (c) significantly undermine the deliberative process in a public authority by inhibiting the free and frank provision of advice or exchange of views; or
  - (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public authority.
- (2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, which is –
- (a) the official record of any deliberation or decision of Cabinet;
  - (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;
  - (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;
  - (d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or
  - (e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.
- (3) Subsections (1) and (2) do not apply to facts, analyses of facts, technical or scientific data or statistical information unless the disclosure would involve the disclosure of any deliberation or decision of Cabinet.

#### **Time limits**

34. (1) The provisions of sections 27–32 apply only to the extent that the harm they envisage would, or would be likely to, occur at or after the time at which the request is considered.
- (2) Sections [28(c), 30, 31 and 32] do not apply to a record that is more than [30] years old.

## PART 5 Information Commissioner

### Appointment of Commissioner

- 35 .(1) An Information Commissioner shall be appointed by the Prime Minister after nomination by a two-thirds majority vote of Parliament, and after a process in accordance with the following principles–
- (a) participation by the public authorities in the nomination process;
  - (b) transparency and openness; and
  - (c) the publication in the *Gazette* of a shortlist of candidates.
- (2) A person shall not be appointed may be appointed as the Commissioner if he or she–
- (a) holds an official office in, or is an employee of a political party, or holds an elected or appointed position in Government or Parliament; or
  - (b) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime or a crime of dishonesty or theft, for which he or she has not been pardoned.
- (3) The Commissioner shall hold office for a term of [seven] years, and may be re-appointed to serve a maximum of two terms, but may be removed by the Prime Minister upon a recommendation approved by a two-thirds majority vote of Parliament.

### Independence and powers

36. (1) The Commissioner shall enjoy operational and administrative autonomy from any other person or entity, including the Government and any of its agencies, except as specifically provided for by law.
- (2) The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.

### Salary and expenses

37. The Commissioner shall be paid a salary equal to the salary of a judge of the High Court and is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties.

### Staff

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

### General activities

39. In addition to any other powers and responsibilities provided for in this Act, the Commissioner may–
- (a) monitor and report on the compliance by public authorities bodies with their obligations under this Act;
  - (b) make recommendations for reform both of a general nature and directed at specific public authorities;

- (c) co-operate with or undertake training activities for officials of public authorities on the right to information and the effective implementation of this Act;
- (d) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
- (e) publish, in the *Gazette* and via any other media, the requirements of this Act and the rights of persons under it.

### Reports

40. (1) The Commissioner shall, within three months after the end of each financial year, lay before Parliament an annual report on compliance by public authorities with this Act, the activities of his or her office and audited accounts of the his or her office during that financial year.
- (2) The Commissioner may from time to time lay before Parliament such other reports as he or she deems appropriate.

### Protection of Commissioner

41. (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty pursuant to this Act.
- (2) For the purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act is privileged, unless that information is shown to have been said or supplied with malice.

## PART 6 Enforcement By Commissioner

### Complaint to Commissioner

42. A person who has made a request for information may apply to the Commissioner for a decision that a public authority has failed to comply with an obligation under Part 3, including by–
- (a) failing to respond to a request for information within the time limits established in section 17;
  - (b) failing to provide a notice in writing of its response to a request for information, in accordance with section 18;
  - (c) Charging an excessive fee, contrary to section 19 or
  - (d) Failing to communicate information in the form requested, contrary to section 20.
  - (e) refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 5;

### Complaint decision

43. (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 42 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public authority an opportunity to provide their views in writing.
- (2) The Commissioner may summarily reject applications–
- (a) which are frivolous, vexatious or clearly unwarranted; or

- (a) where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant public authority.
- (3) In any application pursuant to 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 Part 3.
- (4) In his or her decision pursuant to subsection (1), the Commissioner may–
  - (a) reject the application;
  - (b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations pursuant to Part 3;
  - (c) require the public authority to compensate the complainant for any loss or other detriment suffered; or
  - (d) in cases of egregious or willful failures to comply with an obligation pursuant to Part 3, impose a fine on the public authority.
- (5) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public authority.

#### **Direct implementation of decision**

44.(1) The Commissioner may, after giving a public authority an opportunity to provide their views in writing, decide that a public authority has failed to comply with an obligation pursuant to Part 3.

- (2) In his or her decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under Part 3, including by–
  - (a) appointing an information officer;
  - (b) publishing certain information and categories of information;
  - (c) making certain changes to its practices in relation to the keeping, management and destruction of records, and the transfer of records to the Saint Lucia National Archives;
  - (d) enhancing the provision of training on the right to information for its officials;
  - (e) providing the Commissioner with an annual report, in compliance with section 11;
  - (f) in cases of egregious or willful failures to comply with an obligation under Part 3,.
- (3) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public authority.

#### **Commissioner's powers to investigate**

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.

- (2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

#### **Appeal from Commissioner's decisions and orders**

46.(1) The complainant, or the relevant public authority, may, within 28 days, appeal to the court for a full 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 Part 2.

#### **Binding nature of Commissioner's decisions and orders**

47. Upon expiry of the forty-five days period for appeals pursuant to section 46, the Commissioner may certify in writing to the court any failure to comply with a decision pursuant to section 43 or 44, or an order pursuant to section 45(1), and the court shall consider such failure under the rules relating to contempt of court.

## **PART 7**

### **Whistleblowers**

#### **Whistleblowers**

48.(1) A person shall not be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

- (2) For purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public authority.

## **PART 8**

### **Criminal And Civil Responsibility**

#### **Good faith disclosures**

49. A person shall not be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Act, as long as they acted reasonably and in good faith.

#### **Criminal offences**

50.(1) A person shall not willfully–

- (a) obstruct access to any record contrary to Part 2;
- (b) obstruct the performance by a public authority of a duty pursuant to Part 4;
- (c) interfere with the work of the Commissioner; or
- (d) destroy records without lawful authority.

- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both.



## PART 9 Miscellaneous Provisions

### Regulations

51.(1) The Minister may, by notice in the *Gazette* and after consultation with the Commissioner make Regulations for the purposes of give effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing the Minister may make Regulations particularly or the following-

(3) The Minister may, after consultation with the Commissioner, make Regulations providing-

(a) to prescribe additional forms of communication of information under section 20;

(b) relating to the training of officials pursuant to section 10;

(c) relating to reports to the Commissioner pursuant to section 11;

(d) to prescribe the form of any notice required by this Act; or

(e) relating to any administrative or procedural matter necessary to give effect to this Act.

(3) Regulations made pursuant to this section shall, subject to the affirmative resolution of Parliament.

## SAINT VINCENT AND THE GRENADINES

### FREEDOM OF INFORMATION ACT, 2003

#### Arrangement of sections

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#### Preliminary Section

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2. Commencement
3. Object of Act
4. Interpretation
5. Non-application of Act
6. Act to bind State

#### PART II

#### Publication Of Certain Documents And Information

7. Publication of information concerning functions, etc, of public authorities
8. Certain documents to be available for inspection and purchase
9. Unpublished documents not to prejudice public

#### PART III

#### Right Of Access To Information

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11. Access to certain documents
12. Access to documents otherwise than under this Act
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16. Time-limit for determining requests
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19. Fees
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## **PART IV Exempt Documents**

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37. Protection against actions for defamation or breach of confidence
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## SAINT VINCENT AND THE GRENADINES

**BILL for**

\_\_\_\_\_

**act NO. OF 2003**

**I ASSENT**

[ ] Governor-General

**AN ACT to give rights of access to official documents of the government and public authorities to members of the public and to provide for connected matters.**

[ ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

### **PART I** **Preliminary**

1. This Act may be cited as the Freedom of Information Act, 2003.
2. This Act shall come into operation on a day to be appointed by the Minister, by order published in the *Gazette*.
3. (1) The object of this Act is to extend the right of members of the public to access information in the possession of public authorities by
  - (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices; and
  - (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by expectations and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities;
  - (c) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect or misleading.

(2) The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

4. In this Act

**“applicant” means a person who has made a request in accordance with section 13 and shall include a person who is acting on behalf of a minor or of a person under a disability;**

**“chief executive officer” includes the officer for the time being exercising the highest level of administrative functions within any public authority;**

**“document” means information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, videotape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;**

**“enactment” means an Act or an Instrument (including rules, regulations or by-laws) made under an Act;**

**“exempt document” means a document which, by virtue of any provision of Part IV, is an exempt document.**

**“exempt information” means information the inclusion of which in a document causes the document to be an exempt document;**

**“Minister” means the Minister who has been assigned responsibility for information under the Constitution;**

**“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing -**

**(a) information relating to the race, sex, national or ethnic origin, religion, age or marital status of the individual;**

**(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;**

**(c) any identifying number, symbol or other particular assigned to the individual;**

**(d) the address, fingerprints or blood type of the individual;**

**(e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;**

**(f) correspondence sent to a public authority by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; or**

**(g) the views or opinions of any other person about the individual;**

**“prescribed” means prescribed by the Minister by regulations made under this Act;**

**“public authority” includes**

**(a) Parliament, or any committee of Parliament;**

- (b) the Cabinet as constituted under the Constitution;
- (c) a Ministry or a department or division of a Ministry;
- (d) a local authority;
- (e) a public statutory corporation or body;
- (f) a body corporate or an incorporated body established for a public purpose, which is owned or controlled by the state;
- (g) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purposes of this Act;**

“responsible Minister” in relation to a public authority means the Minister of Government to whom responsibility for the public authority is assigned.

- 5. (1) This Act does not apply to
  - (a) the Governor-General; or
  - (b) a commission of inquiry issued by the Governor-General
- (2) For the purposes of this Act
  - (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a public authority;
  - (b) **except in a judicial capacity** a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority.
- 6. This Act shall bind the State.

## PART II

### Publication Of Certain Documents And Information

- 7. (1) A public authority shall, with the approval of the Minister
  - (a) cause to be published in the Gazette as soon as practicable, but not later than twelve months, after the date of **availability of the forms** approved by the Minister
    - (i) a statement setting out the particulars of the organisation and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation with or representations by, bodies and persons outside the Government administration in relation to the formulation of policy in, or the administration of, the public authority;
    - (ii) a statement of categories of documents that are maintained in the possession of the public authority;
    - (iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;

(iv) a statement of the procedure to be followed by a person when a request for access to document is made to a public authority;

(b) during the year commencing on the first day of January next following the publication, in respect of a public authority, of the statement published under that subparagraph (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.

(2) A form approved by the Minister under subsection (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under this Act.

(3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

(4) Where a public authority comes into existence on or after the date of commencement of this Act, it shall comply with subsection (1) as soon as practicable after the date it so comes into existence.

8. (1) This section applies to documents that are provided by the public authority for the use of, or are used by, the public authority or its officers in making decisions or recommendations, under the public authority, with respect to enactment or scheme administered by the public 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, being

(a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the public authority;

(b) documents containing particulars of such a scheme, not being particulars contained in any other enactment; and

(c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme,

but not including documents that are available to the public as published otherwise than by the public authority or as published by another public authority.

(2) A public authority shall

(a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;

(b) not later than twelve months after the date of commencement of this Act, cause to be published in the Gazette, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

(c) within twelve months after the date of the first publication of the statement under paragraph (b) and thereafter at intervals of not more than twelve months, cause to be published in the Gazette, statements bringing up to date information contained in the previous statement or statements.

(3) The public authority may not comply fully with paragraph 2(a) before the expiration of twelve months from the date of commencement of this Act, but shall, before that time, comply with that paragraph as far as is practicable.

(4) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such a document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) Where a public authority comes into existence on or after the date of commencement of this Act, subsections (2) and (3) shall apply in relation to that public authority as if the references in those subsections to the date of commencement of this Act were references to the date the public authority so comes into existence.

9. If a document required to be made available in accordance with section 8, being a document containing a rule, guideline or practice relating to a function of a public authority, was not made available and included in a statement in the Gazette, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

### PART III

## Right Of Access To Information

10. Subject to this Act, every person shall have a right of access in accordance with this Act, to an official document other than an exempt document.

11. Where

(a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or

(b) a document is available for purchase by the public in accordance with arrangements made by a public authority,

the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

12. Nothing in this Act shall prevent a public authority from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where it has the discretion to do so or is required by law to do so.

13. (1) A person who wishes to obtain access to a document of a public authority shall make a request in writing to the public authority for access to the document.

(2) A request shall identify the document or shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public authority to identify the document.

(3) A request may specify in which of the forms of access set out in section 20 the applicant wishes to be given access.

(4) Subject to section 22, a request may be made for access to all documents of a particular description that contain information of a specified kind or **which** relate to a particular subject matter.

14. (1) A public authority shall take reasonable steps to assist any person who



- (a) wishes to make a request under section 13; or
  - (b) has made a request which does not comply with the requirements of subsection 13(2),
- to make a request in a manner which complies with that section.

(2) Where a request in writing is made to a public authority for access to a document, the public authority shall not refuse to comply with the request on the ground that the request does not apply with subsection 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that complies with that section.

15. (1) Where a request is made to a public authority for access to a document and the request has not been directed to the appropriate public authority, the public authority to which the request is made shall transfer the request to the appropriate public authority and inform the person making the request accordingly.

(2) Where a request is transferred to a public authority in accordance with this section, it shall be deemed to be a request made to that public authority and received on the date on which it was originally received.

16. A public authority shall take reasonable steps to enable an applicant to be notified of the decision on his request (including a decision for deferral of access under section 21) as soon as practicable but in any case not later than thirty days from the date on which the request is duly made.

17. Where a request for access to a document is duly made and

- (a) the request is approved by the public authority; and
- (b) subject to section 19, any fee required to be paid before access is granted has been paid,

access to the document shall be given forthwith in accordance with this Act.

18. (1) Where

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document; and
- (b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the public authority shall give the applicant access to such a copy of the document.

