

Right to Information Bill, 2018

MEMORANDUM

The right to information is a fundamental human right guaranteed by the Constitution and is recognised as a right by international conventions on human rights.

Paragraph (f) of clause (1) of article 21 of the Constitution provides that

“All persons shall have the right to

(f) information, subject to such qualifications and laws as are necessary in a democratic society;”

The purpose of the Bill is to give substance to that constitutional provision by providing for

- (a) access to official information held by public institutions, and
- (b) the qualifications and conditions under which the access should be obtained.

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. It is essential to ensure good governance. It is only when those who are to participate in governance are well informed that they can contribute meaningfully to governance. This can only be achieved if they have access to the relevant information. Thus access to information requires that there is in existence the requisite data or information. It also ensures

- (a) that there is available to the individual the requisite data or information,
- (b) that there is more truthfulness and transparency in government, and
- (c) that corruption is reduced to a minimum because the actions of various persons in authority are made subject to public scrutiny.

This realisation of the importance of the right to information and the desire to ensure that there is transparency in governance, constitute the foundation for empowering the citizenry to contribute to good governance and rapid development and progress of this country. The right to information, however, needs to be qualified in accordance with the Constitution.

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For our purposes, the Constitution in clause (2) of article 12 subjects the enjoyment of the human rights provisions in Chapter Five to the rights and freedoms of others and the public interest. In addition, paragraph (f) of clause (1) of article 21 specifically subjects the right to information “to such qualifications and laws as are necessary in a democratic society”. Conventions on human rights, such as the African Charter on Human Rights, the European Convention on Human Rights and the International Covenant on Civil and Political Rights provide guidelines as to the import of the right to information.

The underlying factor in the qualifications to the right to information, is the need to protect the safety and integrity of the State and the privacy of individuals. This need is summed up in the general term of “subject to respect for the rights and freedoms of others” and “for the public interest”. In the language of clause (2) of article 12 of the Constitution,

“Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest”.

The required qualification to the right to information finds expression in the Bill through the exemptions and protection from disclosure of various kinds of information.

In the provision for the exemptions and protection, however, care has been taken to make them relate to specific circumstances and situations and to make them address specific pressing social needs so as to ensure that loopholes are not available which will be taken advantage of to whittle away the right of access in the implementation of the law.

The Bill deals with two broad subject areas, the first area dealing with information held by public institutions, and the second area with general and miscellaneous matters.

Clause 1 provides for the right to information subject to qualifications and laws necessary in a democratic society. A person may exercise the right through an application made in accordance with *clause 18* and

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does not need to give a reason for the request for access, unless that person requests that the application be treated with urgency.

Maximum disclosure in relation to governance is provided for in *clause 2* which requires the Government to make non-exempt information on governance available to the public without the need of an application. This provision is meant to ensure transparency in Government and to equip the public with the necessary knowledge and information to contribute meaningfully to national development. This provision and indeed any other mandatory provisions may, like any of the provisions of the Constitution on fundamental human rights, be enforced through an action at the High Court as specified in article 33 of the Constitution.

The compilation and publication of an up-to-date manual on official information by each public institution is covered by *clause 3*. The manual shall, among other things, contain a list of departments or agencies under that public institution and a description of the organisational structure and responsibilities of each public institution including details of the activities of each division or branch of the public institution; contain a list of the various classes of information which are prepared by or are in the custody or under the control of each public institution; and contain the name, telephone number, fax, e-mail, postal address and any other contact details of the information officer of the public institution or a designated officer of the public institution to whom a request for access should be made and state the procedures by which access may be obtained.

Clause 4 requires the Minister, in consultation with the Public Services Commission, to issue guidelines for the preparation of the manual by a public institution and for the preparation and publication of a legislative instrument.

Exempt information is provided for in *clauses 5 to 16*. *Clause 5* provides for information to be exempt from disclosure if it is prepared for submission or has been submitted to the Office of the President or if it contains matters the disclosure of which would reveal information concerning opinion, advice and recommendation, among others, given to the President or the Vice-President.

