

**IN THE SECOND SESSION OF THE SIXTH  
PARLIAMENT OF THE FOURTH REPUBLIC OF  
GHANA**



PARLIAMENT OF GHANA LIBRARY  
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**REPORT OF THE COMMITTEE ON  
CONSTITUTIONAL, LEGAL AND  
PARLIAMENTARY AFFAIRS**

**ON THE  
RIGHT TO INFORMATION BILL**

**DECEMBER 2014**

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## **1.0 INTRODUCTION**

1.1 The **Right to Information Bill** was presented to Parliament and read the first time on **Tuesday, 12<sup>th</sup> November, 2013**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

1.2 The Committee during the consideration of the Bill received Memoranda from the under-listed organisations:

- i. The Forum for Former Members of Parliament
- ii. The Coalition on the Right to Information, Ghana
- iii. The Office of the National Chief Imam and the Muslim Community Ghana
- iv. The Commonwealth Human Rights Initiative (CHRI, Africa Office)
- v. The Perceptor of Sentiments Foundation (POS)
- vi. Persons with Disabilities in Ghana

1.3 Representatives of the above organisations also participated in the Committee's deliberations on the Bill. Officials from the Drafting Division of the Ministry

of Justice and Attorney-General's Department were in attendance at the Meetings to assist the Committee. Also in attendance as Resource Person was a former Member of Parliament, former Chairman of the Committee and former Deputy Minister for Justice and Attorney-General's Department, Hon. Kwame Osei-Prempeh who acted as a Resource Person.

- 1.4 The Committee would like to express its appreciation to all who participated in its deliberations especially, the Coalition on the Right to Information, Ghana.

## **2.0 REFERENCE**

- 2.1 The Committee referred to the following Documents during its deliberations.
- i. The 1992 Constitution
  - ii. The Standing Orders of Parliament
  - iii. The Model Law for African Union Member States on Access to Information
  - iv. Report of the International Advisory Commission of the Commonwealth Human Rights Initiative for year 2003
  - v. Blackstone's Guide to The Freedom of Information Act, Third Edition (2000)
  - vi. Memoranda from the Public

- vii. Draft Report of the Committee on Constitutional, Legal and Parliamentary Affairs on Public Hearing on the Right to Information Bill, 2010-2012
- viii. Right to Information Laws from UK, India, Nigeria, South Africa and Liberia

### **3.0 BACKGROUND**

3.1 The Right to Information is a fundamental human right recognised by the United Nations (UN), the Commonwealth and the African Union. The UN General Assembly in 1946 indicated that "***Freedom of Information is a fundamental human right and is the touchstone for all freedoms to which the UN is consecrated***".

3.2 Further to its earlier declaration of right to information as a human right, the UN Commission on Human Rights appointed a Special Rapporteur who came up with a set of principles which were adopted by the Commission. These include;

- i. obligation on public bodies to disclose information and the right of citizens to receive information;
- ii. public bodies should publish and widely disseminate documents of public interest;

- iii. limited scope of exemption – a refusal to disclose information may not be based on trying to protect government from embarrassment;
- iv. all public bodies are required to establish open, accessible internal systems for the public right to information, setting out strict time limits for processing requests;
- v. fees for gaining access should not be so high as to deter applicants;
- vi. the law should require that other legislations be interpreted as far as possible in a manner consistent with its provisions; and
- vii. whistle blowers should be protected from any legal, administrative or employment related sanction for information on wrong doing.

3.3 Subsequent to the recognition of the right to information as a fundamental human right by the UN, the Commonwealth in 1993 adopted the Commonwealth Freedom of Information Principles on the "***Right to know and the Promotion of Democracy and Development***".

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3.4 The Principles stated inter alia that:

- i. member countries should be encouraged to regard freedom of information as a legal and enforceable right;
- ii. there should be a presumption in favour of disclosure and governments should promote a culture of openness.
- iii. the right to information may be subject to limited exemptions but they should be drawn narrowly.
- iv. governments should maintain and preserve records
- v. decisions to access records and information should be subject to independent reviews.

3.5 In 2002, the African Union (AU) Commission on Human and People's Rights adopted the "***Declaration of Principles on Freedom of Expression in Africa***" to supplement the African Charter which provides that "every individual shall have the right to receive information".

3.6 These principles are as follows;

- i. everyone has the right to access information held by public bodies;

- ii. right to access information held by private bodies which is necessary for the exercise or protection of any right;
- iii. refusal to disclose information should be subject to appeal to an independent body or courts;
- iv. public bodies should proactively publish information of significant interest to the public; and
- v. no one should be subject to any sanctions for releasing in good faith information on wrong doing or information which will disclose a serious threat to health, safety or the environment.

3.7 While the Declaration of 2002 and other such laws adopted by the AU Commission have expanded on State Parties' obligations under the African Charter, they do not specifically provide guidance on the form and content of the legislation to be enacted to give effect to these obligations at the domestic level.

3.8 The AU Commission on Human and People's Rights has therefore gone further to provide a Model Law on Access to Information for Africa. The purpose of the



Model Law is to provide detailed and practical content to the legislative obligations of Member States to the African Charter with respect to the right of access to information. The specific form in which such laws would be adopted has however been left for the individual State Parties to determine, including the nature and scope of adjustments required by their constitutions and the structure of their own legal system.

3.9 In Ghana, right to information is guaranteed by the Constitution. Article 21(1)(f) of the Constitution provides that ***"All persons have the right to information subject to such qualifications and laws as are necessary in a democratic society"***.

3.10 The fundamental principles underpinning any genuine and effective right to information legislation include transparency, openness, effective participation of the population in the process of governance, accountability and the greater participation of the populace in public affairs.

3.11 Efforts to operationalise the right of access to information begun in 1999 when a Bill was drafted and

reviewed in 2003, 2005 and 2007 but was never presented to Parliament.

3.12 The first practical attempt at enacting the law on the right to information, was made when the Bill was presented to Parliament on 5<sup>th</sup> February, 2010 and referred to the Joint Committee on Constitutional, Legal and Parliamentary Affairs and Communications for consideration and report.

3.13 The Joint Committee organised regional consultations in six (6) Regions of the Country and collated views of Ghanaians on the Bill. Unfortunately however, the Fifth Parliament could not finalise the discussions on the Bill for its passage before that Parliament's term came to an end.

3.14 The continued realisation of the importance of the right to information and the desire by Government to ensure that there is transparency in governance has compelled Government to lay the Bill in Parliament once again after having incorporated earlier suggestions into the Bill.

#### **4.0 OBJECT OF THE BILL**

4.1 The Bill is for the purpose of giving substance to Article 21(1)(f) of the Constitution by providing for access to official information held by government agencies and private entities performing public functions; and the qualifications and conditions under which the access would be obtained.

#### **5.0 OBSERVATIONS**

The Committee after its discussions made its observations under the following headings:

- i. Exemptions
- ii. Coverage of the Law
- iii. Ministerial Responsibility
- iv. Appeal/Review Process
- v. Appeal to Supreme Court
- vi. Payment of Fees
- vii. Time Lines

#### **Exemptions**

5.2 The Committee observed that the exemption provision on information not to be disclosed are too wide. Too many exemptions would defeat the purpose of the Bill. The purpose of the Bill is to allow for transparency and accountability in governance. Too many exemptions

would erode whatever benefits the law intends to achieve. The Committee is of the view that every exemption must be subjected to the public interest test. The right to information Law in Nigeria for example states in part that **"Notwithstanding.....an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause"**. Section 25(1) of the AU Model Law states that **"notwithstanding any of the exemptions in this Part, an information holder may only refuse a requester access to information if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably outweighs the public interest in the release of the information"**.