(2) Where access is granted to a copy of a document in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any information deleted is exempt information.

19. The Minister may **from time to time** by regulation **prescribe or alter**

- (a) the fees to be charged by a public authority for the making of a request for access to a document;
- (b) the fees payable where access to a document is to be given in the form of printed copies in some other form such, as on tape, disk, film, **electronic means** or other material;

(c) the manner in which any fees payable under this Act is to be calculated and the maximum amount it shall not exceed; and

(d) exempt any person or category of persons from paying any fees under this Act, where the information contained in the document for which access is requested is in the public interest.

20. (1) Access to a document may be given to a person in one or more of the following forms:

(a) a reasonable opportunity to inspect the document;

(b) provision by the public authority of a copy of the document;

(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the public authority of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 18, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant

(a) would interfere unreasonably with the operations of the public authority; or

(b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or

(c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document,

access in that form may be refused and access given in another form.

21. (1) A public authority which receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

22. A public authority dealing with a request may refuse to grant access to a document in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably interfere with the normal operations of the public authority, and if before refusing to provide information on these grounds, the public authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.

23. A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the chief executive officer of the public authority or, subject to the regulations, by an officer of the public authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the chief executive officer of the public authority.

24. (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;
- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 18, state that the document is a copy of a document from which exempt information has been deleted;
- (d) where the decision is to the effect that the document does not exist, state that a thorough and diligent search was made to locate the document;
- (e) inform the applicant of his right to apply to court for a review of the decision and the time within which the application for review is required to be made.

(2) A public authority is not required to include in a notice under subsection (1) any matter that is not of such a nature that its inclusion in a document to be an exempt document.

## PART IV Exempt Documents

25. (1) A document is an exempt document if it is

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister of Government to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;
- (b) an official record of any deliberation or decision of the Cabinet;
- (c) a document that is a draft of a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.

(3) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.

(4) Where a document is a document referred to in paragraph (1) (c) or (d) by reason only of matter contained in a particular part or particular parts of the document, **a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.**

(5) In this section, any reference to “Cabinet” shall be read as including a reference to a committee of the Cabinet.

26. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure

(a) would prejudice the security, defence or international relations of Saint Vincent and the Grenadines;

(b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Saint Vincent and the Grenadines.

(2) Where a responsible Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where a responsible Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

27. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to

(a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;

(b) prejudice the fair trial of a person or the impartial adjudication of a particular case **before a court of law or a tribunal established by law;**

(c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;

(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters

arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

28. (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in section 8 (1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).

29. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.

30. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matters relating to that person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to **the High Court** for judicial review of the decision and the time within which the application for review is required to be made.

31. (1) A document is an exempt document if its disclosure under this Act would disclose:

- (a) trade secrets;
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- (c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an undertaking, being information
  - (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that undertaking in respect of its lawful business, commercial or financial affairs; or
  - (ii) the disclosure of the information under this Act would be contrary to public interest by reason that the disclosure would be reasonably likely to prejudice the ability of the Government or a public authority to obtain similar information in the future for the purpose of administration of the law.

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning

- (a) the business or professional affairs of that person; or
- (b) the business, commercial or financial affairs of an undertaking of which that person, or a person on behalf that person made the request, is the proprietor.

32. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

(2) The kinds of documents to which subsection (1) may apply include but are not restricted to, documents containing information relating to

- (a) currency or exchange rates;
- (b) interest rates;
- (c) taxes, including duties of customs or of excise;
- (d) the regulation or supervision of banking, insurance and other financial institutions;
- (e) proposals for expenditure;

- (f) foreign investment in Saint Vincent and the Grenadines
- (g) borrowings by the Government.

33. (1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and

- (a) the information would be exempt information if it were generated by a public authority; or
- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information

- (a) acquired by a public authority from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

34. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the state

- (a) be in **contempt** of court;
- (b) be contrary to an order made or given by a commission or by a tribunal or other person or body having power to take evidence on oath;
- (c) infringe the privileges of Parliament.

35. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds;

has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

36. (1) **The Minister may, in consultation with a public authority, by order, declare a document to which sections 25 to 35 are not applicable, to be an exempt document for the purposes of this Act on the grounds of national interest.**

(2) In considering whether or not to claim exemption under this Part, the public authority shall act in good faith and use its best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with **national or** public interest.

## PART V Miscellaneous

37. (1) Where access has been given to a document and

- (a) the access was required by this Act to be given; or
- (b) the access was authorised by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

no action for defamation or breach of confidence **shall lie** by reason of the authorising or giving of the access, against the Government or a public authority or against the officer who authorised the access or any person who gave the access.

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the access was given.

38. Where access has been given to a document and

- (a) the access was required by this Act to be given; or
- (b) the access was authorised by a Minister or by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving of the access.

39. (1) Any person aggrieved by a decision of a public authority under this Act may apply to the **High Court** for judicial review of the decision. application for judicial review of a decision of a public authority under this Act is made under subsection (1), that application shall be heard and determined by a Judge in Chambers, unless the Court directs otherwise.

(3) In this section “decision of a public authority” includes the failure of a public authority to comply with provisions of this Act.

40. (1) The Minister shall, as soon as practicable after the thirty-first of December of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before Parliament.

(2) Each responsible Minister shall, in relation to the public authorities within his portfolio, furnish to the Minister such information as he requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

41. (1) The Minister may **from time to time** make **or alter** regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may prescribe

- (a) the fees in respect of access to documents (including the provision of copies or transcripts) in accordance with this Act;

- (b) the officers who may make decisions on behalf of a public authority;
- (c) requirements concerning the furnishing of information and keeping of records for the purposes of section 40.

(3) All regulations made under this Act shall be laid before Parliament as soon as may be after the making thereof and shall be subject to negative resolution.

42. (1) A public authority shall maintain and preserve records **or cause to be maintained and preserved records** in relation to its functions and a copy of all official documents which are created by it or which come at any time into its possession, custody or power **for such period of time as may be prescribed.**

(2) Notwithstanding any other law to the contrary, where an (2) A person who wilfully destroys or damages a record or document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years.

(3) A person who knowingly destroys or damages a record or document which is required to be maintained and preserved under subsection (1) while a request for access to the record or document is pending commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars or imprisonment for a term not exceeding three years.

**43. Nothing in this Act shall be regarded as authorising any derogation from or non-compliance with any provision of the Privacy Act.**

Passed in the House of Assembly this                      day of                      2003.

Clerk of the House of Assembly

## OBJECTS AND REASONS

The object of this Bill is to safeguard the right of members of the public to access information held by public authorities with the aim of increasing transparency and accountability of government.

Dr. the Hon. Ralph Gonsalves

Prime Minister, Minister of Finance, Economic Planning, National Security, Legal Affairs and Grenadines Affairs



## DOMINICAN REPUBLIC

### General Law on Free Access to Public Information, No. 200-04.

#### THE NATIONAL CONGRESS

#### In the Name of the Republic

#### Law No. 200-04

CONSIDERING: That the Constitution of the Dominican Republic, in its Article 2, establishes that: “National Sovereignty belongs to the people, from whom all Powers of the State, which are exercised by representation, derive.”

CONSIDERING: That the Universal Declaration of Human Rights (United Nations, 1948), establishes at Article 19 that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.”

CONSIDERING: That paragraph 10 of Article 8, Section 10 of the Constitution of the Republic provides that: “All information media shall have free access to all official and private news sources provided that these are not against public order or endanger national security.”

CONSIDERING: That Article 13 of the Inter-American Convention on Human Rights (Pact of San Jose, Costa Rica) which was ratified by the Dominican Republic by means of Resolution No. 739 of December 25, 1977, establishes that: “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

CONSIDERING: That the International Covenant on Civil and Political Rights, which was ratified by means of Resolution 684 of October 27, 1977 establishes that: The exercise of the right to seek and receive information and opinions and to impart them embraces special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the respect of the rights or reputation of others and for the protection of national security, or of public order, or of public health or morals.

CONSIDERING: That the above-mentioned International Covenant on Civil and Political Rights, in number 2 of Part II establishes that: Each State Party undertakes to adopt, in accordance with its constitutional processes and with the provisions of the present Covenant, the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized by the present Covenant which are not already provided for by existing legislative or other measures.

CONSIDERING: That the right of individuals to seek and receive information and opinions and to impart them is preserved as a universal principle in many international conventions which have been ratified by the Dominican Republic, and for this reason the State is duty-bound to guarantee free access to information in the possession of its institutions.

CONSIDERING: That in accordance with that established in the paragraph to Article 3 of our Constitution: “The Dominican Republic recognizes and applies the rules of general International Law and American Law to the extent that its authorities have adopted them . . .”

CONSIDERING: That, as established by Article 8 of the Constitution of the Republic, the principal objective of the State is the effective protection of the rights of the human person and the means that facilitate its progressive perfection within a framework of individual freedom and social justice which is compatible with public order, general well-being and the rights of all.

CONSIDERING: That the right to access government information is one of the sources of development and strengthening of representative democracy in that it allows citizens to analyze, judge and evaluate the actions of their representatives in a comprehensive manner, and stimulates transparency in the actions of Government and of the Administration.

CONSIDERING: That to guarantee free access to public information requires a law that regulates its exercise and, *inter alia*, establishes the accepted exceptions to this universal right, in the event that a real and imminent risk which threatens national security or public order exists.

HAVING SEEN the Constitution of the Dominican Republic, in its Articles 2, 3 and 8.

HAVING SEEN the Universal Declaration of Human Rights (United Nations, 1948).

HAVING SEEN the International Covenant on Civil and Political Rights.

HAVING SEEN Article 13 of the Inter-American Convention on Human Rights (Pact of San Jose, Costa Rica).

**HAS ISSUED THE FOLLOWING LAW:**

**GENERAL LAW ON FREE ACCESS TO PUBLIC INFORMATION**

## CHAPTER 1

### Right To Information And To Access The Files And Records Of An Administrative Character

Article 1. – All persons have the right to request and receive complete, accurate, adequate and timely information from any agency of the Dominican State, and from all corporations, limited companies, or companies limited by shares, which have State participation, including:

- a) centralized public administration agencies and entities;
- b) autonomous and/or decentralized agencies and entities of the State, including the national District and municipal agencies;
- c) autarkical and/or decentralized agencies and entities of the State;
- d) commercial businesses and societies owned by the State;
- e) corporations, limited companies or companies limited by shares, which have State participation;
- f) private agencies and institutions that receive funds from the National Budget for the execution of their objectives;
- g) the administrative activities of the Legislative Power;
- h) the administrative activities of the Judicial Power.

Article 2. – The right to information consists of the freedom to access the information contained in records and files of the public administration, as well as the right to be informed periodically and upon request, of the activities developed by entities and persons exercising public functions. Provided that such access does not affect national security, or public order, or public health or morals or a third person's right to privacy and relationships, or the rights to reputation of others. It also consists of the freedom to seek, request, receive and disseminate information regarding State administration and to enquire from persons and entities exercising public functions and the right to obtain copies of documents that contain information on the exercise of their authorized activities, with the only limitations, restriction and conditions established by the present law.

Paragraph: For the purposes of this law, records and files shall mean all those documents preserved or recorded in written, optical, acoustic or any other form, which fulfils aims or objectives of a public character. Draft and project documents which are not of a final nature and consequently do not form part of an administrative process, shall not be considered records and files.

### **PUBLICATION**

Article 3. – All the actions and activities of centralized and decentralized Public Administration, including those of the Legislative and Judicial Power and information relating to their functions, shall be published, and consequently it shall be mandatory for the Dominican State and all its autonomous, autarkical, centralized and/or decentralized authorities and agencies to present permanent and updated information regarding:

- a) Budgets and estimates of resources and approved expenditure, its development and status of implementation;
- b) Programs and projects, their budgets, deadlines, implementation and supervision;
- c) Invitations to tender, competition, purchases, expenditure and results;
- d) List of officials, legislators, magistrates, employees, categories, functions and remuneration and sworn asset declarations when so required by law;
- e) List of beneficiaries of assistance programs, subsidies, scholarships, pensions and retirements;
- f) Financial statements of the public debt, their expiration and payments;
- g) Laws, decrees, resolutions, dispositions, regulatory frameworks and any other form of regulatory measures;
- h) Official indices, statistics and values;
- i) Legal and contractual regulatory frameworks for rendering of public services, conditions, negotiations, table of charges, and sanctions;
- j) Any other information that special laws require to be made available to the public.

### **DUTIES OF THE STATE, ITS AUTHORITIES AND INSTITUTIONS**

Article 4. – It shall be mandatory for the Dominican States and all its authorities, agencies and entities listed in Article 1 of the present law to provide information required by this law, and which is required to be permanently updated, and any information that may be especially required by interested persons. To comply with these objectives, the maximum authorities are required to set up an internal organization which systemizes the information of public interest so as to provide access thereto to interested persons as well as to publish them through available means.

Paragraph. – The duty to provide information to requesting persons extends to all legally established agencies, and those in the process of formation, which are recipients of public funds, including established political parties or those in the process of formation, in the case of which the information shall include the identity of contributors, origin and destination of operational and administration funds.

Article 5. – The computerization and incorporation of all the centralized and decentralized public agencies of the State, including the National District and the municipalities, and their incorporation into the internet-based communication system or into any other system of a similar nature which may be established in the future, is hereby ordered with the aim of guaranteeing thereby direct access to State information by the public. All authorities and agencies of the State shall ensure the publication of their respective web pages with the following objectives:

- a) Dissemination of information: organization, members, operating rules, projects, management reports, database;
- b) Exchange and Customer or User Services Center: enquiries, complaints and suggestions;
- c) Bilateral procedures or transactions.

The information referred to in the preceding paragraph shall be freely accessible to the public without the need for a request.