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Clause 6 exempts information from disclosure if it is prepared for submission to Cabinet or submitted to Cabinet for consideration or if it is an official information from Cabinet which has not been published or released to the public, as well as deliberations of Cabinet which may prejudice national security, among others. In spite of the exemption from disclosure of information relating to Cabinet, Cabinet has the power to grant access to information which contains factual or statistical data and which does not disclose information concerning a decision, deliberation or discussion of Cabinet. This is another provision intended to enhance transparency in governance.

Clause 7 exempts information that relates to law enforcement and public safety from disclosure. This provision is necessary for the protection of public order and public health. Even then, where the information pertains to measures adopted to counteract a contravention or a possible contravention of the law and to the outcome of those measures, and disclosure of the information is in the public interest, the information ceases to be exempt.

Clauses 8, 9 and 10 provide, among others, for the exemption from disclosure of information that is likely to damage or prejudice

- (a) the relationship between this country and any other countries or an international organisation,
- (b) the defence of this country or of a friendly foreign country, and
- (c) the economic or financial interests of the country.

They are aimed at safeguarding the national interest or national security.

Clause 11 exempts from disclosure, confidential information which would reveal a trade secret or which relates to research, scientific, technical or commercial subjects or to labour where the disclosure of the information would prejudice the economic or financial interests of a person, a group of persons or an organisation, among others. In *clause 12* provision is made for the exemption from disclosure of information obtained on a tax return or for the purpose of determining tax liability. *Clauses 11 and 12* together protect the rights of third parties in respect of information held by public institutions, which affects the interests of the third parties. This is in consonance with the Constitution.

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In *clause 13*, information contained in internal working documents of a public institution which relates to an opinion or advice given or a report or recommendation made or consultation or deliberation held in the course of making a decision in the public service or a public institution is exempt from disclosure in so far as the disclosure will frustrate the decision-making process of the public institution. This information is, however, not exempt from disclosure if it forms the basis of a public policy or for formulating a public policy and has already been publicly mentioned.

Clauses 14 and 15 respectively, exempt from disclosure privileged information the disclosure of which would

- (a) infringe or contravene a parliamentary privilege or constitute a contempt of court or of a quasi-judicial body;
- (b) infringe on lawyer and client professional relationship or communication between spouses whether married under an enactment or under the common law as defined in *clause (2)* of article 11 of the Constitution, or is privileged from disclosure under the Evidence Act, 1975 (N.R.C.D. 323); or
- (c) reveal confidential communication between a doctor or any other medical expert and a patient in connection with the patient's medical diagnosis or treatment.

Clause 16 exempts from disclosure, information that relates to unreasonable disclosure of the personal affairs of an individual, whether living or deceased and defines what constitutes unreasonable disclosure. *Clauses 14, 15 and 16* taken together protect the individual's right to privacy.

The exemptions from disclosure are subject to the public interest and can be lifted where disclosure would help reveal a contravention or a failure to comply with a law or non-disclosure could result in an imminent and serious risk to public safety, health or the environment, among others, *clause 17*.

Clause 18 provides for the procedures for access. It requires among other things that an application for access to information shall be made in writing to the public institution, adequately describe the information for which access is sought, indicate the form and manner of the access required and be accompanied with the relevant fee, among others.

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In order to make access as universal as possible, the *clause* further provides, where the applicant cannot write, for oral applications which would be reduced into writing by the receiving officer.

Clause 19 specifies the officer who should deal with an application for access in the person of the information officer of the public institution.

Provision is made under *clause 20* for the transfer of an application to the relevant public institution where a public institution to which the application was initially made is unable to deal with the application. Under *clause 21*, access to information may be deferred where the information is required by law to be published and it has not yet been published or where it is to be published within ninety days, or where it is meant to be submitted to a person and it has not yet been submitted to that person.

Clause 22 makes the information officer of a public institution responsible for determining an application and requires the information officer to give a notice to the applicant within fourteen days from the date of receipt of the application stating whether or not access will be granted. Where access will be granted, the notice will have to state the mode for the access. Where access is refused, the notice will have to state the reason for the refusal and the provision under which the decision for the refusal is based. The clause also makes provision for an application that relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person. The information officer is required to provide the information within forty-eight hours.