5.3 Clause 18 of the Bill lists four (4) instances where disclosure of information would not be permitted. The right of access to information law is to fight corruption and therefore the large range of exemptions in the Bill must not be encouraged. The public interest consideration is consistent with international best practice and human rights norms that subject

exemptions to a genuine public interest override. Public interest is not a closed category and the danger of a limited public interest override clause is that it may omit an unanticipated situation where the public interest requires that the exemption give way to disclosure. The Committee has therefore proposed amendments to the exemption Clauses in line with international best practice.

### **Scope of the Bill**

5.4 The Committee also observed that the Bill is applicable to only information held by government agencies. The Committee sees it to be too restrictive and therefore the coverage must be widened to cover private bodies that perform public functions with public funds. The Committee is of the view that the public should be able to have right of access to information in the custody of private bodies or agencies especially if the disclosure is in the public interest. It is therefore important to widen the scope to cover private bodies which perform public functions with public funds. It is a fact that in modern governance, non-state actors influence the destinies of millions of people and hence, the necessity to extend the coverage to private bodies.

5.5 The Committee therefore proposes that the term "government body" running through the Bill be deleted and the words "public institution" inserted. This is applicable to both South Africa and Liberia. In both jurisdictions, the right of access to information applies to private entities that receive public resources and benefits or engage in public functions or provides public services, particularly in respect of information relating to the public resources, benefits or services.

### **Ministerial Responsibility**

5.6 Clause 53(1) of the Bill states **"The Minister responsible for Justice has ministerial responsibility for the effective implementation of this Act and may for that purpose, issue written guidelines to agencies and ministries"**. The Committee is of the firm conviction that the provision may not allow for independence of the process since the purpose of the Bill is to ensure transparency and accountability in governance. It is the considered view of the Committee that the ministerial oversight responsibility should be replaced with an independent commission established under the Act to ensure independence in the review process.

5.7 The Commission is to have oversight responsibility for the implementation of the Act. The Committee has therefore proposed the establishment of an independent commission which will have oversight responsibility for the implementation of the law. The Committee therefore, using the AU Model Law has made proposals for the establishment of the Commission which would see to the effective operation of the Act.

#### **Appeal/Review Process**

5.8 Clause 38 of the Bill provides that "***a person aggrieved by a decision of the information officer of an agency may submit an application for review of that decision to the Minister responsible for the agency***". The Bill thus places the internal review on the Minister. The Committee envisages that most of the information to be sought would be government information and hence, the Minister being an interested party may have the tendency to be bias. Apart from that, the Minister may invariably be too busy with other core functions of the Ministry to have time for internal reviews under the Law.

5.9 The internal review function, to the Committee must be taken away from the Minister and given to a non-

political head of the public institution. This becomes more compelling in the light of the Committee's proposal to include private institutions performing public functions with public funds. In India, a person dissatisfied with a request appeals first to a senior officer and further to the Central Information Commission or State Information Commission. In Nigeria, the Law does not make provision for internal review but Appeals go to the High Court for review. In line with the amendment proposed to Clause 38, the Committee has made consequential amendments to the relevant Clauses affected by the review process by the Minister.

### **Appeal to Supreme Court**

5.10 The Committee observed that Section 42 of the Bill makes provision for any person who is refused access to information by an agency to appeal to the Supreme Court for judicial review. It is the view of the Committee that most people would not have the money, determination nor resources to apply for judicial review at the Supreme Court. Whereas the purpose of a right to information law is to make it easier for citizens to access information, the appeal to



the Supreme Court would act as a deterrent to most people from pursuing the appeals process.

5.11 In the United Kingdom, experience has shown that most cases end up at the level of the Information Commissioner or at the Information Tribunal. In India, appeals from Information Review Officers go to either the State Information Commission or the Central Information Commission which are easily accessible to the citizens. In Nigeria, as mentioned earlier, appeals go to the High Court. It is the recommendation of the Committee that appeal from Information Review Officers must end up at the High Court and not in the Supreme Court.

### **Payment of Fees**

5.12 The Committee further observed that provisions on payment of fees for access to information are scattered in different parts of the Bill. In some instances the provisions appear to be inconsistent with each other. While some of the provisions suggest that it is the agency that determines the fees to be charged, other provisions appear to vest in the Attorney-General the power of establishing a scale of fees for all the public institutions. The Committee has therefore realigned all

the provisions on payment of fees and brought clarity in the Provisions.

5.13 The Committee also noted that cost should not be an impediment to the engagement of essential fundamental human right such as the right to information. In almost all the jurisdictions where access to information laws are in operation, fees are charged for the provision of the information. The fee charged in the entire Commonwealth and Africa is limited to the cost of reproducing the information for the applicant. In Liberia, the Act provides that the search for information requested **"shall be done free of charge to the requester but a public entity may charge such amount as is necessary to cover actual cost of photocopying....."**. Section 8 of the Nigerian Act states that **"fees shall be limited to standard charges for document duplication and fees transcription where necessary"**.

5.14 The Committee is of the view that the amount of time used by an agency to search for and retrieve information requested should not be at the cost of the innocent applicant, who is not responsible for the poor system of record-keeping, maintenance and retrieval of

information by the agency. The Committee noted that the payment of advance deposit to be decided by the agency as provided for in Clause 25 of the Bill, may be used to ward off potential information seekers and therefore must be deleted.

5.15 The Committee having carefully considered the issue of fees recommends that the international best practice and human rights norms be adopted. The cost of accessing information from any public institution should therefore be limited to the actual cost of reproduction. The fees would be determined by the Minister for Finance in accordance with the Fees and Charges Act.

### **Time Lines**

5.16 The Committee finally observed that the period within which Information Officers are to take decisions on application for access to information is too long. Clause 23(1) of the Bill states "**Where an application for access is received by an agency, the information officer shall take a decision on the application and send a written notice to the applicant within twenty-one working days from the date of receipt of the application**". Clause 23(3)(a) also provides that "**where the information officer decides to give**

*access, the notice shall state the period, which shall not be more than fourteen days, within which the access can be given".* The Provisions quoted mentioned-afore implies that the Information Officer has twenty-one working days to make a decision as to whether or not the information requested would be given and another fourteen days to provide the information.

5.17 Again twenty-one working days is given for extension of time to deal with applications under Clause 26 of the Bill. The Committee observes that the time lines are too long and counter-productive. It has therefore proposed amendments to reduce the respective periods within which Information Officers have to act.

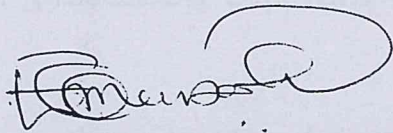
## **6.0 CONCLUSION**

6.1 Our choice of democratic governance entails an active participation by all in the governance of the country. In this participatory democracy, the right to information is particularly relevant and essential to ensure good governance. This is because right to information affords those who participate in governance, the opportunity to access relevant information in order to be well-informed to contribute meaningfully to governance.

6.2 The **Committee** is very much convinced that the **passage** of the Bill would provide an appropriate step for the opening up of governance to the public. This would go a long way to increase transparency and accountability and reduce corruption in our governance system.

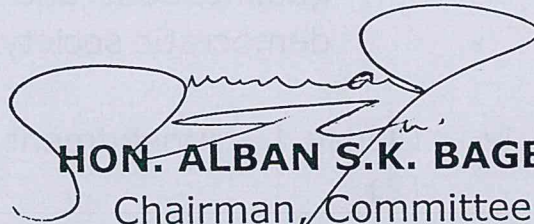
6.3 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the amendments proposed in the Appendix attached.

Respectfully submitted.