#### **TYPE OF INFORMATION**

Article 6. – The Public Administration, both centralized and decentralized, as well as any other body or entity that exercises public functions or implements a public budget, and all the agencies and bodies mentioned in Article 1 of this law are required to provide information contained in written documents, photographs, recordings, magnetic or digital media, or in any other format, which it has created or obtained or which is in its possession and under its control.

Paragraph. – For the purposes of the present law, information shall mean any kind of financial document relating to the public budget or those coming from private financial institutions which serves as basis of an administrative decision, as well as minutes of official meetings.

## **CHAPTER II**

### **Of The Procedure To Exercise The Right And Access To Information**

Article 7. – The application for access to information shall be made in writing and shall include, as a minimum, the following requirements for its processing:

- a) Complete name and merits of the person making the application;
- b) Clear and precise identification of the data and information being requested;
- c) Identification of the public authority that possesses the information;
- d) Motivation of the reasons for requesting the data and information;
- e) Place or medium to receive notifications.

Paragraph I. – If the request does not contain the required data, the Administration shall inform the requesting person accordingly so that s/he can correct and complete the data, and for this purpose the applicant shall have the assistance of the relevant office designated by the Administration's agency to receive applications.

Paragraph II. – If the application is made to an office that is not authorized to provide the information or which simply does not have the information, that office shall send the application to the competent administration for processing in accordance with the present law. At no time shall the making of a request to an unauthorized office signify that a request for access to information by an interested person will be denied or filed away.

Paragraph III. – If the application must be denied for any of the reasons foreseen in the present law, this denial must be communicated in writing to the applicant within five (5) working days from the date of receipt of the application.

Paragraph IV. – The Public Administration, both centralized and decentralized as well as any other agency or entity that exercises public functions or implements a public budget, are required to provide citizens with simple and accessible information on the arrangements and procedures they should follow to apply for the required information, the competent authorities or bodies, the mode of making the application, the manner of filling the required forms, as well as the dependency to which they can go to request guidance or to make complaints, enquiries or to protest against the services provided or on the exercise of functions or authorities in charge of the entities or persons concerned.

#### **TIME-FRAME FOR DELIVERY OF INFORMATION**

Article 8. – All requests for information in accordance with the present law shall be satisfied within fifteen (15) working days. This period may be extended, in an exceptional manner, for ten (10) additional working days where circumstances interfere with the collection of the requested information. In that case, the requested body, by communication signed by the relevant authority and before the expiration of the fifteen-day deadline, shall communicate the reasons for making use of the exceptional extension.

Article 9. – The failure to observe the deadlines established in the preceding Article, as well as any conduct which violates, limits, impedes, restricts or obstructs the freedom to access information as provided for under the present law, shall constitute a serious fault of the officer in the execution of his duties, without prejudice to the application of the relevant sanctions regime.

#### **ADMINISTRATIVE SILENCE**

Article 10. – If the body or entity to which a request for information is made fails to meet the deadlines for delivery of the requested information or to offer legal reasons that impede its delivery thereof, it shall be considered a denial of the information and consequently, a violation of the present law. Accordingly, the sanctions provided for in the present law shall, consequently, be applied to the relevant officers.

#### **MANNER OF DELIVERY OF REQUESTED INFORMATION**

Article 11. – The requested information may be delivered in person, by telephone, facsimile, regular, certified or electronic mail, or through formats available in the web page that the administration has prepared for this purpose pursuant to Article 1 of this law.

#### **PROOF OF MODE OF DELIVERY OF THE INFORMATION**

Article 12. – A system for proving the effective delivery of the information to the citizen shall be duly established taking into account the relevant technical developments, such as encryption rules, electronic signature, certificates of authenticity and electronic reports delivery manuals.

#### **PREVIOUSLY PUBLISHED INFORMATION**

Article 13. – If the information requested by the citizen is already available to the public in printed form, such as books, compendiums, triptychs, the administration's public archives, or in electronic formats available on the internet or in any other medium, the citizen shall be informed by reliable means of the source, place and manner to access the said previously published information.

**FREE OF COST**

Article 14. – Public access to information shall be free if the reproduction thereof is not required. In any event, the fees to be charged by the institutions shall be reasonable and calculated on the basis of the costs of providing the information.

Article 15. – The agency may apply rates intended to pay the different costs that the search and reproduction of the information require, but that shall not imply the lessening of the exercise of the freedom to access public information. It may also establish different costs when the information is requested for use as part of a profit-making activity; and may exempt from payment when the request is made by educational, scientific, or non-profit institutions or those associated with activities of public or social interest.

Article 16. – Any person who is prevented from exercising the right of access to information may use the *habeas corpus* remedy preserved by Article 30 of the present law.

**LIMITATION TO ACCESS BASED ON OVERRIDING PUBLIC INTERESTS**

Article 17. – The following limitations and exceptions to the obligation to inform on the State and the institutions indicated in Article 1 of the present law is hereby established exhaustively:

- a) Information associated with the defence or security of the State which has been classified as “reserved” by law or decree of the Executive Power, or when it can affect the international relations of the country;
- b) When the extemporaneous delivery of the information may affect the success of a public measure;
- c) When the information may affect the functioning of the banking or financial systems;
- d) When the delivery of said information may compromise the procedural strategy prepared by the administration in the proceedings of a judicial cause or the duty of secrecy that must be obeyed by the attorney-at-law or an official who represents the State with respect to the interests of its representation;
- e) Information classified as “Secret” to protect scientific, technological, communications, industrial or financial strategies and projects, because its revelation may damage the national interest;
- f) Information that may damage strategies of the State in proceedings of administrative investigations, if disseminated;
- g) When knowledge of the information in question may damage the principle of equality between bidders, or information defined as confidential in tender documents as per the terms of national legislation in the areas of administrative contracting and complementary provisions;
- h) When the information in question refers to advice, recommendations or opinions generated as part of the process of deliberations and consultations prior to a government decision. Once the governmental decision has been made, this particular exception shall cease if the administration opts to make express reference to said advice, recommendations or opinions;
- i) When the information refers to private- or State-owned commercial, industrial, scientific, or technical secrets, or to reserved or confidential industrial or commercial information belonging to third parties that the administration has received with regard to procedures or actions undertaken to obtain a permit, authorization or any other procedure, and that has been delivered with that sole purpose, and its revelation may cause economic harm;

- j) Information that does not allow violation of secrecy in particular cases, as imposed by laws or judicial or administrative decisions;
- k) Information that may damage or affect the right to privacy of persons or endanger their lives or security if disclosed;
- l) Information which would endanger public health and security, the environment and the public interest in general, if published.

#### **LIMITATION TO ACCESS BASED ON OVERRIDING PRIVATE INTERESTS**

Article 18. – A request by an interested party for information may be refused if it can affect overriding private interests and rights, which shall be understood to occur in the following circumstances:

When it refers to personal information which, if published, may result in the invasion of a person's privacy. This notwithstanding, the Administration may provide this data and information if the applicant can prove through his application that the information is of public interest and will assist in the illustration of an on-going investigation in the hands of another body of the public administration.

When access to the requested information may affect the right to intellectual property, especially the copyrights, of a citizen.

When it refers to personal data, it shall be provided only where there is express and unequivocal proof that the affected person consents that said data be provided or where a law demands its publication.

#### **SPECIAL CIRCUMSTANCES IN WHICH THE CONSENT OF THE PERSON OR ENTITY WITH COPYRIGHTS TO INFORMATION OR DATA IS OBTAINED**

Article 19. – When access to information depends on the authorization or consent of a third party who is protected by the right or reservation or informational self-determination in accordance with Articles 2 and 16 of this law, information may be provided when the express consent of the affected person has been obtained. This consent may also be requested by the administration from the affected person when the applicant or requesting person so requires. If within fifteen (15) days, or twenty-five (25) days where the special extension is utilized, the administration dealing with the request has not received proof that the consent referred to in this Article has been obtained, it shall be inferred for all legal purposes that the consent has been denied.

#### **PROVIDING INFORMATION AND DATA AMONG BODIES OF THE ADMINISTRATION**

Article 20. – When the information required is not personal data, especially those protected by the right of informational self-determination of the citizen, the administrations referred to in Article 1 of this law may allow direct access to the reserved information gathered in their collections, provided that, as a consequence, these are used for the normal course of responsibilities of the requesting entities and bodies and that the principle of suitability for the public purpose, which provided the basis for granting of the information, is respected.

Paragraph I. – In any event, the bodies of the requesting administration shall not only respect the principle of suitability, but also the reservation principle with respect to the information and documents they receive.

Paragraph II. – Access to personal data and information that is protected by the legal reservation principle may only be admitted when the application is based on arguments made on the principle of necessity, suitability and necessity in the strict sense, which govern the area of justified injury to fundamental rights.

**EXPIRATION PERIOD FOR LEGAL RESERVATION OF CONFIDENTIAL INFORMATION ON THE BASIS OF OVERRIDING PUBLIC INTEREST**

Article 21. – Where provision to the contrary is not made in the specific laws regulating confidential materials, it shall be considered that the period of the legal reservation on confidential information and data, reserved in accordance with Article 5 of this law regarding actions and measures of the entities and bodies referred to in Article 1 of the present law, is for five years. Once this period has expired, the citizen has the right to access this information and the relevant authorities or offices are required to provide the means to issue the relevant copies.

**RIGHTS OF THE MASS MEDIA TO ACCESS PUBLIC INFORMATION**

Article 22. – Investigations by journalists and of the mass media on the actions, efforts and accomplishments of public responsibility conferred on the bodies and entities listed in Article 1 of this law are expressions of a social function of transcending value for the exercise of the right to receive accurate, complete and duly investigated information, in accordance with the constitutional requirements governing the freedom of information and access to public sources.

Paragraph I. – By virtue of the nature of its activities aimed at securing the fundamental rights of information, the freedom of expression and the promotion of public freedoms, the mass media shall receive special protection and support from public authorities.

Paragraph II. – In light of this duty of protection and support for the mass media and journalists in general, they must be guaranteed access to documents, administration records and other illustrative elements of conduct of the said entities and persons, without any restrictions different from those contemplated under the present law with respect to overriding public and private interests.

**CHAPTER III****Of The Duties To Publish General Rules To Regulate The Manner Of Providing And Accessing Public Services****DUTY TO PUBLISH DRAFT REGULATIONS AND OTHER GENERAL DISPOSITIONS**

Article 23. – The entities or persons who perform public functions or who administer State resources have the duty to publish, through official or private media of wide coverage, including electronic media and mechanisms, and sufficiently in advance of their date of issuance, the draft regulations they intend to adopt by means of rules or acts of a general nature, with respect to requirements or formalities that govern the relationship between individuals and the administration, or which are demanded of persons for the exercise of their rights and activities.

**MANNER OF CONDUCTING PUBLICATIONS THROUGH PUBLIC AND PRIVATE MEDIA AND THROUGH OTHER ELECTRONIC MEANS AND MECHANISMS**

Article 24. - The entities or persons who perform public functions or who administer State resources shall provide in their budgets the funds necessary to publish the draft regulations and acts of general nature referred to in the previous Article, through the mass media with wide national coverage.

Paragraph. – Where the relevant entity or person has a web portal or a web page, they shall provide therein a specific space where citizens can obtain information on draft regulations, regulation of services, of acts and communications of a general nature which, in one way or the other, determine the manner of protection of the services and access by persons of the said entity. The contents of said information shall be up to date and explanatory, and in a language that is understood by the common citizen.



Article 25. – The entities and persons who perform public functions or who administer public resources may be relieved from the duty to publish draft regulations and acts of a general nature regarding the provisions of services in the following cases:

- a) For obvious reasons of overriding public interest;
- b) When it can affect the internal security of the State or the country's international relations;
- c) When an early publication may cause general misinformation or confusion in the public.
- d) When because of the nature of the issue being regulated in the act of a general nature it is not convenient to publish the text thereof since it may provoke a negative effect that is harmful to the intended purpose of the regulation;
- e) Where it has been duly proven that urgency compels the relevant administration or person executing public budgets to act immediately, by approving the [regulatory] disposition of a general nature through the channels foreseen in the relevant legislation, without the requirement of prior publication of the draft.

## CHAPTER IV Administrative And Jurisdictional Recourses

Article 26. – The general principle that must always be respected is that the information must be provided within the specified timeframe and that all denials to provide information must be made in writing, indicating therein the legal basis for said denials.

Paragraph I. – When the information is denied on the ground of reservation or confidentiality of the information, the circumstances must be explained to the citizen, indicating the legal basis therefor.

Paragraph II. – When the denial is based on reservations, [the applicant has] the right to appeal this decision before the highest hierarchical authority of the relevant entity or body for a final determination on the granting of the requested data or information.

### **HIERARCHICAL RECOURSE BEFORE THE PUBLIC ADMINISTRATION**

Article 27. – Where the applicant is not satisfied with the decision of the entity or person to whom the request for information was made, such person may appeal this decision before the highest hierarchical authority of the relevant entity or body for a final determination on the granting of the requested data or information.

### **RECOURSE TO THE CONTENTIOUS ADMINISTRATIVE COURT**

Article 28. – If [the person is] neither satisfied with the decision of the hierarchical entity, [he/she] may recur to the Supreme Administrative Court within fifteen (15) working days.

### **HABEAS CORPUS REMEDY**

Article 29. – Where the entity or the person to whom a request for information has been made does not provide same within the established timeframe, or where the hierarchical superior body or entity has not issued its judgment on the matter within the established timeframe, the interested person may apply for *habeas corpus* before the Contentious Administrative Court for the purpose of guaranteeing the freedom of information established under the present law.

Paragraph I. – The affected person shall apply for *habeas corpus* and shall specify therein the steps taken and the harm that the delay may cause him. He shall also present copies of the writings through which he has applied for the information or has filed for the hierarchical recourse.