In *clause 23* provision is made for the information officer of a public institution to give notice to the applicant by a written declaration signed by the information officer, where the information requested for cannot be found or does not exist. The declaration should state that it is not possible to give access for the reasons stated in the declaration and should further state the steps taken to find the information or to determine its existence. The notice is considered to be a refusal.

Clause 24 gives a public institution powers to demand the payment of a deposit, where in the opinion of the public institution the cost of processing is likely to exceed the amount of the application fee. The public institution has a discretion to specify the period of time within which a

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deposit should be paid and to refuse to process an application where any fee or deposit required to be paid has not been paid, and is obliged to refund a deposit that is in excess of the cost of processing.

The information officer of a public institution has the power under *clause 25* to extend the period for the processing of an application for a further period not exceeding fourteen days where the volume of work required in the processing is so huge that it would unreasonably interfere with the operations of the public institution, where the information requested has to be gathered from more than one source or where the processing requires consultation with a person outside the public institution and cannot be reasonably complied with within the time limit. 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. The information officer is required to give notice in writing of an extension to the applicant, state the reason for the extension in the notice and inform the applicant of the applicant's right to request for a review of the decision.

Under *clause 26* a public institution may refuse to continue the processing of an application where the applicant fails to pay the required deposit. A public institution which refuses to continue to process an application shall immediately notify the applicant in writing of the refusal. *Clause 27* deals with the inability to process. A public institution which fails to continue to process an application shall immediately notify the applicant in writing of the inability to do so and the reason for the inability. In that event the public institution must refund to the applicant the deposit paid.

Clause 28 provides the conditions under which an application for access may be refused. Under this *clause* the information officer of a public institution is empowered to reject an application for access to information where the application is frivolous or vexatious, where the information is exempt information or where the information is usually available for purchase, among others.

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Clause 29 deals with manner of access to information. The manner of access enables an applicant access information by giving the applicant a reasonable opportunity to inspect the information or by giving the applicant a copy of the information. Where an applicant has requested that access be given in a particular form, access to the information shall be given in that form except where it is likely to unreasonably interfere with the operations of the public institution, be detrimental to the preservation of the information or, having regard to the physical nature of the information, it is not appropriate to grant access in that form.

Clause 30 provides for the amendment of the personal records of a person who has been given access to information in the custody of a public institution and which that person considers to represent the personal records of that person or to be incorrect, misleading, incomplete or out-of-date. The application for amendment of information under *clause 31* should be in writing and should specify that it is made under the law, give sufficient particulars to enable the records to be identified, specify the error, or omission in the records, provide the information necessary to correct the error or to fill in the omission and provide an address to which notices should be sent.

Clause 32 is on the right to internal review and permits a person aggrieved by a decision of an information officer of a public institution to submit an application for internal review of that decision to the head of the public institution. The application for internal review is dealt with in *clause 33* and shall be made within thirty days of the receipt of the decision of an information officer. The application has to be accompanied with the prescribed fee.

Clause 34 deals with a decision on internal review by the head of a public institution to whom a request for internal review is made. *Clause 35* deals with notice to third parties. 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.

Under *clause 36*, the head of the public institution shall exercise the power conferred under section 34. Where the head of the public institution fails to give a decision on a request for review within fifteen days, the head of that public institution is deemed to have affirmed the original decision of the information officer, *clause 37*.

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Provision is made for review by the High Court of decisions of a public institution which relate to disclosures that will be prejudicial to the security of the State or will be injurious to the public interest in accordance with article 135 of the Constitution, *clause 38*.

Clause 39 details the powers of the High Court in relation to a review. These include the power to request for and inspect documents as well as the power to summon and examine witnesses. The High Court does not have the power to disclose exempt information to any person other than a representative of the public institution whose decision is under review and the Attorney-General.

The High Court, under *clause 40*, has the right in an application for review, to make an order that the Court considers just and is obliged, where it orders access, to specify the period within which access should be given. Under *clause 41* a person who applies for access to information, the public institution concerned and a person affected by proceedings under this Bill whether before a Minister or a Court may be represented by a lawyer or may call an expert witness.