**ERIC OWUSU-MENSAH**

Clerk, Committee on  
Constitutional, Legal and  
Parliamentary Affairs



**HON. ALBAN S.K. BAGBIN**

Chairman, Committee on  
Constitutional, Legal and  
Parliamentary Affairs

**DECEMBER 2014**

## **APPENDIX**

### **AMENDMENTS PROPOSED TO THE RIGHT TO INFORMATION BILL, 2013**

- i. General – Amendment proposed – Delete “government agency” or “agency” and substitute with “public institution” wherever it appears in the Bill.
- ii. Long title – Amendment proposed – In line 4, after “transparency” insert “openness”.
- iii. Clause 1 – Amendment proposed – Delete Sub-clause (1) and substitute the following:  
“(1) A person has the right to information, subject to qualifications and laws that are necessary in a democratic society.”
- iv. Clause 1 – Amendment proposed – Delete sub-clause (2).
- v. Clause 1 – Amendment proposed – Delete all words after “application” in Sub-clause (4), line 1.
- vi. Clause 1 – Amendment proposed – Delete sub-clause (5) and substitute the following:  
“(5) Despite subsection (4), where an applicant requests that the application be treated as urgent, the applicant shall state the reason for the urgency.”
- vii. Clause 1 – Amendment proposed – Transposed sub-clause (5) to clause 19.

viii. Clause 2 – Amendment proposed – Delete “In addition to the requirements of article 67 of the Constitution, and subject to this Act”.

ix. Clause 3 – Amendment proposed – Delete sub-clause (1) and substitute with the following:

“(1) A public institution shall, within twelve months from the date of the coming into force of this Act, and every twelve months after that date, compile and publish an up-to-date official information in the form of a manual.”

x. Clause 3 – Amendment proposed – Add the following as a new paragraph (a) to sub-clause (2).

“(a) the list of departments or agencies under that public institution”.

xi. Clause 3 – Amendment proposed – Delete “purchased” and substitute “accessed” in sub-clause (2), paragraph (c), line 1.

xii. Clause 3 – Amendment proposed – Delete “as specified by the Minister responsible for Justice” and substitute “as specified in the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793)” in sub-clause (2), paragraph (c), line 4.

xiii. Clause 3 – Amendment proposed – Delete “as specified by the Minister responsible for Justice” and substitute “as specified in the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793)” in sub-clause (2), paragraph (c), line 5.

xiv. Clause 3 – Amendment proposed – Delete Sub-clause (2), paragraph (d), and substitute the following:

“(d) the name and contact details of the information or designated officer of the public institution to which a request for access may be made.”

xv. Clause 4 – Amendment proposed – Delete clause 4 and substitute the following:

“4. The Information Oversight Commission in consultation with the Attorney-General shall provide guidelines

(a) for the preparation under section 3 of the manual by a public institution; and

(b) for the preparation and publication of an instrument.”

xvi. Clause 5 – Amendment proposed – Delete “or of the Vice-President, or” and insert “and” in sub-clause (1), paragraph (a), line 2.

xvii. Clause 5 – Amendment proposed – Delete paragraph (b) in sub-clause (1) and insert the following:

“(b) if it contains matters the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendation, minutes or consultations made and is likely to

(i) prejudice the effective formulation or development of government policy;

(ii) frustrate the success of a policy by premature disclosure of that policy;



(iii) undermine the deliberative process in the Office of the President by inhibiting the free and frank provision of advice or exchange of views; or prejudice national security."

xviii. Clause 5 – Amendment proposed – Delete sub-clause (2).

xix. Clause 5 – Amendment proposed – Delete "or of the Vice-President" in sub-clause (3), line 3.

xx. Clause 6 – Amendment proposed – Insert "or" after "consideration" in sub-clause (1), paragraph (a), line 2.

xxi. Clause 6 – Amendment proposed – Delete "or" and substitute "and" in sub-clause (1), paragraph (b), line 2.

xxii. Clause 6 – Amendment proposed – Insert the following in sub-clause (1), paragraph (c):

"(c) if it contains matters the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendation, minutes or consultations made and is likely to

- (i) prejudice the effective formulation or development of government policy;
- (ii) frustrate the success of a policy by premature disclosure of that policy;
- (iii) undermine the deliberative process in Cabinet by inhibiting the free and frank provision of advice or exchange of views; or

(iv) prejudice national security”.

xxiii. Clause 6 – Amendment proposed – Delete sub-clause (3) in view of the deletion of clause 5 (2).

xxiv. Clause 6 – Amendment proposed – Delete sub-clause (4) and substitute the following:

“(4) Cabinet may publish or grant access to information that is otherwise exempt under this section”.

xxv. Clause 6 – Amendment proposed – Delete sub-clause (5) and substitute the following:

“(5) For the purposes of this section, Cabinet includes a committee or sub-committee of Cabinet.”

xxvi. Clause 7 – Amendment proposed – Delete the Heading and substitute the following:

“Information relating to law enforcement and public safety”.

xxvii. Clause 7 – Amendment proposed – Add “to” to the opening phrase in sub-clause (1) and delete “to” at the beginning of the paragraphs in sub-clause (1).

xxviii. Clause 7 – Amendment proposed – Add “if” to the opening phrase in sub-clause (2) and delete “if” at the beginning of the paragraphs in sub-clause (2).

xxix. Clause 7 – Amendment proposed – Delete “agency” and substitute “public institution” in sub-clause (2), paragraph (a), line 2.

- xxx. Clause 7 – Amendment proposed – Delete “the” and substitute with “a” in sub-clause (2), paragraph (a), line 3.
- xxxii. Clause 7 – Amendment proposed – Delete “an enactment” and substitute “a law” in sub-clause (2), paragraph (b), line 3.
- xxxiii. Clause 7 – Amendment proposed – Transpose the current sub-clause (3) to clause 9.
- xxxiiii. Clause 7 – Amendment proposed – For a definition of “security of state”, South African legislation and legislation from the United Kingdom should be referred to.
- xxxv. Clause 9 – Amendment proposed – Insert “and security” after “defence” in the Heading.
- xxxvi. Clause 9 – Amendment proposed – Insert the following sub-clauses after sub-clause (1):
- “(2) Information created by or in the custody of the Armed Forces or the security and intelligence agencies established under the Security and Intelligence Agencies Act, 1996 (Act 526) which is likely to threaten the security of the State is an exempt information.
- (3) For the purposes of this section, “security of state” means any action that causes a disturbance of the peace or upsets the stability of the nation.”

xxxvi. Clause 10 – Amendment proposed – Insert a new sub-clause (1) as follows:

“(1) A person is entitled to information on economic interest or any other related interest.”

xxxvii. Clause 10 – Amendment proposed – Delete the opening sentence of sub-clause (2) and substitute the following:

“Despite subsection (1), information is exempt from disclosure prior to official publication if”.

xxxviii. Clause 10 – Amendment proposed – Delete “if” from the beginning of all the paragraphs under clause 10.

xxxix. Clause 10 – Amendment proposed – Insert “or public institution” after “Government” in paragraph (a), line 2.

xl. Clause 10 – Amendment proposed – Insert “or public institution” after “Government” in paragraph (b), line 2.

xli. Clause 10 – Amendment proposed – Delete paragraph (c) and substitute the following:  
“(c) if the disclosure of the information can reasonably be expected to cause a disruption of business or trade in the country”.

xlii. Clause 10 – Amendment proposed – Insert “being” after “negotiations” in paragraph (e), line 2.

xliii. Clause 10 – Amendment proposed – Delete paragraph (f) and substitute the following:

“(f) it contains questions to be used in an examination, recruitment or selection process and the release is likely to jeopardise the integrity of that examination, recruitment or selection process.”

xliv. Clause 11 – Amendment proposed – Delete “whether expressly or impliedly” in sub-clause (1), line 3.

xlv. Clause 11 – Amendment proposed – Delete sub-clause (1), paragraph (a) and substitute the following:

“(a) prejudice the competitive position of a person, a group of persons or an organisation, or  
(b) adversely affect negotiations with a third party.”

xlvi. Clause 11 – Amendment proposed – Delete sub-clause (1), Paragraph (c) and substitute the following:

“(d) result in a public institution not being supplied with similar information where it is in the public interest that the similar information be supplied.”

xlvii. Clause 13 – Amendment proposed – substitute “agencies” with “public institutions.” in the heading.

xlviii. Clause 13 – Amendment proposed – Delete clause 13 and substitute the following:

"13 (1) Information is exempt from disclosure which, if disclosed, would reveal

- (a) an opinion, an advice, a report or a recommendation contained, prepared or recorded, or
- (b) a consultation or a deliberation held in the course of or for the purpose of making a decision in the public service or a public institution of the Government and which can reasonably be expected to frustrate or inhibit the candid and deliberative process of a public institution or between public institutions.