Paragraph II. – If the recourse is accepted, the Court shall require the relevant body of the public administration to inform on the reasons for the delay and shall set a short and final timeframe for a response. Once the request has been answered or the timeframe for so doing has expired, the Court shall deliver its corresponding resolution in light of the violated freedom and shall establish therein a timeframe for the body of the Public Administration to resolve the issue regarding the request for information.

## CHAPTER V Of Criminal and Administrative Sanctions [Concerning] Impediment Or Obstruction To Access Information

Article 30. – The relevant public official or entity that arbitrarily denies, obstructs or impedes access by the applicant to the required information shall be punished with a term of imprisonment of between six months and two years and disqualification from exercising public duties for five years.

## CHAPTER VI Final Provisions

Article 31. – Access to information regarding files and records of an administrative nature which are regulated by special laws shall be applied for and provided in accordance with the dictates and procedures established by said laws. This notwithstanding, the provisions of Articles 27, 28, 29, 30, and 31 of the present law relating to administrative and jurisdictional recourses shall apply.

Article 32. – Within ninety (90) days from the date of enactment of the present law, the Executive Power shall dictate its regulations for implementation. Within that timeframe, it shall take the necessary measures to establish the conditions for operation which guarantee the fulfilment of all the provisions contained in the present law.

GIVEN at the Senate's Sessions Room, Palace of National Congress, in Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, on the thirteenth (13<sup>th</sup>) day of April, Two Thousand and Four (2004); 161<sup>st</sup> Year of Independence and 141<sup>st</sup> Year of Restoration.

**Jesus Vásquez Martínez** President

**Melania Salvador de Jiménez** Secretary

**Sucre Antonio Muñoz Acosta** Secretary

GIVEN at the Parliament's Sessions Room, Palace of National Congress, in Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, on the thirteenth (13<sup>th</sup>) day of July, Two Thousand and Four (2004); 161<sup>st</sup> Year of Independence and 141<sup>st</sup> Year of Restoration.

**Alfredo Pacheco Osoria** President

**Néstor Julio Cruz Pichardo**  
Ad-hoc Secretary

**Iliana Neumann Hernández**  
Secretary

**HIPOLITO MEJIA**  
Republic

President of the Dominican

In the exercise of the powers conferred upon me by Article 55 of the Constitution of the Republic.

I HEREBY ENACT the present law and order that it be published in the Official Gazette for its knowledge and fulfillment.

GIVEN in Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, on the twenty-eighth (28<sup>th</sup>) day of July, Two Thousand and Four (2004); 161<sup>st</sup> Year of Independence and 141<sup>st</sup> Year of Restoration.

**HIPOLITO MEJIA**

## JAMAICA

### THE ACCESS TO INFORMATION ACT

#### ARRANGEMENT OF SECTIONS

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## SCHEDULES

## THE ACCESS TO INFORMATION ACT

Acts  
21 of 2002  
24 of 2003  
[5 January 2004]

**Short Title.**

1. This Act may be cited as the Access to Information Act.

## PART I Preliminary

**Objects of Act.**

2. The objects of this Act 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 official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.

**Interpretation.**

3. In this Act, unless the context otherwise requires-

"appointed day" means the 5th day of January, 2004; "document" includes, in addition to a document in writing-

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being 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;
- (d) 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;

"exempt document" means a document which by virtue of any provision of Part 111 is exempt from disclosure; "exempt matter" means any matter the inclusion of which in a document causes that part of the document to be exempt from disclosure;

"any" means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;

"official document" means a document held by a public authority in connection with its functions as such, whether or not it was created-

- (a) by that authority; or
- (b) before the 5th day of January, 2004, and for the purposes of this Act, a document is held by a public authority if it is in its possession, custody or control;

"public authority" means-

- (a) a Ministry, department, Executive Agency or other agency of Government;
- (b) a statutory body or authority;
- (c) a Parish Council;
- (d) the Council of the Kingston and St. Andrew Corporation;
- (e) any Government company which-
  - (i) is wholly owned by the Government or an agency of the Government, or in which the Government holds more than fifty per cent shares; or
  - (ii) is specified in an order under section 5(3);
- (f) any other body or organization specified in an order under section 5 (3);

"responsible Minister" means the Minister responsible for the public authority which holds an official document.

#### **Publication of Information by Public Authority.**

4 (1) A public authority shall cause to be published within twelve months of -

- (a) the appointed day;
- (b) its establishment;
- (c) the coming into operation of an order under section 5 (1) (a) or (3) which specified that authority; or
- (d) the application of the provisions of this Act to that public authority pursuant to section 5 (1) (b),

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

- (2) The provisions of the First Schedule shall apply for the purposes of making available to the public the document described in that Schedule.
- (3) The information required under subsection (1) shall be published in such manner and shall be updated with such frequency as may be prescribed.
- (4) The Minister may amend the First Schedule by order subject to affirmative resolution.

#### **Application of Act.**

5 (1) Subject to subsection (2), this Act applies to-

- (a) public authorities which are specified by the Minister by order within eighteen months after the appointed day; and
  - (b) all other public authorities immediately after the expiration of the period of eighteen months referred to in paragraph (a);
  - (c) official documents created by or held by a public authority not earlier than thirty years immediately preceding the appointed day.
- (2) The Minister may, by order subject to negative resolution, declare that this Act shall apply to official documents 1 created by or held by a public authority at such date, being earlier than the thirty years referred to in subsection (1) (c), as may be specified in that order.
- (3) The Minister may, by order subject to affirmative resolution, declare that this Act shall apply to-
- (a) such government companies, other than those specified in paragraph (e) (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 Jamaican society, or to such aspects of their operations as may be specified in the order.
- (4) An order under subsection (3) may be made subject to such exceptions, adaptations or modifications, as the Minister may consider appropriate.
- (5) The Minister may, by order subject to affirmative resolution, declare that the application of this Act in relation to any government company specified in paragraph (e) (i) of the definition of "public authority" shall be subject to such exceptions, adaptations or modifications as the Minister may consider appropriate.
- (6) This Act shall not apply to-
- (a) the Governor-General, in relation to the exercise of the powers and duties conferred or imposed on him by or under the Constitution of Jamaica or under any other law;
  - (b) the judicial functions of-
    - (i) a court;
    - (ii) the holder of a judicial office or other office connected with a court;
  - (c) the security or intelligence services in relation to their strategic or operational intelligence gathering activities;
  - (d) any statutory body or authority as the Minister may specify by order subject to affirmative resolution.
- (7) This Act applies to official documents held in a registry or other office of a court, being documents that relate only to matters of an administrative nature.
- (8) In subsection (6) "security or intelligence services" means-
- (a) the Jamaica Constabulary Force;
  - (b) the Island Special Constabulary Force;
  - (c) the Rural Police;



- (d) the Jamaica Defence Force.

## PART II Right Of Access

### Right of access.

6.-(1) Subject to the provisions of this Act, every person shall have a right to obtain access to an official document, other than an exempt document.

(2) The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Minister may specify by order, subject to affirmative resolution.

(3) An applicant for access to an official document shall not be required to give any reason for requesting access to that document.

(4) Where an official document 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 document shall be obtained in accordance with the provisions of that enactment or those procedures, as the case may be.

### Application for access.

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

(2) An application under subsection (1)-

(a) may be made in writing or transmitted by telephone or other electronic means;

(b) shall provide such information concerning the document 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 documents to which the application relates;

(b) acknowledge receipt of every application in the prescribed manner;

(c) grant to the applicant, access to the document specified in the application if it is not an exempt document.

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

(a) thirty 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 days after the date of the receipt by that authority, so, however, that an authority may extend the period of thirty days for a further period, not exceeding thirty 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 days, it shall state the reasons therefor, and the options available to an aggrieved applicant.

#### **Transfer of requests.**

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

- (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.

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

#### **Forms of access.**

9. (1) Access to an official document may be granted to an access. applicant in one or more of the following forms-

- (a) the applicant may be afforded a reasonable opportunity to inspect the document;
- (b) the authority concerned may furnish the applicant with a copy of the document;
- (c) in the case of a document 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 document 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 document.

(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 document, or be inappropriate, having regard to its physical state;
  - (b) constitute an infringement of copyright subsisting in any matter contained in the document.
- (4) Copies of documents to which access is granted shall be authenticated in the prescribed manner.

#### **Assistance and deferment of access.**

10. (1) Where the information provided by the applicant in relation to the document is not such as is 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 document can be identified.

(2) A public authority may defer the grant of access to an official document-

- (a) if publication of the document within a particular period is required under the provisions of any enactment, until the expiration of that period;
  - (b) if the document was prepared for presentation to Parliament 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 the person or body;
  - (c) if the premature release of the document 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 document 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 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.

**Deletion of exempt matter.**

11. (1) Where an application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom.
- (2) A public authority which grants access to a copy of an official document 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.

**Fees etc.**

12. (1) The cost of reproducing any documents containing information in relation to which an application is made under this Act shall be borne by the applicant.
- (2) The responsible Minister may waive, reduce or remit, the cost specified in subsection (1) for access to an official document where he is satisfied that such waiver, reduction or remission is justifiable.

**Grant of access.**

13. Subject to this Act, where-
- (a) an application is made in accordance with section 7 for access to an official document; and
  - (b) the cost incurred by the public authority in granting access has been paid, access to the document shall be granted in accordance with this Act.

**PART III**  
**Exempt Document**

**Documents affecting security, defence or international relations.**

14. Official documents are exempt from disclosure if-
- (a) the disclosure thereof would prejudice the security, defence or international relations of Jamaica;
  - (b) those documents contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.

**Cabinet documents.**

15.-(1) An official document is exempt from disclosure if it is a Cabinet document, that is to say-

- (a) it is a Cabinet Submission, Cabinet Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted ;
  - (b) it is a Cabinet Decision, or other official record of any deliberation of the Cabinet.
- (2) Subsection (1) does not apply to-
- (a) any document appended to a Cabinet document that contains material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature; or
  - (b) a document by which a decision of the Cabinet has been officially published.

**Documents relating to law enforcement**

16. Official documents 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) prejudice-
  - (i) the conduct of an investigation of a breach or possible breach of the law; or
  - (ii) the fair trial of any person or the impartial 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 method or procedures;
- (e) facilitate the escape of a person from lawful detention; or
- (f) jeopardize the security of any correctional facilities.

**Documents subject to legal privilege etc.**

17. An official document 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.

**Documents affecting national economy.**

18.-(1) An official document of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to,

have a substantial adverse effect on the Jamaican economy, or the Government's ability to manage the Jamaican economy.

(2) The types of documents referred to in subsection (1) include but are not limited to, documents relating to taxes, duties or rates, interest rates, monetary policy and exchange rate policy or currency or exchange rates.

**Documents revealing Government's deliberative processes.**

**19.-(1)** Subject to subsection (3), an official document 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) shall not apply to documents which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.

(3) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

**Documents relating to business affairs etc.**

**20.-(1)** Subject to subsection (2), an official document 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.

**Documents relating to heritage sites etc.**

**21.-(1)** Subject to subsection (2), an official document 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-

- (a) any historical, archaeological or anthropological resources;
- (b) anything declared to be a national monument, designated as protected national heritage or protected by a preservation notice under the Jamaica National Heritage Trust Act;
- (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.

(2) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.-

**Documents affecting personal privacy.**

**22.**-(1) Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.

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

**Issue of certificate *re* exempt document.**

**23.**-( 1 ) Where-

(a) the Prime Minister is satisfied that an application for access relates to a document specified in section 15 (1);

(b) a responsible Minister is satisfied that an application for access relates to an official document to which section 14, 16 or 18, as the case may be, applies, the Prime Minister or the responsible Minister, as the case may require, may issue a certificate to the effect that the document is an exempt document and shall specify the basis of the exemption.

(2) Where the Prime Minister or a responsible Minister, as the case may be, is satisfied as mentioned in subsection (1) by virtue of anything contained in any particular part or parts of an official document, a certificate issued under that subsection in respect of that document shall identify that part or those parts of the document by reason of which the certificate is issued.

(3) A certificate issued under subsection (1) shall be conclusive that the document is exempt.

## PART IV

### Amendment And Annotation Of Personal Records

**Application for amendment or annotation of personal records.**

**24.**-(1) Where a person claims that an official document contains personal information about the person 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, as the case may be, of that document.

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

#### **Amendment of records.**

**25.-(1)** Where, in relation to any application under section 24, a public authority is satisfied as to the truth of the matters stated in the application, it shall amend the document concerned in the prescribed manner.

- (2) Where a public authority decides not to amend an official document it shall-
  - (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 24 (2) (b); and
  - (b) annotate the document by adding thereto the statement referred to in paragraph (a).

#### **Annotation of personal records.**

**26.** Where, in relation to an application for annotation of an official document containing personal information, the public authority-

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

#### **Notice of amendments of annotations.**

**27.** A public authority which amends or annotates an official document pursuant to section 25 or 26, or, as the case may be, decides not to do so, shall take reasonable steps to inform-

- (a) the applicant; and
- (b) any other public authority which it is satisfied has made prior use of the document, 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.**

**28.** The provisions of section 8 shall apply, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

## **PART V**

### **Review And Appeal**

#### **Interpretation.**

**29.** In this Part and Part VI "relevant decision" means a decision referred to in section 30 (1) or (2), as the case may require.

**Internal review.**

**30.**-(1) An applicant for access to an official document may, in accordance with subsection (4), apply for an internal review of a decision by a public authority to-

- (a) refuse to grant access to the document;
- (b) grant access only to some of the documents specified in an application;
- (c) defer the grant of access to the document;
- (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, in accordance with 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 Act 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 responsible Minister, a Permanent Secretary or the principal officer of the public authority concerned.