Clause 42 establishes the Right to Information Commission. The object of the Commission is to promote, monitor, protect and enforce the right to information that is granted to a person under paragraph (f) of clause (1) of article 21 of the Constitution, *clause 43*.

Clause 44 provides for the independence and autonomy of the Commission in the performance of its functions.

Clause 45 deals with the powers of the Commission and includes the resolution of complaints, the issuance of written orders requesting for the production of information and the limitation of access to information by parties in terms of this Bill.

The functions of the Commission are provided in *clause 46* and include the determination and issuance of general directions for the hearing of a matter including notice to parties; the holding of hearings in public unless it is considered inappropriate to do so and the consideration of the needs of persons who wish to make protected disclosures, minors and vulnerable groups.

The promotion of the right to information is dealt with in *clause 47*. The Commission, under this clause, is mandated to promote and sustain awareness within the country and educate the public on the right to information.

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Clause 48 deals with research and law reform. Under this clause the Commission is mandated to take measures that are necessary to ensure that all proposed and emerging legislation of any status, regulations and practices are aligned to this Bill.

The monitoring powers of the Commission are provided for in *clause 49*. Under this clause, the Commission is mandated to monitor compliance by a public institution or a relevant private body with this Bill, to issue directives to the public institution or a relevant private body and to monitor the implementation of its directives, among others.

Clause 50 deals with the governing body of the Commission. The governing body of the Commission consists of a chairperson, one deputy chairperson and three other persons one of whom is a woman. The tenure of office for members of the Commission is provided for in *clause 51* and is not more than five years.

Clauses 51 to 55 deal with the standard provisions of tenure of office, meetings of the Board, disclosure of interest, establishment of committees and allowances.

A Commissioner who is an informative Commissioner is not to occupy any office of profit or engage in any partisan political activity, *clause 56*.

Clause 57 provides for the appointment of an Executive Secretary. The functions of an Executive Secretary are provided for in *clause 58*.

Clause 59 deals with the appointment of other staff of the Commission by the President in accordance with article 195 of the Constitution. The Secretary to the Board is provided for in *clause 60*.

The Commission may engage the services of an expert for the purpose of exercising a power, duty or function under this Bill, *clause 61*.

Clause 62 deals with the funds of the Commission. The funds of the Commission include moneys approved by Parliament and administrative penalties imposed by the Commission.

The moneys for the Commission shall be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General, *clause 63*. *Clause 64* provides for the expenses of the Commission to be paid from moneys provided for the Commission.

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Accounts and audit are provided for in *clause 65*. *Clause 66* deals with annual report and other reports.

Clause 67 deals with an application to the Commission whereby 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. *Clause 68* deals with the exhaustion of the internal review procedure and provides that 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. Also, an application to the High Court for the review of the decision of a public institution or a relevant private body shall only be made to the High Court after the applicant has exhausted all rights of review by the Commission.

Clause 69 deals with direct access to the Commission for a review of a decision of a public institution. The right to make representations is provided for in *clause 70*. *Clause 71* mandates the Commission to serve notice on all relevant parties of its findings, an application, a decision on a hearing, or a referral to an appropriate court including a right of appeal. The duty to assist the Commission is provided for in *clause 72* whereby a public institution, a relevant private body or an interested party is mandated to assist the Commission in the course of an application or investigation.

Clause 73 deals with orders, decisions and directives. Under this *clause* the Commission is required to issue binding orders or make recommendations on a matter before the Commission.

Clause 74 places the burden of proof on the public institution or relevant private body subject to subclause (3). Subclause (3) provides that the applicant bears the burden of proof where 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 the applicant asserts that the reproduction fee is not payable on the basis that the information requested is in the public interest or the applicant is indigent.

Clause 75 requires the information officer of a public institution or the officer designated as an information officer to perform the functions assigned to an information officer under this Bill.

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Clauses 76 and 77 respectively indemnify a person who in good faith, grants access to information, from actions for defamation, breach of confidence or criminal liability.