(2) Information which

- (a) merely contains material that has been publicly mentioned as the basis of a public policy or for formulating public policy, or
- (b) contains only factual or statistical data is not exempt information."

xlix. Clause 14 – Amendment proposed – Add "to" to line 2 of the opening sentence.

i. Clause 14 – Amendment proposed – Delete "to" from the beginning of paragraphs (a), (b) and (c).

ii. Clause 15 – Amendment proposed – Delete the heading and substitute "Privileged information."

iii. Clause 15 – Amendment proposed – Delete sub-clause (1), paragraph (b) (ii).

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liii. Clause 15 – Amendment proposed – Clause 15 and 16 are to be merged as they both relate to privileged information.

liv. Clause 16 – Amendment proposed – Clause 16 should therefore be added to clause 15 as sub-clause (3) as follows:

“(3) Information is exempt information where the disclosure of the information reveals confidential communication between a doctor and a patient or any other medical professional expert in connection with the medical diagnosis or treatment of the patient.”

lv. Clause 17 – Amendment proposed – Delete “marriage or” and insert “confidential” before “employment record” in sub-clause (2), paragraph (b).

lvi. Clause 17 – Amendment proposed – Insert “confidential” before “professional” in sub-clause (2), paragraph (d).

lvii. Clause 17 – Amendment proposed – Insert a new paragraph under sub-clause (3) as follows:

“(k) the disclosure is about the physical or mental health or well-being of the individual who is under the care of the applicant and who is

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request

and giving access would be in the best interest of the individual.”

lviii. Clause 18 – Amendment proposed – Delete sub-clause (1) and insert the following:

“(1) Despite the provisions of this Act on exempt information, information is not exempt if the disclosure of the information reveals evidence of

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

and the benefits of disclosure clearly outweigh the harm or danger that the disclosure will cause.”

lix. Clause 18 – Amendment proposed - Add an omnibus provision as sub-clause (2) to clause 18 as follows:

“18 (2) A person who discloses information or authorises the disclosure of information under this section is not liable in criminal or civil proceedings for the disclosure or authorisation of the disclosure of information under this section.”

lx. Clause 19 – Amendment proposed – Delete “agency” and substitute “public institution” in sub-clause (1), paragraph (a).



- ixi. Clause 19 – Amendment proposed – Delete “type” and substitute “form and manner” in sub-clause (1), paragraph (c).
- ixii. Clause 19 – Amendment proposed – Delete “in the country” in sub-clause (1), paragraph (e), line 1.
- ixiii. Clause 19 – Amendment proposed – Delete “relevant” and substitute “prescribed” in sub-clause (1), paragraph (f).
- ixiv. Clause 19 – Amendment proposed – Delete “shall” and substitute “may” in sub-clause (2), line 2.
- ixv. Clause 19 – Amendment proposed – the word “writing” should be defined in the interpretation clause to include “braille” in sub-clause (3), line 3.
- ixvi. Clause 19 – Amendment proposed – In view of the proposal for “writing” in sub-clause (3) to be defined, the new sub-clause (4) reads as follows:
- “19(4) For the purposes of this section, the reference to “writing” in subsection (3) includes “braille.”
- ixvii. Clause 19 – Amendment proposed – Delete “agency” and substitute “public institution” sub-clause (4), line 2.
- ixviii. Clause 19 – Amendment proposed – Delete “document” and substitute “information” in sub-clause (4), line 4.

lix. Clause 19 – Amendment proposed – The new clause 19 sub-clause (6) transposed from clause 1, sub-clause (5) reads as follows:

“19 (6) Where an agency receives an application for access, part of which is exempt, the information officer shall disclose to the applicant as much of the information as can reasonably be separated without disclosing the exempt part.”

lxx. Clause 20 – Amendment proposed – Delete “agency” and substitute “public institution” in sub-clause (1).

lxxi. Clause 20 – Amendment proposed – Delete sub-clause (2).

lxxii. Clause 20 – Amendment proposed – Delete sub-clause (3).

lxxiii. Clause 21 – Amendment proposed – Delete “agency” and substitute “public institution” as a consequential amendment.”

lxxiv. Clause 21 – Amendment proposed – Insert “or the designated officer” after “the information officer” in sub-clause (1), line 7,

lxxv. Clause 21 – Amendment proposed – Delete sub-clause (2) and substitute the following:

“Where an application for access is made and the public institution to which the application is made does not have the information in its custody, the information officer shall, within a period of not more than ten working days,

- (a) make the necessary enquiry to establish whether any other public institution has the information,
- (b) transfer the application to that other public institution if that public institution has the information, and
- (c) notify the applicant accordingly."

lxxvi. Clause 21 - Amendment propose - Insert "other" before the word "agency" (now public institution) in sub-clause (2), paragraph (b), line 2.

lxxvii. Clause 22 - Amendment proposed - Delete paragraph (a).

lxxviii. Clause 22 - amendment proposed - Delete "which is required to be published" and substitute "that will be available to the public institution" in paragraph (b), line 1.

lxxix. Clause 22 - Amendment proposed - Add a new sub-clause (2) as follows:

"22 (2) Where an application for access is deferred for any of the reasons stated in sub-section (1), the information officer shall notify the applicant in writing of

- (i) the reason for the deferment; and
- (ii) the likely period of the deferment."

lxxx. Clause 23 - Amendment proposed - Delete "twenty-one days" and substitute "fourteen days" sub-clause (1).

lxxxii. Clause 23 – Amendment proposed – Delete paragraph (c) in sub-clause (2).

lxxxiii. Clause 23 – Amendment proposed – Delete paragraph (d) in sub-clause (2).

lxxxiv. Clause 23 – Amendment proposed – Delete sub-clause 3, paragraph (a) and substitute the following:

“(a) the period within which the access will be given and the period shall not be more than fourteen days.”

lxxxv. Clause 23 – Amendment proposed – Delete paragraph (e) in sub-clause (3).

lxxxvi. Clause 23 – Amendment proposed – Delete sub-clause (4) and substitute the following:

“(4) Where the public institution decides to refuse access, the notice shall state, the reason for the refusal and the provision under which the decision for the refusal is based.”

lxxxvii. Clause 23 – Amendment proposed – Delete sub-clause (5) and substitute the following:

“(5) Where a public institution fails to determine an application within fourteen days after the application is received by the public institution, the application is deemed to have been refused and the applicant has the right to seek redress under sections 38 to 45.”

lxxxvii. Clause 23 – Amendment proposed – Delete sub-clause (6) and substitute the following:

“(6) Subsection (5) does not apply to an application which has been transferred to another public institution or which the public institution has refused to continue to process for failure to pay the prescribed deposit or fee.”