**Procedure *re* internal review**

**31** .-(1) An internal review shall be conducted

- (a) by the responsible Minister in relation to documents referred to in sections 14, 15, 16 and 18;
- (b) in any other case, by the Permanent Secretary in the relevant Ministry or the principal officer of the public authority whose decision is subject to review.

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

(a) within thirty 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 days, as the public authority may permit; or

(b) where no such notification has been given, within thirty 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 days after the date of receipt of the application.

**Appeal. Second Schedule**

**32.**-(1) An appeal shall lie pursuant to subsections (2) and (3), to the Tribunal established for that purpose, constituted in accordance with the Second Schedule.

(2) A person may lodge an appeal-

(a) where internal review under section 30 is applicable-



- (i) against a decision taken on such review;
- (ii) if the time specified in section 3 1 (2) (b) has expired without the applicant being notified of a decision;
- (b) in any other case, against a relevant decision in relation to any of the matters referred to in paragraphs (a) to (c) of section 30 ( 1 ) or section 30 (2), and accordingly section 30 (3) shall apply with necessary modifications to an appeal under this paragraph.
- (3) An appeal shall be made-
  - (a) by the lodgement of a document within sixty 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) where no notification has been given within the period required by this Act, within sixty days after the expiration of that period.
- (4) Where an appeal is not made within the period specified in subsection (2), the Appeal Tribunal may extend that period if it is satisfied that the appellant's delay in so doing is not unreasonable.
- (5) On the hearing of an appeal, the onus of proving that the relevant decision was justified or that a decision adverse to the appellant should be made by the Appeal Tribunal, shall lie on the public authority which made the relevant decision.
- (6) On hearing an appeal, the Appeal Tribunal-
  - (a) may subject to paragraph (h), make any decision which could have been made on the original application;
  - (b) shall not nullify a certificate issued under section 23.
- (7) The Appeal Tribunal may call for and inspect an exempt document, so, however, that, where it does so, it shall take such steps as are necessary to ensure that the document is inspected only by members of staff of the Appeal Tribunal acting in that capacity.

## PART VI Miscellaneous

### **Protection from liability *re* defamation, breach of confidence or copyright.**

- 33.**-(1) Nothing in this Act shall be construed as authorizing the disclosure of any official document
- (a) containing any defamatory matter; or
  - (b) the disclosure of which would be in breach of confidence or of copyright.
- (2) Where access to a document referred to in subsection ( 1 ) is granted in the *hona.fide* belief that the grant of such access is required by this Act, no action for defamation, breach of confidence or breach of copyright shall lie against- the Government or any public authority, any Minister or any public officer involved in the grant of such access, by reason of the grant of access or of any republication of that document; or the author of the document or any other person who supplied the document 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 document.
- (3) The grant of access to an official document in accordance with this Act shall not be construed as authorization or approval-

- (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the document or its contents by the person to whom access is granted;
- (b) for the purposes of the Copyright Act, of the doing by that person of any act comprised within the copyright in any work contained in the document, as follows-
  - (i) any literary, dramatic, musical or artistic work;
  - (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
  - (iii) a published edition of a literary, dramatic, musical or artistic work.

### Offence

**34.**-(1) A person commits an offence, if in relation to an official document to which a right of access is conferred under this Act he-

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals, the document with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

### Provisions *re* other Acts.

**35.**-(1) Where access to an official document is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.

(2) Subject to subsection (3), nothing in this Act shall affect the provisions of any other Act other than the Official Secrets Act, relating to the non-disclosure of information.

(3) For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.

### Reports.

**36.**-(1) The Minister shall, as soon as practicable after the end of each year (but not later than the 30th of June in the following year) prepare a report of the operation of this Act during the year, containing the matters specified in subsection (4).

(2) The report referred to in subsection (1) shall be laid on the Table of the House of Representatives and of the Senate.

(3) Each public authority shall submit to the Minister, quarterly reports on the matters specified in subsection (4).

(4) The matters referred to in subsections (1) and (3) are-

- (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
- (e) such other matters as are considered relevant.

### **Regulations**

**37.** The Minister may make regulations generally for giving effect to the provisions and purposes of this Act and such regulations shall be subject to affirmative resolution.

### **Review of Act by Parliamentary Committee**

**38.**-(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.

- (2) The first such review shall be conducted not later than two years after the appointed day.

## **FIRST SCHEDULE (Section 4)**

### **Information to be published by Public Authorities**

1. The information referred to in section 4 of this Act is
  - (a) a description of the subject area 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 documents specified in sub-paragraph (e) being documents 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 documents referred to in sub-paragraph (4) are-
    - (i) manuals or other documents containing interpretations, rules, guidelines, practices or precedents;

(ii) documents containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Act.

2. The principal officer of the authority shall-

(a) cause copies of such of the documents 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 twelve months after the publication of the statement under paragraph 1 (d) and thereafter at intervals of not more than twelve 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 two 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 document of the kind specified in paragraph 1 (c) containing exempt matter, to be made available in accordance with paragraph 2, but, if such a document is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with paragraph 2.

5. Paragraphs 2 and 3 apply in relation to a public authority-

(a) that comes into existence after the appointed day:

(b) which is specified in an order under section 5 (1) (a) or (3) of the Act: or

(c) to which section 5 (1) (b) of the Act applies.

as if the references in paragraph 3 to the appointed day were references to the day on which the authority comes into existence or the date on which the order referred to in subparagraph (b) takes effect or the date on which the provisions of section 5 (1) (b) of the Act take effect in relation to the authority, as the case may be.

## SECOND SCHEDULE (Section 32)

### Constitution of Appeal Tribunal

#### Constitution of Tribunal

1. The Tribunal shall, subject to paragraph 2: consist of five members appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition.

#### Power of one member to sit alone.

2. For the hearing of any appeal under this Act the Tribunal may consist of one member sitting alone if the parties to the appeal agree.

#### Tenure of office.

3. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for a period of five years and shall be eligible for reappointment.

**Chairman**

4. The Governor-General, shall appoint one of the members of the Tribunal appointed under paragraph 1 to be chairman thereof.

**Acting appointments.**

5. The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may appoint any person to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member.

**Resignation.**

(6)-(1) Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the chairman, and from the date of the receipt by the Governor-General of such instrument that member shall cease to be a member of the Tribunal.

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

**Revocation of appointment.**

7. The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition may terminate the appointment of any member of the Tribunal who-

- (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 payments to his creditors;
- (c) is convicted and sentenced to a term of imprisonment or to death;
- (d) is convicted of any offence involving dishonesty;
- (e) fails to carry out the functions conferred or imposed on him by this Act.

**Filling of vacancies.**

8. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member.

**Publication of membership.**

9. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

**Remuneration of members.**

10. There shall be paid to the chairman and other members of the Tribunal, in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as may be determined by the Minister responsible for the public service.

**Voting.**

11. Subject to paragraph 2, the decision of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

**Power to regulate own proceedings.**

12. Subject to the provisions of the Act, the Tribunal shall regulate its own proceedings.

**Office of chairman or member of Tribunal not public office.**

13. The office of chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

## BARBADOS

### FREEDOM OF INFORMATION

#### INTRODUCTION

Freedom of information legislation, also described as open records or sunshine laws, are laws which set rules on access to information or records held by government bodies. In general, such laws define a legal process by which government information is required to be available to the public. In many countries, there are constitutional guarantees for the right of access to information, but usually these are unused if specific legislation to support them does not exist.

A basic principle behind most freedom of information legislation is that the burden of proof falls on the body being asked for the information, not the person asking for it. The individual does not usually have to give an explanation for his request, but if the information is not disclosed a valid reason has to be proffered.

The Legislation makes official information more freely available, provides for proper access by each person to official information, protects official information to the extent consistent with the public interest, preserves personal privacy, and establishes procedures for the achievement of those purposes.

The legal principle behind the law requires that information shall be made available unless there is good reason for withholding it. Conclusive reasons for withholding information include national security or international relations; that it was supplied by another government in confidence; maintenance of the law; personal safety; or severe economic damage.

The Freedom of Information Bill is being circulated as widely as possible in order to provide opportunities for all persons to become familiar with the proposals therein and, to obtain their meaningful feedback and inputs.

Copies of the Bill are being provided, electronically and in hard copy, to the various Public and Private Sector bodies and special interests groups.

The Bill can be accessed online at [www.gov.bb](http://www.gov.bb). Persons providing electronic feedback should do so at [freedomofinfobill@barbados.gov.bb](mailto:freedomofinfobill@barbados.gov.bb). Copies of the Bill are also being placed at Post Offices islandwide.

Responses to the Bill, whether electronic or hard copy, should be **forwarded no later than Friday, 31st October 2008** to:

(i) *freedomofinfobill@barbados.gov.bb*

or

(ii) *Permanent Secretary (Special Assignments)*

*Prime Minister's Office Government Headquarters Bay Street St. Michael or*

(iii) *Fax Number: 228-8234*

The following Town Hall Meetings are also being held in order to provide additional opportunities for persons to provide feedback and inputs. **Wednesday, 15th October 2008 The Combermere School, Waterford, St. Michael** **Wednesday, 22nd October 2008 The Alexandra School, Queen Street, St. Peter**

Wednesday, 29th October 2008 The Deighton Griffith School, Kingsland, Christ Church  
 Wednesday, 5th November 2008 The Princess Margaret School, Six Roads, St. Philip

The Bill would

(a) give effect to the broad provisions of section 20 of the Constitution which gives to every person the right and freedom to receive ideas and information without interference, including information held by public authorities, so as to enhance good governance through knowledge, transparency and accountability; and

(b) make provision for public access to public information about the operations of public authorities and, in particular, ensure that the authorizations, policies, rules and practices affecting members of the public are readily available to persons affected by those authorizations, policies, rules and practices; and

(c) create a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests in a democratic society and the private or business affairs of persons in respect of whom information is held by public authorities;

(d) establish the Office of the Information Commissioner and specify the functions of that office.

## ARRANGEMENT OF CLAUSES

### PART I

#### *Preliminary*

#### *Section*

1. Short title.
2. Commencement.
3. Interpretation.
4. Act not to apply to courts and registries, etc.
5. Act binds the Crown.
6. Construction of Act in relation to other laws, etc.

### PART II

#### *Measures To Promote Openness*

7. Guide to using the Act.

### PART III

#### *Information Commissioner And Employees, Etc.*

8. Appointment of Information Commissioner.
9. Appointment of staff.
10. Functions of Commissioner.



11. Independence of Commissioner and employees of Commissioner’s Office.
12. Annual reports.
13. Exemption from personal liability.
14. Information officers of Ministries and prescribed authorities.

#### **PART IV**

##### ***Publication of Certain Documents and Information***

15. Publication of information concerning functions of and prescribed authorities.
16. Certain documents to be available for inspection and purchase.
17. Statement of possession of certain documents to be published.

#### **PART V**

##### ***Access to Documents***

18. Right of access.
19. Procedure for obtaining access to certain documents.
20. Access to documents apart from this Act.
21. Requests for access.
22. Transfer of requests.
23. Requests involving use of computers, etc.
24. Access to documents to be given on request.
25. Time within which formal requests to be decided.
26. Forms of access.
27. Deferment of access.
28. Deletion of exempt matter.
29. Decision to be made by authorized persons.
30. Reasons and other particulars of decisions to be given.

#### **PART VI**

##### ***Exempt Documents***

31. Documents affecting national security, defence and international relations.
32. Cabinet documents.
33. Documents affecting enforcement and administration of the law.

34. Documents to which secrecy provisions of enactments apply.
35. Certain documents concerning operations of Ministries, etc.
36. Documents affecting personal privacy.
37. Documents affecting legal proceedings or subject to legal professional privilege.
38. Documents relating to trade secrets, etc.
39. Documents affecting national economy.
40. Documents containing material obtained in confidence.
41. Documents the disclosure of which would be contempt of Parliament or contempt of court.
42. Crown privilege in judicial proceedings not affected.
43. Duty of authorities to act in good faith.

## PART VII

### *Review of Decisions*

44. Applications to Ombudsman.
45. Internal review.
46. Time for application to Ombudsman.
47. Burden of proof.
48. Power of Ombudsman to make orders.
49. Production of exempt documents.
50. Evidence of certificates.
51. Power of Ombudsman in relation to witnesses, etc.
52. Appeals against Ombudsman's decisions.

## PART VIII

### *Miscellaneous*

53. Protection against actions for defamation or breach of confidence.
54. Protection in respect of offences.
55. Reports to National Assembly.
56. Offences and Penalties.
57. Regulations.

## BARBADOS: A Bill entitled Freedom of Information

### An Act to

(a) give effect to the broad provisions of section 12 of the Constitution which gives to every person the right and freedom to receive ideas and information without interference, including information held by public authorities, so as to enhance good governance through knowledge, transparency and accountability; and

(b) make provision for public access to public information about the operations of public authorities and, in particular, ensure that the authorizations, policies, rules and practices affecting members of the public are readily available to persons affected by those authorizations, policies, rules and practices; and

(c) create a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests in a democratic society and the private or business affairs of persons in respect of whom information is held by public authorities.

(d) establish the Office of the Information Commissioner and specify the functions of that office.

(Gazetted..., 2008)

BE IT ENACTED by the Parliament of Barbados as follows:

### PART I Preliminary

1. This Act may be cited as the *Freedom of Information Act, 2008*.

Short title.