Clause 78 provides that an applicant who seeks access to information under this Bill is required to pay the fee or charge approved by Parliament in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793). Under *clause 78*, however, a fee or a charge may be waived if, among others, the applicant is an indigent or a person with disability. This *clause* will ensure that a person is not denied access to information merely because of that inability of that person to pay the access fee or charge.

Subject to the Constitution, a public institution is authorised to retain fees received by that public institution under this Bill, *clause 79*. The fees retained by the public institution shall only be used to defray expenses incurred by the public institution in the performance of functions under this Bill and shall be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General.

Clause 80 places on the Commission the oversight responsibility for the implementation of the Bill and empowers the Commission to issue written guidelines to public institutions and relevant private bodies.

Clauses 81 and 82 respectively provide for the submission of written annual reports by a public institution within three months after the end of each year to the Commission, and the submission of a report by the Minister to Parliament within six months after the end of the year.

Clauses 83, 84 and 85 respectively provide for the limitation period of exempt information, which is twenty-five years from the date of creation of the information; make the law inapplicable to information held by the national archives, libraries and museums to which the public have access and apply the law to information created before or after the coming into force of the Act as well as to information held by an independent contractor engaged by a public institution.

Wilful disclosure of exempt information, unlawful access to the personal record of another person and destruction, damage, alteration and concealment of a document and the making of a false entry in a document aimed at denying access to information are all made offences under *clauses 86 and 87*.

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Clause 88 provides for the extension of time for an action to be taken under the law by fourteen days where a provision is not made for an extension. Since the aim of the Bill is part of the move to stamp out corruption, *clause 89* empowers the Minister to, by legislative instrument, extend the application of this law to the private sector.

Clause 90 empowers the Minister to make Regulations by legislative instrument for the effective implementation of the law.

Clause 91 is on interpretation and *clause 92* deals with the application to and modification of existing enactments and makes disclosure of information under any other enactment in existence immediately before the coming into force of the Act, subject to the Act.


GLORIA AFUA AKUFFO (MISS)
Attorney-General and Minister for Justice

Date: 21st MARCH, 2018

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BILL

ENTITLED

RIGHT TO INFORMATION ACT, 2018

AN ACT to provide for the implementation of the constitutional right to information held by a public institution, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of transparency and accountability in public affairs and to provide for related matters.

PASSED by Parliament and assented to by the President:

Access to Official Information

Right of access to official information

1. (1) A person has the right to information, subject to qualifications and laws that are necessary in a democratic society.

(2) The right may be exercised through an application made in accordance with section 18.

(3) A person does not have to give a reason for the application.

(4) Despite subsection (3), where an applicant requests that the application be treated as urgent, the applicant shall state the reason for the urgency.

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Responsibility of Government to provide information on governance

2. The Government shall make available to the public, general information on governance without application from a specific person.

Compilation and Publication of Manual on Information of a Public Institution

Responsibility of public institution in respect of access

3. (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.

(2) The manual shall contain

- (a) a list of departments or agencies under that public institution and a description of the organisational structure and responsibilities of each public institution including details of the activities of each division or branch of the public institution;
- (b) a list of the various classes of information which are prepared by or are in the custody or under the control of each public institution;
- (c) a list of the types of information that may be accessed or inspected free of charge or subject to a fee, and the deposit required or the fee or charge payable in respect of an access to information as specified under section 69;
- (d) the name, telephone number, fax, e-mail, postal address and any other contact details of the information officer of the public institution or a designated officer of the public institution to whom a request for access may be made;
- (e) the place in the public institution where information which is accessible under this Act or any other enactment, can be found or made available, and
- (g) the arrangements made or procedures established by the public institution to enable a member of the public to seek amendment of that member's personal official records with the public institution.

Provision of guidelines for manual

4. The Minister shall, in consultation with the Public Services Commission, issue guidelines for the preparation under section 3 of the manual by a public institution.

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Exempt Information

Information from the Office of the President and of the Vice President

5. (1) Information is exempt from disclosure

- (a) if it is prepared for submission or has been submitted to the Office of the President, or
- (b) if it contains matters the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendations, minutes or consultations made or given to the President or the Vice-President and is likely to
 - (i) undermine the deliberative process in the Office of the President or of the Vice-President by inhibiting the free and frank provision of advice or exchange of views; or
 - (ii) prejudice national security.