lxxxviii. Clause 24 – Amendment proposed – Delete “statutory” and substitute “written” in sub-clause (1), line 6.

lxxxix. Clause 24 – Amendment proposed – Insert “signed by that information officer” after “declaration”, in sub-clause (1), line 7.

xc. Clause 25 – Amendment proposed – References to “agency” are to be changed to “public institution” as a consequential amendment.

xc. Clause 25 – Amendment proposed – Delete “advance deposit” and substitute “deposit” wherever it appears in the clause.

xcii. Clause 25 – Amendment proposed – Delete sub-clause (1) and substitute the following:

“(1) Where the cost of providing the information other than the administrative cost is likely to exceed the amount of the application fee, the public institution may request the applicant to pay a reasonable deposit determined by the public institution.”

xciii. Clause 25 – Amendment proposed – Delete sub-clause (2) and substitute the following:

“(2) A deposit required by a public institution under subsection (1) is not part of the application fee, and accordingly a deposit paid in respect of the application which is in excess of the amount which is necessary to cover the costs of providing the information shall be refunded to the applicant”.

xciv. Clause 25 – Amendment proposed – Delete sub-clause (6) as it is already stated in sub-clause (2).

xcv. Clause 26 – Amendment proposed – Delete “documents” and substitute “records” wherever it appears in the clause.

xcvi. Clause 26 – Amendment proposed – Delete sub-clause (1), paragraph (d).

xcvii. Clause 26 – Amendment proposed – Delete sub-clause (2) and substitute the following:

“26 (2) The period of extension shall not exceed fourteen days from the date when a decision on the application should have been made, but the Commission may on an application in writing by the designated information officer, grant a further extension period of not more than fourteen days.”

xcviii. Clause 26 – Amendment proposed - Insert sub-clauses (4), (5) and (6) after sub-clause (3) as follows:

"(4) Despite section 23 (1), where an application relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer shall, within forty-eight hours,

- (a) determine whether or not to grant the application,
- (b) notify the applicant of the decision in writing, and
- (c) give the applicant access to the information where the application is granted.

(5) Despite subsection (4), where the information Requested contains third party information, an applicant may not be granted access to that information until

- (a) the time that the right of a party to appeal against the release of the information has expired, or
- (b) an appeal lodged by the third party has been determined.

(6) Where upon the review of an application it does not appear to the information officer that the information requested reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer shall within forty-eight hours of receipt of the application

- (a) give notice of the decision and reasons for the decision to the applicant, and
- (b) inform the applicant that, subject to the right of the applicant to apply to the Commission for a review, the information officer shall make a decision with respect

to whether to grant access to the requested information within fourteen days."

xcix. Clause 27 – Amendment proposed – Delete "advance deposit" and substitute "deposit" wherever it appears in the clause.

c. Clause 27 – Amendment proposed – Delete sub-clause (2) and substitute the following:

"(2) Where an applicant, after the payment of a deposit, fails to pay for the full cost of the provision of the information, the applicant shall not be given access to the information and is not entitled to a refund of the deposit.

ci. Clause 28 – Amendment proposed – Delete sub-clause (1), paragraph (c).

cii. Clause 28 – Amendment proposed – Delete sub-clause (1), paragraph (e).

ciii. Clause 28 – Amendment proposed – Delete sub-clause (2) and substitute with the following:

"28 (2) Where an information officer refuses to grant access to information for any of the reasons stated in subsection (1), the information officer shall notify the applicant in writing of the reason upon which the refusal is based."

civ. Clause 29 – Amendment proposed – Delete "document containing the" in sub-clause (1), paragraph (a), sub-paragraph (i), lines 1 and 2.



cv. Clause 29 - Amendment proposed - Delete "document containing the" in sub-clause (1), paragraph (a), sub-paragraph (ii).

cvi. Clause 29 - Amendment proposed - Delete "or" in sub-clause (1), paragraph (e), line 4 and substitute "and".

cvi. Clause 29 - Amendment proposed - Delete the words "contained in a document" or "contained in the document" wherever they appear in the clause.

cviii. Clause 29 - Amendment proposed - Delete sub-clause (3) and substitute the following:

"(3) Where access to information has been requested in a particular form, access to information in that form may be refused if

- (a) it is likely to
  - (i) unreasonably interfere with the operations of the public institution;
  - (ii) be detrimental to the preservation of the information; or
- (b) having regard to the physical nature of the information, it is not appropriate to grant access in that form."

cix. Clause 29 - Amendment proposed - Delete sub-clause (4) and substitute the following:

"(4) Where access cannot be given in the form specified by the applicant but can be given in some other form,

- (a) access shall be given in that other form, and

(b) the applicant shall be provided with a reason why access cannot be given in the specified form."

cx. Clause 29 - Amendment proposed - Delete sub-clauses (5).

cx. Clause 29 - Amendment proposed - Delete sub-clause (7).

cxii. Clause 29 - Amendment proposed - Delete sub-clause (6) and substitute the following:

"(6) For the purposes of subsection (4), the applicant shall not be required to pay a fee which is greater than the fee that the applicant would have paid had access been given in the form requested."

cxiii. Clause 31 - Amendment proposed - Delete "in the country" in sub-clause (3).

cxiv. Clause 32 - Amendment proposed - Delete Clause 32.

cxv. Clause 33 - Amendment proposed - Delete Clause 33.

cxvi. Clause 34 - Amendment proposed - Delete Clause 34.

cxvii. Clause 35 - Amendment proposed - Delete Clause 35.

cxviii. Clause 36 – Amendment proposed – Delete Clause 36.

cxix. Clause 37 – Amendment proposed – Delete Clause 37.

cxx. Clause 38 – Amendment proposed – Delete Clause 38 and substitute the following:

**“Right to internal review**

38 (1) Except as otherwise provided in this Act, a person aggrieved by a decision of the information officer of a public institution may submit an application for internal review of that decision to the head of the public institution.

- (2) An application for internal review
- a. may be in writing; or
  - b. may be made orally;
  - c. shall, except where the applicant is exempt, be accompanied with the prescribed fee;
  - d. shall be addressed to the head of the public institution; and
  - e. shall state the request and the decision of the information officer which is the subject of the application for internal review”.

cxxi. Clause 39 – Amendment proposed – Delete Clause 39 and substitute the following:

**“Application for internal review**

39 (1) An application for internal review shall be made within thirty days of the receipt of the decision of an information officer.

- (2) Where an applicant makes a request for internal review, the information officer shall put the oral request into writing and provide a copy of the written request to the applicant.
- (3) Where a request for internal review referred to in subsection (1) is lodged after the expiry of thirty days, the information officer may, upon good cause shown, allow the late lodging of the request.
- (4) On the receipt of a request for internal review, the information officer shall, as soon as practicable, but in any event within five days after receipt of the request,
  - (a) submit to the head of the public institution
    - (i) the request for internal review;
    - (ii) the reasons of the information officer for the decision; and
    - (iii) the application that is the subject of the review; and
  - (b) notify the applicant and other interested persons in writing of the submission of the records to the head of the public institution".

cxxii. Clause 40 – Amendment proposed – Delete Clause 40 and substitute the following:

**"Notice to third parties**

40 (1) The head of a public institution or a relevant private body shall on receipt of a notice of a hearing or an investigation from the

Commission, inform the Commission of all third parties to whom the information relates.

(2) Subject to subsection (3), the Commission shall issue the directions that are necessary to ensure, to the extent reasonably possible, that third parties in matters before it are notified of hearings or investigations.