2. This Act shall come into operation on a day to be appointed by the Minister by Order published in the *Gazette*.

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

“applicant” means a person who has made a request;

“Atlanta Declaration” means the Atlanta Declaration And Plan Of Action For The Advancement Of The Right Of Access To Information” signed at Atlanta, Georgia, in the United States of America on 29 February, 2008; “Commissioner” means the Information Commissioner appointed under section 8;

“ Department” means a Department of the Government of Barbados;

“document” includes public contracts, grants or leases of land, letters, e-mails, written decisions, policy papers, information recorded in any form, or any written or printed matter, map, diagram, plan, photograph, film or micro film, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid 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, but does not include library material maintained for reference purposes;

“enactment” means an Act or an instrument (including rules, regulations or bylaws) made under an Act;

“exempt document” means a document which, by virtue of a provision of Part VI, is an exempt document;

“exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document;

“information officer” means a senior officer of a Ministry or prescribed authority appointed pursuant to section 14;

“Minister” or “Minister administering this Act” means the Minister of Government to whom is assigned responsibility under the Constitution for information;

“Ministry” means a Ministry of the Government;

“Ombudsman” means the Ombudsman established under the Ombudsman Act;

“personal information” means information about an individual, including-

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, telephone number, finger-prints or blood type of the individual;

(e) the personal opinions or views of the individual except where they relate to another individual;

(f) correspondence sent to a public authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual; and

(h) the individual’s name where it appears with other personal information relating to the individual where the disclosure of the name would reveal other personal information about the individual;

“prescribed authority” means –

(a) a local authority;

(b) a public statutory corporation or body; or

(c) a body corporate or an unincorporated body established for a public purpose, which may be prescribed by the Minister by Order published in the *Gazette*;

“principal officer” means–

(a) in relation to a Ministry, the Permanent Secretary of that Ministry,

(b) in relation to a Department, the Head of that Department, and

(c) in relation to a prescribed authority, the chief executive officer, general manager or other similar officer of that authority;

“regulations” means regulations made under this Act;

“record” shall have the same meaning as assigned to the term “document”;

“request” means a request for access to a document made in accordance with this Act;

“responsible Minister” means –

(a) in relation to a Ministry, the Minister who has been assigned responsibility under the Constitution for that Ministry; or

(b) in relation to a prescribed authority, the Minister who has been assigned responsibility under the Constitution for the subject-matter of that authority.

(2) References in this Act to a Ministry shall include a reference to a Department of Government following under that Ministry.

4. This Act shall not apply to

(a) a court, or the holder of a judicial office or other office pertaining to a court, in his capacity as the holder of that office;

(b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff;

(c) a Commission of Inquiry and the members and staff of a Commission of Inquiry;

(d) the internal proceedings of Parliament which are subject to parliamentary privilege;

(e) the office of the Governor-General.

5. This Act binds the Crown.

6. (1) Within the broad objectives of section 20 of the Constitution, every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by a Ministry or prescribed authority (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.

(2) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.

(3) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice.

(4) Every Ministry and prescribed authority shall, within the broad objectives of section 20 of the Constitution, give effect to the principles and objectives of the Atlanta Declaration in the implementation of this Act.

## PART II

### Measures To Promote Openness

7. (1) Every information officer of a Ministry or prescribed authority appointed under section 14 shall, within three months of the commencement of this Act, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in electronic form at the Ministry’s website, and in any other accessible form.

(2) The guide published under this section shall be updated on a regular basis by the information officer and in any case once every year if necessary.

(3) Every public authority shall designate one of its officers of as an information officer and ensure that members of the public authorities public have easy access to the information officer, including his or her name, function and contact details.

(4) The information officer shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities –

(a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to the provision of information pursuant to this Act.

(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal.

### PART III

#### Information Commissioner And Employees, Etc.

(2) A person shall not be qualified to hold office as Commissioner if that person-

(a) is a member of the House of Assembly or a member of the Senate;

(b) holds or is acting in a public office;

(c) is an undischarged bankrupt, having been declared bankrupt under any law;

(d) has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or

(e) holds office in, or is an employee of, a political party or is a political activist.

(3) The Commissioner shall hold office for a term of five years and may be re-appointed for a further term of three years, but shall not hold office for more than two consecutive terms.

(4) The Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.

9. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.

10. In addition to any other functions under this Act, the functions of the Commissioner shall be-

(a) to monitor and report to Parliament on the compliance by Ministries and prescribed authorities with their obligations;

(b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;

(c) to undertake or promote the training of officials of Ministries and prescribed authorities and other persons on the right to information and the effective implementation of this Act;

(d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences; and

(e) to publicize the requirements of this Act and the rights and obligations under the Act.

11. (1) In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority.

(2) All officers and employees of the office of the Commissioner and any other persons authorised to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.

12. (1) The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the Office of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.

(2) The Minister shall cause a copy of each annual report submitted pursuant to subsection (1) to be laid before both Houses of Parliament as soon as practicable after he has received the report.

13. (1) The Commissioner, any officer or employee of his Office or any other person acting on behalf of or under the direction of the Commissioner shall not be personally liable in criminal or civil proceedings for any act done in good faith pursuant to this Act.

(2) For the purposes of proceedings for defamation, any information provided, whether orally or in writing, pursuant to an investigation by or on behalf of the Commissioner under this Act shall be treated as privileged information unless it is shown that that information was not provided in good faith.

14. (1) Every Ministry and prescribed authority shall designate one of its officers as an information officer and ensure that members of the public have easy access to the information officer, including his name, functions and contact details.

(2) The information officer shall, in addition to any obligations of a Ministry or prescribed authority specifically provided for in other provisions of this Act or any other law, have the following responsibilities-

(a) to serve as a central contact within the Ministry or prescribed authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to the provision of information pursuant to this Act.

(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal.

(3) The Information Commissioner shall be responsible for the training of information officers in each year to better enable them to discharge their duties under this Act.

## PART IV

### Publication of Certain Documents and Information

15. (1) Every Ministry or prescribed authority shall, in the public interest, publish and disseminate in an accessible form, updated annually, basic information, clearly dated including-

(a) an accurate and sufficiently detailed description of its structure, functions, duties and finances;

(b) relevant details concerning any services it provides directly to members of the public;

(c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that Ministry or prescribed authority, together with a summary of any requests, complaints or other direct actions by members of the public and that Ministry or prescribed authority's responses;

(d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;

(e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;

(f) any regulations; policies, rules, guides or manuals regarding the discharge by that authority of its functions;

(g) the content of all decisions and policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and

(h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that Ministry or prescribed authority.

(2) The information to be published in accordance with this section shall be published in the *Gazette* and on the internet at each Ministry's website.

(3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

(4) Subsection (1) applies in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

16. (1) This section applies to documents that are provided by the Ministry or prescribed authority for the use of, or are used by the Ministry or prescribed authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the Ministry or prescribed authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being –

(a) manuals or other documents containing interpretations, rules of procedure, letters of advice to persons outside the Ministry or prescribed authority, guidelines, practices, precedents, policies, records of decisions or similar documents;

(b) documents containing particulars of such a scheme, not being particulars contained in an enactment or published under this Act, but not including documents that are available to the public as published otherwise than by a Ministry or prescribed authority.

(2) The principal officer shall –

(a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;

(b) not later than 12 months after the commencement of this Act, cause to be published in the *Gazette*, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and



(c) within 12 months after the publication of the statement under paragraph (b) 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) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.

(6) Subsections (2), (3), (4) and (5) apply in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

(7) If a document required to be made available in accordance with this section, being a document containing a rule, guideline or practice relating to a function of a Ministry or prescribed authority, was not made available and included in a statement in the *Gazette*, as referred to in this section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

17. (1) This section applies, in respect of a Ministry or prescribed authority, to any document that is-

(a) a report, or statement containing the advice or recommendations, of a body or entity established within the Ministry or prescribed authority;

(b) a report, or statement containing the advice or recommendations, of a body or entity established outside the Ministry or prescribed authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the Ministry or prescribed authority or to the responsible Minister of that public authority;

(c) a report, or a statement containing the advice or recommendations, of an inter-departmental Committee whose membership includes an officer of the Ministry or prescribed authority;

(d) a report, or a statement containing the advice or recommendations, of a committee established within the Ministry or prescribed authority;

(e) a report (including a report concerning the results of studies, surveys or tests) prepared for the Ministry or prescribed authority by a scientific or technical expert, whether employed within the public service or not, including a report expressing the opinion of such an expert on scientific or technical matters;

(f) a report prepared for the Ministry or prescribed authority by a consultant who was paid for preparing the report;

(g) a report prepared within the Ministry or prescribed authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;

(h) a report on the performance or efficiency of the Ministry or prescribed authority, or of an office, division or branch of the Ministry or prescribed authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the Minister or prescribed authority;

(i) a report containing final plans for the re-organisation of the functions of the Ministry or prescribed authority, the establishment of a new policy, programme or project to be administered by the Ministry or prescribed authority, or Cabinet;

(j) a statement prepared within the Ministry or public authority and containing policy directions for the drafting of legislation;

(k) a report of a test carried out within the Ministry or prescribed authority on a product for the purpose of purchasing equipment;

(l) an environmental impact statement prepared within the Ministry or prescribed authority; and

(m) a valuation report prepared for the Ministry or prescribed authority by a valuator whether or not the valuator is a public officer.

(3) This section does not require a document of the kind referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.

(4) A Ministry or prescribed authority that comes into existence on or after the commencement of this Act shall comply-

(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the Ministry or prescribed authority comes into existence and not later than 12 months after that day; and

(b) with the provisions of subsection (2)(b) as if the reference to :first publication: in that subsection were a reference to first publication in compliance with this subsection.

## PART V Access to Documents

18. Subject to this Act, every person shall have a right to obtain access in accordance with this Act to a document of a Ministry or prescribed authority, other than an exempt document.

19. Where –

(a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or

(b) a document is available for purchase by the public in accordance with arrangements made by a Ministry or prescribed authority, the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

20. Nothing in this Act is intended to prevent or discourage Ministries and prescribed authorities from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

21. (1) A person who wishes to obtain access to a document of a Ministry or prescribed authority shall make a request in writing to the Ministry or prescribed authority for access to the document.

(2) Subject to subsection (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Ministry or prescribed authority, as the case may be, to identify the document.

(3) Where a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the Ministry or prescribed authority.

(4) It is the duty of a Ministry or prescribed authority, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate Ministry or prescribed authority, to make a request in a manner that complies with this section or to direct a request to the appropriate Ministry or specified authority.

(5) Where a request in writing is made to a Ministry or prescribed authority for access to a document, the Ministry or prescribed authority, as the case may be, shall not refuse to comply with the request on the ground –

(a) that the request does not comply with subsection (2); or

(b) that, in the case of a request of the kind referred to in subsection (3), compliance with the request would interfere unreasonably with the operations of the Ministry or prescribed authority, as the case may be, without first giving the applicant a reasonable opportunity of consultation with the Ministry or prescribed authority with a view to the making of a request in a form that would remove the ground for refusal.

22. (1) Where –

(a) a request is made to a Ministry or prescribed authority for access to a document; and

(b) the document is not in the possession of that Ministry or prescribed authority but is in the possession of another Ministry or prescribed authority or the subject-matter of the document is more closely connected with the functions of another Ministry or prescribed authority than with those of the Ministry or prescribed authority to which the request is made,

the Ministry or prescribed authority to which the request is made may transfer the request to the other Ministry or prescribed authority and inform the person making the request in writing accordingly and, if it is necessary to do so in order to enable the other Ministry or prescribed authority to deal with the request, send any document in its possession to the other Ministry or prescribed authority.

(2) Where a request is transferred to a Ministry or prescribed authority in accordance with this section, it shall be deemed to be a request made to that Ministry or prescribed authority and received at the time at which it was originally received.

23. (1) Where –

(a) a request (including a request of the kind described in subsection 21(3)) is duly made to a Ministry or prescribed authority; and

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the Ministry or prescribed authority; and

(c) the Ministry or prescribed authority could produce a written document containing the information in discrete form by –

(i) the use of a computer or other equipment that is ordinarily available to the Ministry or prescribed authority for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the Ministry or prescribed authority, the Ministry or prescribed authority shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the Ministry or prescribed authority had such a document in its possession. .

(2) A Ministry or prescribed authority is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the Ministry or prescribed authority.

24. (1) Where a request for access to a document is duly made, and payment is made of any charge or fee that is required to be paid before access is granted, access to the document shall be given promptly in accordance with this Act.

(2) Where a document already exists in paper form at the time of the making of a request, no fee shall be paid by the applicant to have access to such document, where the document exists electronically, on film, or otherwise, the applicant shall pay a fee to be prescribed by the Minister in Regulations made under this section.

(3) The expression “duly made” occurring in subsection (1) means that the request shall be in writing.

25. If a request to a Ministry or prescribed authority –

(a) is made in writing and is expressed to be in pursuance of this Act; and

(b) is sent by post to the Ministry or prescribed authority, or delivered to the appropriate officer of the Ministry or prescribed authority, at an address of the Ministry or prescribed authority, as the case may be, to which requests made in pursuance of this Act may be sent or delivered in accordance with this section, the Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than three working days where the document already exists at the time of making the request and two weeks after the day on which the request is received by or on behalf of the Ministry or prescribed authority, where the document does not yet exist or is not readily available.

26. (1) Access to a document may be given to a person in one or more of the following forms:

(a) a reasonable opportunity to inspect the document;

(b) provision by the Ministry or prescribed authority of a copy of the document;

(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

(d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the Ministry or prescribed authority of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 19, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant – (a) would interfere unreasonably with the operations of the Ministry or prescribed authority; or (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or (c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document, access in that form may be refused and access given in another form.

27. (1) A Ministry or prescribed authority which receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the Ministry or prescribed authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

28. (1) Where –

(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document; and

(b) it is practicable for the Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and

(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy with deletions, the Ministry or prescribed authority shall grant access to such a copy of the document.

(2) Where access is granted to a copy of a document in accordance with subsection (1) –

(a) the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any matter deleted is exempt matter; and

(b) section 30 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the Ministry or prescribed authority to furnish him with a notice in writing in accordance with that section.