(3) The Commission may dispense with the notification to third parties where it considers it necessary".

cxxiii. Clause 41 - Amendment proposed - Delete Clause 41 and substitute the following:

**"Decision on internal review**

41 (1) The head of the public institution to whom a request for internal review is made, shall as soon as reasonably practicable, but in any event within fifteen working days of receipt of the request

- (a) make a decision; and
- (b) notify the applicant of that decision in writing.

(2) Where the head of the public institution determines that access should be granted the notice referred to in sub-clause (1) shall state

- (a) the reproduction fee, translation fee or transcription fee payable;
- (b) the form in which access will be given; and

- (c) that the applicant may apply to the Commission established under section.... for a review in respect of
  - (i) the fee payable; or
  - (ii) the form of access and the process for lodging that appeal.
  
- (3) Subject to subsection (4), where an applicant has been notified that access to the information has been granted, that applicant shall, upon payment of the prescribed fee or where no fee is payable, be given access to the information.
  
- (4) Where the head of the public institution decides to release information that contains third party information, the applicant may not be granted access to that information until the time that the right of the third party to appeal against the release of the information has expired or any appeal lodged by the third party has been finally determined.
  
- (5) Where the head of the public institution decides to refuse access to the information, the head of the public institution shall notify the applicant in writing.
  
- (6) The notice to the applicant shall
  - (a) state the reason for the refusal based on the
    - (i) contents of the request; and
    - (ii) the information considered by the head of the public institution;
  - (b) contain a reference to the specific provision of this Act relied on; and

(c) inform the applicant of the right to apply to the Commission for a review of the decision in accordance with section ....and the process of lodging that appeal”.

cxxiv. Clause 42 – Amendment proposed -

**“Delegation of power**

42. The head of the public institution shall exercise the power conferred under section.....”.

cxxv. Clause 43 – Amendment proposed – Delete Clause 43 and substitute the following:

**“Deemed refusal**

43. Where the head of the public institution fails to give a decision on a request for internal review within fifteen days, the head of that public institution is deemed to have affirmed the original decision of the information officer.”

cxxvi. Clause 42 – Amendment proposed – Delete “Supreme Court” and substitute “High Court” in Clause 42.

cxxvii. Clause 43 – Amendment proposed – Delete “Supreme Court” and substitute “High Court” in Clause 43.

cxxviii. Clause 44 – Amendment proposed – Delete “Supreme Court” and substitute “High Court” in Clause 44.

cxxix. Clause 42 – Amendment proposed – Delete “working” before “days” in sub-clause (2), line 2.

cxxx. Clause 42 – Amendment proposed – Delete “of” before “receipt” and substitute “after” in sub-clause (2), line 2.

cxxx. **Insertion of Clauses on the Right to Information Commission**

The following clauses on the Right to Information Commission are to be inserted after Clause 45 and renumbered accordingly.

***“Establishment of the Right to Information Commission***

**Establishment of the Commission**

- 1 (1) There is established by this Act a body to be known as the Right to Information Commission.
- (2) For the performance of its functions, the Commission may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.
- (3) Where there is hindrance to the acquisition of property, the property may be acquired for the Commission under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Commission.

**Object of the Commission**

2 The object of the Commission is to

- (a) promote,
- (b) monitor,
- (c) protect, and



(d) enforce the right of access to information that is granted to a person under paragraph (f) of clause (1) of article 21 of the Constitution.

### **Powers of the Commission**

3 (1) The Commission may determine the nature, process and undertakings necessary for the effective performance of its functions under this Act.

(2) The Commission may

- (a) resolve complaints through negotiation, conciliation or mediation;
- (b) determine the need for, form of and type of investigation required for the determination of any matter;
- (c) make any determination as the Commission considers just and equitable including issuing recommendations or penalties in matters before the Commission;
- (d) dismiss an application for access to information if it considers the application to be manifestly vexatious;
- (e) dismiss a complaint relating to an application for access to information by an applicant where the applicant has failed to comply with a provision of this Act;
- (f) grant condonation where appropriate on the facts of the matter;
- (g) issue written orders requesting for the production of information;
- (h) examine, reproduce, take extracts from or hold information for unlimited periods, including information found in any premises entered

- pursuant to an inspection conducted by the Commission in the performance of the monitoring function of the Commission;
- (i) require the production of information to which access has been refused on the basis of an exemption for the purpose of deciding whether it is an exemption document;
  - (j) limit access to information by parties in terms of this Act; and
  - (k) take any action that is necessary to enable the Commission resolve a complaint before it.
  - (l) undertake any action that it considers necessary for the effective performance of its functions;

### **Functions of the Commission**

4 (1) To achieve its objects, the Commission shall

- (a) determine and issue general directions for the hearing of a matter including notification of parties;
- (b) issue specific directions where sensitive matters relating to the State are concerned;
- (c) issue specific directions in matters concerning confidential information, minors, or circumstances which the Commission considers appropriate for that action;
- (d) decide on matters relating to the need for, form of, issuing and service of notices and communications;
- (e) decide on issues of representation where necessary;
- (f) conduct matters with as little technicality or formality and as expeditiously as possible;
- (g) hold hearings in public unless it is considered inappropriate to so;

- (h) publish its findings, recommendations, orders, decisions and directives quarterly; and
- (i) consider the needs of persons who wish to make protected disclosures, minors and vulnerable groups.

(2) The Commission shall prepare a plain language guide to this Act in all official languages to assist users in requesting information.

### **Composition of the Commission**

5 (1) The Commission shall consist of three members one of whom is the chairperson.

(2) The members of the Commission shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The President shall, in making appointments under this section, have regard to the knowledge, expertise and experience of the persons and in particular their knowledge in matters relevant to the functions of the Commission.

### **Tenure of office**

6 (1) A member of the Commission shall hold office for five years and is eligible for re-appointment.

(2) A member of the Commission may at any time by notice in writing to the President resign office.

(3) The chairperson of the Commission shall notify the President of vacancies which occur in the membership of

the Commission within two months of the occurrence of the vacancy.

- (4) The President may by a letter addressed to a member of the Commission terminate the appointment of that member where that member
- (a) is mentally or physically incapable of performing the functions and duties of the office;
  - (b) is declared insolvent;
  - (c) has engaged in gross misconduct or has been involved in actions that bring the Commission into disrepute;
  - (d) is convicted of a serious offence; or
  - (e) is grossly incompetent.
- (5) The President shall not terminate the appointment of a member of the Commission unless the President has caused an investigation to be made which establishes an allegation against that member.

### **Limitation on outside work**

7 An information commissioner shall not, while in office, occupy any office of profit or engage in any partisan political activity.

### **Independence**

8 (1) Subject to this Act, the Commission shall be independent and autonomous in the performance of its functions.

(2) The Commission shall through the Minister for Finance submit the budget of the Commission to Parliament for approval annually.

- (3) The Commission shall through a process of consultation develop its rules, procedures and code of conduct to regulate its affairs.

### **Appointment of other staff**

- 9 The President may, in accordance with article 195 of the Constitution, appoint officers and other employees that are necessary for the effective implementation of the functions of the Commission.

### **Engagement of expert**

- 10 The Commission may engage the services of an expert for the purpose of exercising a power, duty or function under this Act.

### **Immunity of the Commission and staff**

- 11 (1) Criminal or civil proceedings shall not be initiated against the Commission or against any person acting on behalf or under the direction of the Commission, for anything done, reported or said in good faith in the course of the exercise of a duty or the performance of a function of the Commission under this Act.
- (2) A member of staff who discloses wrongdoing within the Commission shall not be subject to any sanction or disadvantage in the course of employment of that member of staff by reason of the disclosure.

### **Promotion of access to information**

- 12 (1) The Commission shall promote awareness, educate and

propagate the right of access to information.

(2) In promoting awareness of the right of access to information, the Commission shall

- (a) assess all implementation plans required to be submitted by public bodies and relevant private bodies to the Commission to ensure public institutions or relevant private bodies have clear obligations and processes which support awareness raising and education interventions at community level including disadvantaged groups;
- (b) consult and collaborate with civil society organisations and interest groups;
- (c) provide recommendations and guidelines to a public institution or a relevant private body for internal training of personnel, and provide training on request, if resources are available;
- (d) monitor internal training of staff within public bodies and relevant private bodies and issue notices for mandatory training where necessary;
- (e) assist both applicants and a public institution or a relevant private body on matters of interpretation of the Act;
- (f) develop the material that it considers necessary to advance promotion of access to information; and
- (g) make public and widely disseminate its annual report.

(3) In this section, "relevant private body" means a private body that the Minister may by legislative instrument add to the list of private bodies performing a public function.

## **Research and law reform**

- 13 (1) The Commission shall take measures that are necessary to ensure that all proposed or emerging legislation of any status, regulations and practices are aligned to this Act.
- (2) To discharge its obligations under subsection (1), the Commission shall submit recommendations for reform on proposed or emerging legislation to the relevant authorities.
- (3) The Commission may undertake or commission any research it considers necessary or appropriate for the attainment of the objectives of this Act.
- (4) The Commission shall in its annual report to Parliament include a report covering reports of recommendations for reform and any research undertaken by the Commission.

## **Monitoring powers of the Commission**

- 14 (1) A public institution or a relevant private body shall provide the reports that are required under this Act to the Commission.
- (2) The Commission shall
- (a) monitor compliance by a public institution or a relevant private body with this Act;
  - (b) give reasonable notification to a public institution or a relevant private body before taking an action under subsection (4);
  - (c) issue directives to the public institution or a relevant private body;
  - (d) monitor implementation of its directives; and

- (e) following public consultation, develop and publicise guidelines which detail the reporting requirements that apply to a public institution or a relevant private body,.
- (3) The reporting requirements referred to in subsection (2)(e) include the manner, means and time frames that apply to a public institution or a relevant private body.
  - (4) The Commission may, in the performance of its monitoring function,
    - (a) conduct an inspection;
    - (b) undertake an investigation that the Commission considers appropriate in furtherance of the audit;
    - (c) engage with staff of a public institution or a relevant private body;
    - (d) request copies of information;
    - (e) request a public institution or a relevant private body to provide to the Commission further information to facilitate and enhance its monitoring activities;
    - (f) issue an order compelling the provision of further information; and
    - (g) access any information that the Commission considers necessary to undertake the monitoring.
  - (5) Where a public institution or a relevant private body fails to comply with the notice issued by the Commission in subsection (2) (b), the Commission may impose an administrative penalty that the Commission considers necessary.



## **Applications to the Commission**

- 15 (1) A person, who is adversely affected by a decision of a public institution or a relevant private body, may apply to the Commission for a review of the decision.
- (2) An application to the Commission may be made orally or in writing.
- (3) Where an application is made orally, the Commission, shall reduce the oral application to writing and provide a copy of the written record to the applicant.

## **Exhaustion of internal review process**

- 16 Subject to sections 17 (1) and 17 (2), an application to the Commission for the review of the decision of a public institution or a relevant private body may only be submitted to the Commission after the applicant has exhausted all rights of internal review offered by the public institution or relevant private body.

## **Direct access**

- 17 (1) Despite section 16, a person may make an application to the Commission without exhausting the internal review procedure under this Act where
- (a) the information requested is the personal information of the applicant and the initial request to a public institution or a relevant private body has been refused;
- (b) the information requested was previously in the public domain; or

- (c) the head of the public institution or the relevant private body is the information officer of that body.
- (2) An applicant who requests access to information which is reasonably believed to be necessary to safeguard the life or liberty of a person may apply directly to the Commission for a review of the decision if that person
- (a) is refused access to the information; or
  - (b) receives no notice of the decision of the public institution or the relevant private body within forty-eight hours of the request.
- (3) Where the Commission receives an application under subsection (2), the Commission may on an assessment of the facts
- (a) determine the matter summarily; or
  - (b) remit the application to the information officer to undertake further investigation before making a determination.
- (4) A staff member or a public institution or a relevant private body, who wishes to report wrongdoing under this Act, may contact the Commission without exhausting any applicable internal procedures.

### **Right to make representations**

- 18 (1) In a matter before the Commission, reasonable opportunity shall be given to
- (a) the applicant and the requester,
  - (b) the head of the public institution or relevant private body concerned; and
  - (c) a third party, if the information requested contains third party information and the third party can be reasonably located.

(2) The Commission shall uphold the right of the public to be present during a hearing except when, in the view of the Commission, the circumstances dictate that the hearing should be held in camera.

(3) With respect to any matter before it, the Commission may

- (a) summon witnesses, heads of organs of State, or any person where necessary;
- (b) allow an interested party on application to join proceedings;
- (c) provide assistance to an applicant where appropriate;
- (d) allow a relevant person to participate in hearings through any medium that person chooses;
- (e) administer oath and receive any evidence that it considers necessary under oath or on affidavit.

(4) Where a witness fails to appear, the Commission may apply to the Court for an order to compel the attendance of that witness.

### **Notices and communications**

19 (1) The Commission shall serve notice on all relevant parties of

- (a) its findings on
  - (i) an investigation, or
  - (ii) monitoring,
- (b) its summary finding,
- (c) an application,

- (d) a decision on a hearing, or
  - (e) a referral to an appropriate court, including a right of appeal.
- (2) Where in the view of the Commission, service of the notice of the finding will cause prejudice as a result of the sensitive nature of the exempt information, the Commission shall amend the finding in the appropriate manner.
- (3) The Commission may decide to dispense with notification where giving notice may
- (a) prejudice the conduct of an investigation of a breach or possible breach of the law;
  - (b) prejudice the enforcement or administration of the law;
  - (c) endanger the life or physical safety of a person;
  - (d) cause substantial prejudice to the commercial interests of a private individual or a private business; or
  - (e) impair relations between states.

### **Duty to assist the Commission**

- 20 Public institutions, relevant private bodies and interested parties shall assist the Commission in the course of an application or investigation.

### **Orders, decisions and directives**

- 21 (1) The Commission shall issue binding orders or make recommendations on a matter before the Commission.

- (2) A decision of the Commission may include

- (a) an affirmation of the decision of the information holder;
- (b) a variation of the type of access originally granted or requested;
- (a) setting aside the decision of the public institution or relevant private body;
- (b) making a ruling;
- (c) requiring the public institution or relevant private body to take the steps that are necessary to ensure that the public institution or relevant private body has complied with the obligations under this Act;
- (d) imposition of a fine against the public institution or relevant private body where the public institution or relevant private body fails to comply with an obligation under this Act;
- (e) a direction for the execution of warrants for search and seizure;
- (f) mandating negotiation, conciliation and arbitration for the purpose of the resolution of a complaint; or
- (g) imposition of an order for contempt, cost or any other summary order it considers just and equitable.

- (3) The Commission may issue directives that the Commission considers necessary for the enforcement of its decisions.

**Content of and access to findings, recommendation, orders, decisions and directives**

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22 The Commission shall

- (a) produce a statement of facts, findings and reasoning for decisions on matters before it; and
- (b) make a copy of the statement, findings and reasoning available to parties to the matter free of charge.

### **Accounts and audit**

18. (1) The Commission shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.
- (2) The Commission shall submit the accounts of the Commission to the Auditor-General for audit within three months after the end of the financial year.
- (3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.
- (4) The financial year of the Commission shall be the same as the financial year of the Government.