29. A decision in respect of a request made to a Ministry or prescribed authority may be made on behalf of the Ministry or prescribed authority by the responsible Minister or the principal officer of the Ministry or prescribed authority or, subject to the Regulations, by an officer of the Ministry or prescribed authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the responsible Minister or the principal officer of the Ministry or prescribed authority.

30. (1) Where, in relation to a request for access to a document of a Ministry or prescribed authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred, the Ministry or prescribed authority shall cause the applicant to be given notice in writing of the decision, and the notice shall –

(a) state the findings on any material questions of fact, referring to the material on which those findings are based, and the reasons for the decision;

(b) where the decision relates to a document of any Ministry or prescribed authority, state the name and designation of the person giving the decision; and

(c) inform the applicant of his right to apply for judicial review of the decision.

(2) A Ministry or prescribed authority

## PART VI Exempt Documents

31. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure –

- (a) would prejudice the security, defence or international relations of Barbados; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Barbados.

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where a Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) The responsible Minister may delegate his powers under this section to the principal officer of the Ministry or the prescribed authority, as the case may be.

32. (1) A document is an exempt document if it is –

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed to be submitted; or
- (b) an official record of the Cabinet; or
- (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or (d) a document the disclosure of which would involve disclosure of any deliberation or advice of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.

(3) Where a document is a document referred to in subsection (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) A reference in this section to the Cabinet shall be read as including a reference to a committee or subcommittee of the Cabinet.

33. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to –

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(c) disclose, or enable a person to ascertain the identity of, a confidential source of information in relation to the enforcement or administration of the law;

(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or (e) endanger the lives or physical safety of persons (including prosecution witnesses) engaged in or in connection with law enforcement.

No. 19 of 2004. *The Freedom of Information Act, 2004.* 1 ANTIGUA AND BARBUDA



[ L.S. ]

I Assent,

James B. Carlisle,  
*Governor-General*

5th November, 2004.

ANTIGUA AND BARBUDA

No. 19 of 2004

AN ACT to promote maximum disclosure of information in the public interest, to guarantee and facilitate the right of access to information and to provide for effective mechanisms to secure that right.

*[Published in the Official Gazette Vol. XXIV No. 93 dated 23rd December, 2004]*

ENACTED by the Parliament of Antigua and Barbuda as follows:

**PART I**

**PRELIMINARY**

1. This Act may be cited as the Freedom of Information Act, 2004 and, shall come into operation on a date appointed by the Minister by Notice published in the *Gazette*. Short title and Commencement.

2. In this Act, unless the context otherwise requires: — Interpretation.

"Commissioner" means the Information Commissioner, appointed pursuant to Part V;



ANTIGUA AND BARBUDA	2	<i>The Freedom of Information Act, 2004.</i>	No. 19 of 2004.
		<p>"information officer" means a person so designated pursuant to section 9 (1);</p> <p>"Minister" means the Minister responsible for public information;</p> <p>"official" means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full time;</p> <p>"personal information" means information which relates to a natural living person who can be identified from that information;</p> <p>"public authority" has the meaning given to it pursuant to section 3(1);</p> <p>"publish" means make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination; and</p> <p>"record" has the meaning set out in section 4.</p>	
Interpretation of "public authority" and "private" body.		<p>3. For the purposes of this Act, a public authority means —</p> <p>(a) the Government;</p> <p>(b) a Ministry of the Government and a department, division or unit, by whatever name known, of a Ministry;</p> <p>(c) the Barbuda Council established under section 123 of the Constitution and the Barbuda Local Government Act;</p> <p>(d) a body —</p> <p style="padding-left: 20px;">(i) established by or under the Constitution or any other law;</p> <p style="padding-left: 20px;">(ii) owned, controlled or substantially financed by the Government from public funds;</p>	

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	<ul style="list-style-type: none"> <li>(iii) carrying out a function conferred by law or by executive action, or a public function conferred by the Government, only to the extent of that function;</li> <li>(e) such other body carrying out a public function as the Minister may, by Order published in the <i>Gazette</i>, designate.</li> </ul>	
<p>4. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified.</p>		<b>Records.</b>
(2) A public authority holds a record if —		
(a) the public authority holds the record, other than on behalf of another person; or		
(b) another person holds the record, on behalf of the public authority.		
5. This Act binds the Crown.		<b>Act binds the Crown.</b>
<p>6. (1) Within the broad objectives of section 12 of the Constitution, every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by public authorities (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.</p>		<b>Principles and objectives, and construction of Act in relation to other laws, etc.</b>
(2) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.		
(3) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice.		

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Non-application of Act.		7. This Act does not apply to —	
Cap. 91		<p>(a) a commission of inquiry or the proceedings and findings of such a Commission, established pursuant to the Commissions of Inquiry Act;</p> <p>(b) such public authority or function of a public authority as the Minister may, by Order subject to negative resolution of the House of Representatives, determine;</p> <p>(c) a court, or the holder of a judicial office or other office pertaining to a court in its capacity or his capacity as such; or</p> <p>(d) a registry or other office of a court and the staff of such a registry or other office in their capacity as members of that staff in relation to matters pertaining to the administration of the court.</p>	
<b>PART III MEASURES TO PROMOTE OPENNESS</b>			
Guide to using this Act.		<p>8. (1) The Commissioner shall, as soon as practicable, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in an accessible form.</p> <p>(2) The guide published under subsection (1) shall be updated on a regular basis and in any case once every five years.</p>	
Information officers of public authorities.		<p>9. (1) Every public authority shall designate one of its officers as an information officer and ensure that members of the public have easy access to the information officer, including his or her name, function and contact details.</p> <p>(2) The information officers shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities—</p> <p>(a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance</p>	

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of the public authority relating to the provision of information pursuant to this Act.			
(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and			
10. (1) Every public authority shall, in the public interest, publish and disseminate in an accessible form, updated annually, basic information, clearly dated including —			<b>Duty to publish basic information.</b>
(a) an accurate and sufficiently detailed description of its structure, functions, duties and finances;			
(b) relevant details concerning any services it provides directly to members of the public;			
(c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that authority, together with a summary of any requests, complaints or other direct actions by members of the public and that authority's response;			
(d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;			
(e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;			
(f) any regulations, policies, rules, guides or manuals regarding the discharge by that authority of its functions;			
(g) the content of all decisions and policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and			
(h) any mechanisms or procedures by which members			

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		influence the formulation of policy or the exercise of powers by that public authority.	
		(2) The Minister may, by direction in writing, authorise the publication in a single document of any statements required to be published in pursuance of this Part by a public authority together with the statements required to be published by any other public authority for which the first-mentioned authority is responsible; and where a direction has been issued, that other public authority shall be treated as having complied with this Part.	
Guidance on duty to publish.		<p>11. The Commissioner shall—</p> <p>(a) publish a guide on minimum standards and best practices regarding the duty of public authorities to publish information pursuant to section 10; and</p> <p>(b) upon request, provide advice to public authorities regarding the duty to publish information pursuant to section 10.</p>	
Maintenance of records.		<p>12. (1) Every public authority shall maintain its records in a manner which facilitates the right of access to information, as provided for in this Act, and in accordance with the Code of Practice issued pursuant to subsection (3).</p> <p>(2) Every public authority shall establish and maintain adequate procedures for the correction of personal information held by it.</p> <p>(3) The Commissioner shall, after appropriate consultation with interested parties, issue and, from time to time, update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the Archives and Records Office established under the Archives and Records Act.</p>	
Cap. 35.			
Training of officials.		13. Every public authority shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.	
Reports to Commissioner.		14. The information officer of a public authority shall, in each financial year, submit to the Commissioner a report on the activities	

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of the public authority pursuant to, or promoting compliance with, this Act, which shall include information about —

- (a) the number of requests for information received, granted in full or in part, or refused;
- (b) how often and which provisions of this Act were relied upon to refuse, in part or in full, requests for information;
- (c) appeals from refusals to communicate information;
- (d) fees charged for requests for information; and
- (e) its activities pursuant to sections 10 and 12.

**PART III  
RIGHT OF ACCESS TO INFORMATION**

15. (1) Notwithstanding any law to the contrary and subject to the provisions of this Act, every person has the right to obtain, on request, access to information. Right of access.

(2) Nothing in this Act shall prevent a public authority from giving access to documents or information other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a court.

16. (1) A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to — Access procedure not to apply to certain documents.

- (a) a document which contains information that is open to public access, as part of a public register or other document, in accordance with any other written law, where that access is subject to a fee or any other charge;
- (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;
- (c) a document that is available for public inspection in a registry maintained by the Registrar or other public authority;

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(d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.

(2) A person making a request for information to a public authority shall be entitled, subject only to the provisions of this Part and Part IV of this Act—

(a) to be informed whether or not the public authority holds a record containing that information or a record from which that information may be derived; and

(b) if the public authority does hold such a record, to have that information communicated to him.

Requests for information.

17. (1) For the purposes of section 15, a request for information shall be made by the applicant in writing addressed to a senior official or the information officer of a public authority or private body and in sufficient detail to facilitate a determination, with reasonable effort, whether or not the authority holds a record containing that information.

(2) Where a request for information does not comply with the provisions of subsection (1), the official who receives the request shall, subject to subsection (5), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with subsection (1).

(3) A person who is unable, because of illiteracy or disability, to make a written request for information may make an oral request, and the official who receives the oral request shall, subject to subsection (5), reduce it to writing, and include his name and position within the public authority, and give a copy thereof to the person who made the request.

(4) The reason for a request for information made to a public authority is irrelevant for the purpose of deciding whether the information should be provided.

(5) An official who receives a request for information may transfer that request to the relevant information officer for purposes of complying with subsection (2) or (3).

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(6) Without prejudice to the power of the Minister to make regulations, a public authority may prescribe a form for requests for information, in a format that does not unreasonably delay the processing of requests or place an undue burden upon those making requests.

(7) An official of a public authority which receives a request for information shall provide the person making the request with a receipt documenting the request.

18. (1) Subject to subsections (2) and (3), an official of a public authority must respond to a request for information as soon as practicable and in any event within twenty working days of receipt of the request if the request has been approved and the applicant has paid the fees required to be paid under section 20.

**Time limits for responding to requests.**

(2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the official shall provide a response within 48 hours.

(3) The official of a public authority may, by notice in writing within the initial period of twenty days extend the period in subsection (1) to the extent strictly necessary, and in any case to not more than forty working days, where the request is for a large number of records or requires a search through a large number of records and where compliance within twenty working days would unreasonably interfere with the operations of the public authority.

(4) Failure to comply with the time-limits prescribed or permitted under this section is deemed to be a refusal of the request.

19. (1) The response pursuant to section 18 to a request for information shall be made in writing and state — **Notice of response.**

- (a) the applicable fee, if any, pursuant to section 20, in relation to any part of the request which is granted, and the form in which the information will be communicated;
- (b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part IV;



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		<p>(c) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and</p> <p>(d) the right of appeal to the Commissioner or to a judicial review available to the applicant.</p> <p>(2) The response pursuant to section 18 to a request for information shall be made in writing and state —</p> <p>(a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 20, and the form in which the information will be communicated; and</p> <p>(b) in relation to any part of the request which is not granted, adequate reasons for the refusal.</p> <p>(3) In relation to a request or any part of a request that is granted, communication of the information must take place forthwith, subject only to section 20.</p>	
<p>Fees.</p>		<p>20. (1) The communication of information pursuant to a request may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.</p> <p>(2) Payment of a fee shall not be required for requests for personal information, and requests in the public interest.</p> <p>(3) The Minister may, after consultation with the Commissioner, make Regulations providing —</p> <p>(a) for the fees to be paid;</p> <p>(b) for the manner in which fees are to be calculated;</p> <p>(c) that no fee is to be charged in cases specified in the Regulations; and</p> <p>(d) for any other matter relating to fees.</p>	

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(4) A public body shall not require payment of a fee pursuant to subsection (1) where the cost of collecting that fee would exceed the amount of the fee.			
21. (1) Where a request indicates a preference as to the form of communication of information provided in subsection (2), a public authority communicating information pursuant to a request for information shall, subject to subsection (3), do so in accordance with the preference indicated by the applicant.			
Means of communicating information.			
(2) An applicant may, in a request for information, indicate the following preferences as to the form of communication of information—			
(a) a true copy of the record in permanent or other form;			
(b) an opportunity to inspect the record, where necessary using equipment normally available to the public authority;			
(c) an opportunity to copy the record;			
(d) a transcript of the record in print, electronic, sound or visual form;			
(e) a transcript of the content of a record, in print, electronic, sound or visual form, where such transcript is capable of being produced using equipment normally available to the authority; or a transcript of the record from shorthand or other codified form.			
(3) A public authority shall not be required to communicate information in the form indicated by the person making the request where to do so would—			
(a) unreasonably interfere with the operations of the public authority; or			
(b) adversely affect the preservation of the record.			
(4) Where a record exists in more than one language, communication of the record shall, from among those languages,			

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If a record is not held.		be given in accordance with the language preference of the person making the request.	
		22. (1) Where an official who receives a request for information believes, on reasonable grounds, that the request relates to information that is not contained in any record held by the public authority, the official may transfer the request to the information officer for purposes of compliance with this section.	
		(2) Where an information officer receives a request pursuant to subsection (1), he shall confirm whether or not the public authority holds a record containing the information and, if it does not, he shall, if he knows of another public authority which holds the relevant record, as soon as practicable —	
		(a) transfer the request to that public authority and inform the applicant of such transfer; or	
		(b) indicate to the applicant which public authority holds the relevant record;	
		whichever would be likely to ensure more expeditious access to the information.	
		(3) Where a request is transferred pursuant to subsection (2) ((a), the time limit for responding to requests under section 18 shall begin to run from the date of the transfer.	
Vexatious, repetitive or unreasonable requests.		23. (1) A public authority is not required to comply with a request for information which is vexatious or unreasonable or where it has recently complied with a substantially similar request from the same person.	
		(2) A public authority is not required to comply with a request for information where to do so would unreasonably affect its financial or other resources.	
		<b>PART IV EXCEPTIONS TO GENERAL RIGHT OF ACCESS</b>	
Public interest to override all other considerations.		24. Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm that would result from the refusal outweighs the public interest in the disclosure of that information.	