### **Annual report and other reports**

19. (1) The Commission shall within one month after the receipt of the audit report submit an annual report to the Minister responsible for Justice covering the activities and the operations of the Commission for the year to which the report relates.
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- (2) The annual report shall include the report of the Auditor-General.

- (3) The Minister responsible for Justice shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister responsible for Justice considers necessary.
- (5) The Commission shall also submit to the Minister responsible for Justice any other report which the Minister responsible for Justice may require in writing."

cxxxii. Clause 46 – Amendment proposed – Delete Clause 46 and substitute the following:

**"Burden of proof**

46. (1) Subject to subsection (3), the public institution or relevant private body shall bear the burden of proof.

(2) Where the public institution or relevant private body refuses to grant access to information, that public institution or relevant private body shall be required to prove that

(a) the information requested is exempt from disclosure under this Act; and

(b) more harm would be caused by the release of the information to the applicant over and above the public interest in the release of the information.

(3) The applicant bears the burden of proof where

(a) a request to a relevant private body is

refused on the basis that the information requested does not assist in the exercise or protection of a right; or

- (b) the applicant asserts that
  - (i) the reproduction fee is not payable on the basis that the information requested is in the public interest; or
  - (ii) the applicant is indigent.

cxxxiii. Clause 48 – Amendment proposed – Delete sub-clause (1) and substitute the following:

“48. (1) An information officer or other person is not liable to any action, claim, suit or demand whether criminal or civil for an omission or action taken by that information officer or other person who acting in good faith and in the course of duty provides access to information to an applicant or in compliance with the provisions of this Act.”

cxxxiv. Clause 50 – Amendment proposed – Delete sub-clause (1) and substitute the following:

“(1) An applicant seeking access to information under this Act shall pay the fee or charge approved by Parliament in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793)”.

cxxxv. Clause 50 – Amendment proposed – Delete sub-clause (2) and substitute the following:

“(2) Despite subsection (1), a fee or charge shall not



be payable for

- (a) the reproduction of personal information of the applicant or where the request is made on behalf of another person, the personal information of the person on whose behalf the request is made;
- (b) the reproduction of information which is in the public interest;
- (c) information that should have been provided within the stipulated time under this Act;
- (d) information to an applicant who is indigent;
- (e) information to a person with disability;
- (f) time spent by an information officer or information reviewing officer in reviewing the information requested;
- (g) time spent by an information officer or information reviewing officer in examining whether the information requested is exempt information; or
- (h) preparing the information for which access is to be provided".

cxxxvi. Clause 50 – Amendment proposed – Delete sub-clause (3) and substitute the following:

"(3) Where a request is made for information to be provided in a language other than the language in which the information is held, the information officer may request the applicant to pay the reasonable costs for translating the information into the language requested by the applicant".

cxxxvii. Clause 50 – Amendment proposed – insert a new sub-clause (4) as follows:

“(4) Where a request is made for a written transcript of the information held by a public institution, the information officer may request the applicant to pay the reasonable costs of the transcription.”

cxxxviii. Clause 51 – Amendment proposed – Delete Clause 51.

cxxxix. Clause 52 – Amendment proposed – Delete “and charges” from the heading.

cxl. Clause 52 – Amendment proposed – Delete “and charges” in line 1.

cxli. Clause 52 – Amendment proposed – Delete “agency” and substitute “public institution” in the clause.

cxlii. Clause 53 – Amendment proposed – Delete sub-clause 53 (1) and substitute the following:

“(1) The Commission has oversight responsibility for this Act and may for that purpose issue written guidelines to public institutions and relevant private bodies.”

cxliii. Clause 53 – Amendment proposed – Delete “Commission” and substitute “Minister” in sub-clause (3).

cxliv. Clause 54 – Amendment proposed – Delete Clause 54 and substitute the following:

"54. The Attorney-General shall, under this Act, be a party to proceedings before the High Court for the review of a decision of the Right to Information Commission."

cxlv. Clause 55 – Amendment proposed – Delete "Right to Information Commission" and substitute "Minister responsible for Justice" in sub-clause (1).

cxlvi. Clause 55 – Amendment proposed – Delete "the Court of Appeal and the Supreme Court." in sub-clause (2).

cxlvii. Clause 56 – Amendment proposed – Delete sub-clause (1) and substitute the following:

"56. (1) The Minister responsible for Justice shall by the 30<sup>th</sup> of June of each year lay before Parliament an annual report on the activities of the agencies and the Right to Information Commission in respect of the preceding year based on the annual reports of the public institutions referred to in section 55.

(2) The report of the Minister may contain comments that the Minister considers necessary including an assessment of the extent to which the public institutions and the Commission are complying with this Act."

cxlviii. Clause 57 – Amendment proposed – Delete sub-clause (2) and substitute the following:

"(2) On the expiry of the period specified in sub-section (1), a person may seek access to the information and the public institution which has custody of the information shall give access in accordance with the procedure established under this Act, except that where disclosure of

the information will endanger the life or physical safety of an individual, the information shall not be disclosed."

cxlix. Clause 59 – Amendment proposed - Add a new sub-clause (3) as follows.

"59. (3) For the purposes of this section, an independent contractor means a person who performs an obligation or duty that is not connected to something or somebody who has an interest in the obligation or duty being performed by the contractor."

cl. Clause 60 – Amendment proposed – Delete Clause 60 and substitute the following:

"60. A person who willfully discloses information which is exempt from disclosure under this Act commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both the fine and the term of imprisonment."

cli. Clause 61 – Amendment proposed – Delete sub-clause (2), lines 10 to 13 and substitute the following:

"commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than three years or to both the fine and the imprisonment."

clii. Clause 62 – Amendment proposed – Delete "working" before "days" in line 4.

cliii. Clause 63 – Amendment proposed – Insert a new Clause 64 as follows:

**“Application to chieftaincy**

64 (1) A subject of a stool or skin has a right of access to information in relation to income or other resources received

(a) from the management, alienation or use of stool or skin lands, and

(b) for donations made to the stool or skin for the development of the community which the stool or skin represents.

(2) The National House of Chiefs shall in consultation with the Commission make regulations to extend the application of this Act to chieftaincy.

(3) The legislative instrument made under subsection (2) shall specify the established procedures which each stool or skin shall comply with to grant access to information to members of the community.”

cliv. Clause 64 – Amendment proposed – Add the following to the Regulations Clause:

“14 (4) (e) The Commission may develop regulations related to the entry, search and seizure procedures that are necessary for the execution of its mandate”

clv. Clause 64 – Amendment proposed – Delete paragraph (c).

clvi. Interpretation Clause – Amendment proposed – The following definitions are proposed:

"*Commission*" means the Right to Information Commission established under section .....of this Act;

"*contact details*" means the information by which an applicant and an information officer may be contacted for the purposes of obtaining or providing access to information under this Act;

"*contractor*" means a person who has agreed to provide goods or services to another person under a set of agreed terms with that other person;

"*public institution*" includes a private body or organisation which provides a public function;

"*relevant private body*" means a private body that the Minister may by legislative instrument add to the list of private bodies performing a public function;

"*right to information*" means the right assigned to access information;

"*access to information*" means the right to obtain information from an agency.

clvii. Interpretation Clause – Amendment proposed – Substitute the following definitions with the ones in the Clause:

"*information*" includes recorded matter or material

(a) regardless of form or medium;

(b) in the possession or under the control or custody of a public institution, and

(c) whether or not it was created or made by a public institution and, in the case of a private body, relates to the performance of a public function.

*"right of access"* means the right to access information.

clviii. Clause 66 – Amendment proposed – Delete the headnote and substitute "Application to and modification of existing enactments".

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(c) The amount of the fee shall not exceed the amount by which the fee is in excess of the amount of the fee imposed by the public instructor and in the case of a private

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