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25. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception specified in this Part, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the person making the request. **Severability of information.**

26. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a third party who is a natural person. **Personal information.**

(2) Subsection (1) does not apply if —

- (a) the third party has effectively consented to the disclosure of the information;
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;
- (c) the third party has been deceased for more than 20 years; or
- (d) the third party is or was an official of a public authority and the information relates to his function in that capacity.

27. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it. **Legal privilege.**

28. A public authority may refuse to communicate information if — **Commercial and confidential information.**

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
- (b) the information was obtained in confidence from a third party and —
  - (i) it contains a trade secret; or

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		(ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or	
		(c) the information was obtained in confidence from another State or an international organization, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organization.	
<b>Health and safety.</b>		<b>29.</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any person.	
<b>Law enforcement.</b>		<b>30.</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to —	
		(a) the prevention or detection of crime;	
		(b) the apprehension or prosecution of offenders;	
		(c) the administration of justice;	
		(d) the assessment or collection of any tax or duty;	
		(e) the operation of immigration controls; or	
		(f) the assessment by a public authority of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.	
<b>Defence and security.</b>		<b>31.</b> A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of Antigua and Barbuda.	
<b>Public economic interests.</b>		<b>32.</b> (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the Government to manage the economy of Antigua and Barbuda.	

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(2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of the public authority or another public authority.

(3) Subsections (1) and (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

33. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to — **Policy making and operations of public authorities.**

- (a) cause serious prejudice to the effective formulation or development of Government policy;
- (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
- (c) significantly undermine the deliberative process in a public authority by inhibiting the free and frank provision of advice or exchange of views; or
- (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public authority.

(2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, which is —

- (a) the official record of any deliberation or decision of Cabinet;
- (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by the Cabinet and which is related to issues that are or have been before Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;

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- (d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or
- (e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

(3) Subsections (1) and (2) do not apply to facts, analyses of facts, technical or scientific data or statistical information unless the disclosure would involve the disclosure of any deliberation or decision of Cabinet.

Time limits. 34. (1) The provisions of sections 27 to 32 apply only to the extent that the harm they seek to protect against would, or would be likely to, occur at or after the time at which the request is considered.

(2) Sections 28(c), 30, 31, and 32 do not apply to a record which is more than thirty years old or such other longer or shorter period as the Minister may, by Order published in the Gazette, prescribe either generally or in respect of any particular class of records.

**PART V  
INFORMATION COMMISSIONER AND  
EMPLOYEES, ETC.**

Appointment of Information Commissioner. 35. (1) The Governor-General, acting on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution, shall appoint an Information Commissioner for the purposes of this Act, on such terms and conditions as may be specified in the instrument of his appointment.

(2) A person shall not be qualified to hold office as Commissioner if that person —

- (a) is a member of the House of Representatives or a member of the Senate;
- (b) holds or is acting in a public office;
- (c) is an undischarged bankrupt, having been declared bankrupt under any law;

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	<p>(d) has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or</p> <p>(e) holds office in, or is an employee of, a political party or is a political activist.</p>		
	<p>(3) The Commissioner shall hold office for a term of three years and may be re-appointed for a further term of three years, but shall not hold office for more than two consecutive terms.</p>		
	<p>(4) The Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.</p>		
	<p>36. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.</p>	Appointment of staff.	
	<p>37. In addition to any other functions under this Act, the functions of the Commissioner shall be —</p>	Functions of Commissioner.	
	<p>(a) to monitor and report on the compliance by public authorities with their obligations;</p> <p>(b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;</p> <p>(c) to undertake or promote the training of officials of public authorities and other persons on the right to information and the effective implementation of this Act;</p>		
	<p>(d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences; and</p>		



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Independence of Commissioner and employees of Commissioner's Office.

38. (1) In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority.

(2) All officers and employees of the Office of the Commissioner and any other persons authorised to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.

Annual reports.

39. (1) The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the Office of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.

(2) The Minister shall cause a copy of each annual report submitted pursuant to subsection (1) to be laid before the House of Representatives as soon as practicable after he has received the report.

Exemption from personal liability.

40. (1) The Commissioner, any officer or employee of his Office or any other person acting on behalf of or under the direction of the Commissioner shall not be personally liable in criminal or civil proceedings for any act done in good faith pursuant to this Act.

(2) For the purposes of proceedings for defamation, any information provided, whether orally or in writing, pursuant to an investigation by or on behalf of the Commissioner under this Act shall be treated as privileged information unless it is shown that that information was not provided in good faith.

**PART VI  
ENFORCEMENT BY COMMISSIONER**

Complaints to Commissioner.

41. A person who has made a request for information may apply in writing to the Commissioner for a decision that a public

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authority has failed to comply with an obligation under Part III, including the following:

- (a) refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 16;
  - (b) failing to respond to a request for information within the time limits established in section 18;
  - (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 19;
  - (d) failing to communicate information forthwith, contrary to section 19 (3);
  - (e) charging an excessive fee, contrary to section 20; or
- failing to communicate information in the form requested, contrary to section 21.

42. (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 41 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public authority or private body an opportunity to provide their views in writing.

Decision on complaints.

(2) The Commissioner may summarily reject an application—

- (a) which is frivolous, vexatious or unreasonable; or
- (b) if the applicant has failed to seek or use any other remedies established by the relevant public which are available to him.

(3) In an application pursuant to section 41, the burden of proof shall be on the public authority to show that it acted in

(3) In an application pursuant to section 41, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under Part III,

(4) In a decision pursuant to subsection (1), the Commissioner may —

- (a) dismiss the application; or

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		<p>(b) require the public authority or private body to take such steps as may be necessary to bring it into compliance with its obligations pursuant to Part II.</p> <p>(5) The Commissioner shall provide a copy of the decision to the complainant and the public authority together with information regarding the right of the parties to a review of the Commissioner's decision.</p>	
<b>Direct implementation of decision.</b>		<p>43. (1) Where Commissioner decides that a public authority has failed to comply with an obligation pursuant to Part II, the Commissioner may require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under Part II, including the following —</p> <ul style="list-style-type: none"> <li>(a) appointing an information officer;</li> <li>(b) publishing the relevant information and categories of information;</li> <li>(c) making relevant changes to its practices in relation to the keeping, management and destruction of records, and the transfer of records to the Archives and Records Office;</li> <li>(d) enhancing the provision of training on the right to information for its officials;</li> <li>(e) providing the Commissioner with an annual report, in compliance with section 14.</li> </ul> <p>(2) The Commissioner shall serve notice of the decision, to the public authority together with information regarding the right of the public authority to a review of the Commissioner's decision.</p>	
<b>Commissioner's powers to</b>		<p>44. (1) In coming to a decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct an</p>	
<b>Commissioner's powers to investigate.</b>		<p>44. (1) In coming to a decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.</p> <p>(2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies,</p>	

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and no such record may be withheld from the Commissioner on any grounds.

45. (1) The complainant, or the relevant public authority may, within 28 days, apply to the High Court for a review of a decision of the Commissioner pursuant to section 42 or 43, or an order pursuant to section 44 (1). **Review of Commissioner's decisions and orders.**

(2) In any review of a decision pursuant to subsection (1), the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Part III.

46. On the expiry of the period of 28 days referred to in section 45 or such longer period as the Commissioner may, pursuant to a decision or order under section 42 or 43 determine, the decision of the Commissioner shall become binding. **Commissioner's decisions and orders binding.**

**PART VII  
BONA FIDE DISCLOSURE OF WRONGDOING**

47. (1) A person may disclose information to the Commissioner or to any other authority on the wrong-doing by a public authority concerning — **Whistle-blowers.**

- (a) a serious threat to the health or safety of an individual or a serious threat to the public or the environment;
- (b) the commission of a criminal offence;
- (c) failure to comply with a legal obligation;
- (d) a miscarriage of justice;
- (e) corruption, dishonesty or serious maladministration;

abuse of authority or neglect in the performance of official duty;

- (g) injustice to an individual;

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(h) unauthorised use of public funds,

and that person shall not be liable in any legal proceedings or to any sanction relating to his employment if the information was disclosed in good faith and in the reasonable belief that it was true.

(2) A person who, pursuant to subsection (1), discloses information maliciously or without reasonable belief of the truthfulness of that information, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

**PART VIII  
MISCELLANEOUS**

**Offences.** 48. (1) A person shall not wilfully —

- (a) obstruct access to any record contrary to Part III of this Act;
- (b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act;
- (c) interfere with the work of the Commissioner;
- (d) destroy, mutilate, remove or in any way alter a record with intent to prevent the disclosure of information contained therein; or
- (e) fail to comply with a decision or an order of the Commissioner made pursuant to section 42 or 43.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both.

**Regulations.** 49. (1) The Minister may, after consultation with the Commissioner, make Regulations for the purpose of giving effect to the provisions of this Act.

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(2) Regulations made pursuant to this section shall be subject to negative resolution of the House of Representatives.

Passed the House of Representatives this 27th day of October, 2004. Passed the Senate this 28th day of October, 2004.

D. Giselle Isaac-Arrindell,  
*Speaker.*

Dr. Edmond A. Mansoor,  
*President.*

Y. Henry,  
*Acting Clerk to the House of Representatives.*

Y. Henry,  
*Acting Clerk to the Senate.*

## Annex 3

### Participants of the First Consultation Workshop for ITU/EU funded HIPCAR Project Working Group dealing with ICT Legislative Framework – Information Society Issues Gros Islet, Saint Lucia, 8-12 March 2010

#### Officially Designated Participants and Observers

Country	Organization	Last Name	First Name
Antigua and Barbuda	Ministry of Information, Broadcasting, Telecommunications, Science & Technology	SAMUEL	Clement
Bahamas	Utilities Regulation & Competition Authority	DORSETT	Donavon
Barbados	Ministry of Finance, Investment, Telecommunications and Energy	BOURNE	Reginald
Barbados	Ministry of Trade, Industry and Commerce	COPPIN	Chesterfield
Barbados	Cable & Wireless (Barbados) Ltd.	MEDFORD	Glenda E.
Barbados	Ministry of Trade, Industry and Commerce	NICHOLLS	Anthony
Belize	Public Utilities Commission	SMITH	Kingsley
Grenada	National Telecommunications Regulatory Commission	FERGUSON	Ruggles
Grenada	National Telecommunications Regulatory Commission	ROBERTS	Vincent
Guyana	Public Utilities Commission	PERSAUD	Vidiahar
Guyana	Office of the Prime Minister	RAMOTAR	Alexei
Guyana	National Frequency Management Unit	SINGH	Valmikki
Jamaica	University of the West Indies	DUNN	Hopeton S.
Jamaica	LIME	SUTHERLAND CAMPBELL	Melesia
Saint Kitts and Nevis	Ministry of Information and Technology	BOWRIN	Pierre G.
Saint Kitts and Nevis	Ministry of the Attorney General, Justice and Legal Affairs	POWELL WILLIAMS	Tashna
Saint Kitts and Nevis	Ministry of Youth Empowerment, Sports, Information Technology, Telecommunications and Post	WHARTON	Wesley
Saint Lucia	Ministry of Communications, Works, Transport and Public Utilities	FELICIEN	Barrymore
Saint Lucia	Ministry of Communications, Works, Transport and Public Utilities	FLOOD	Michael R.
Saint Lucia	Ministry of Communications, Works, Transport and Public Utilities	JEAN	Allison A.
Saint Vincent and the Grenadines	Ministry of Telecommunications, Science, Technology and Industry	ALEXANDER	K. Andre
Saint Vincent and the Grenadines	Ministry of Telecommunications, Science, Technology and Industry	FRASER	Suenel
Suriname	Telecommunicatie Autoriteit Suriname / Telecommunication Authority Suriname	LETER	Meredith

Country	Organization	Last Name	First Name
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Trinidad and Tobago	Ministry of Public Administration, Legal Services Division	MAHARAJ	Vashti
Trinidad and Tobago	Telecommunications Authority of Trinidad and Tobago	PHILIP	Corinne
Trinidad and Tobago	Ministry of Public Administration, ICT Secretariat	SWIFT	Kevon

### Regional / International Organizations' Participants

Organization	Last Name	First Name
Caribbean Community Secretariat (CARICOM)	JOSEPH	Simone
Caribbean ICT Virtual Community (CIVIC)	GEORGE	Gerry
Caribbean ICT Virtual Community (CIVIC)	WILLIAMS	Deirdre
Caribbean Telecommunications Union (CTU)	WILSON	Selby
Delegation of the European Commission to Barbados and the Eastern Caribbean (EC)	HJALMEFJORD	Bo
Eastern Caribbean Telecommunications Authority (ECTEL)	CHARLES	Embert
Eastern Caribbean Telecommunications Authority (ECTEL)	GILCHRIST	John
Eastern Caribbean Telecommunications Authority (ECTEL)	HECTOR	Cheryl
International Telecommunication Union (ITU)	CROSS	Philip
International Telecommunication Union (ITU)	LUDWIG	Kerstin
Office of Trade Negotiations (formerly CRNM) Caribbean Community Secretariat (CARICOM)	BROWNE	Derek E.
Organization of Eastern Caribbean States Secretariat (OECS)	FRANCIS	Karlene

### HIPCAR Project Experts

Last Name	First Name
MARTÍNS DE ALMEIDA	Gilberto
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PRESCOD	Kwesi

<sup>50</sup> Workshop Chairperson