(2) Information which contains factual or statistical data and does not disclose information concerning a deliberation or decision of the Office of the President or of the Vice President is not exempt information.

Information relating to Cabinet

6. (1) Information is exempt from disclosure

- (a) if it is prepared for submission to Cabinet or submitted to Cabinet for consideration, or
- (b) if it is an official information from Cabinet, not published or released to the public, and
- (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.

(2) Information which contains factual or statistical data and which does not disclose information concerning a decision, deliberation or discussion of Cabinet is not exempt information.

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

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

Information relating to law enforcement and public safety

7. (1) Information is exempt from disclosure if it contains matters which if disclosed can reasonably be expected to

- (a) interfere with the prevention, detection or curtailment of a contravention or possible contravention of a law,
- (b) prejudice the investigation of a contravention or possible contravention of a law,
- (c) reveal investigation techniques and procedures in use or likely to be used in law enforcement,
- (d) disclose the identity of a confidential source of information, matter or the information given by a confidential source in respect of law enforcement,
- (e) impede the prosecution of an offence,
- (f) endanger the life or physical safety of a person,
- (g) prejudice the fair trial of a person or the impartial adjudication of a case,
- (h) reveal a record of information that has been confiscated from a person by a police officer or a person authorised to effect the confiscation in accordance with an enactment,
- (i) interfere with the maintenance or enforcement of a lawful method or procedure for protecting the safety of the public,
- (j) endanger the security of a building, structure or means of transport or a system including computer and communication systems for which security is reasonably required,
- (k) prejudice the security of a prison or place for lawful detention,
- (l) facilitate the escape of a person from lawful custody, or
- (m) prejudice a system or procedure for witness protection or any other procedure for the protection of persons or property where the protection is required.

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(2) Despite subsection (1), information is not exempt from disclosure where that information

- (a) consists merely of a report on the success of a programme adopted by a public institution to deal with a contravention or possible contravention of a law;
- (b) contains a general outline of the structures of a programme adopted by a public institution to deal with a contravention or possible contravention of a law; or
- (c) consists merely of a report on a law enforcement investigation that has already been disclosed to the person who is the subject of the investigation.

Information affecting international relations

8. (1) Information is exempt information if its disclosure can reasonably be expected

- (a) to damage or prejudice the relations between the Government and the government of any other country,
- (b) to reveal information communicated in confidence to a public institution by or on behalf of another government, or
- (c) to reveal information communicated in confidence to a public institution by an international organisation of states or a body of that organisation.

(2) Despite subsection (1), the exempt information may be disclosed if the President gives prior approval for the disclosure.

Information that affects the defence and security of the country

9. (1) Information is exempt information if its disclosure can reasonably be expected

- (a) to damage or prejudice the defence of the Republic or a foreign State allied to or friendly with the Republic, or
- (b) to be prejudicial to the detection, prevention or suppression of terrorism, sabotage or espionage.

(2) Subject to article 135 of the 1992 Constitution, information created by or in the custody of the Ghana 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 defence and security of the State is an exempt information.

Economic and any other interests

10. Information is exempt from disclosure prior to official publication where

- (a) it contains trade secrets or financial, commercial, scientific or technical information that belongs to the Government or public institution and the information has monetary or a potential monetary value;
- (b) the disclosure of the information can reasonably be expected to damage the financial interests of the Government or public institution or the ability of the Government to manage the national economy;
- (c) the disclosure of the information can reasonably be expected to cause a disruption of business or trade in the country;
- (d) the disclosure of the information can unduly benefit or be injurious to a person because it provides prior information about future economic or financial measures to be introduced by the Government or public institution;
- (e) it contains criteria, procedures, positions or instructions that relate to negotiations being carried on or to be carried on by or on behalf of the Government or public institution; or
- (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.

Economic information of third parties

11. (1) Information which would reveal a trade secret, research, scientific, technical, commercial, financial or labour related information supplied in confidence is exempt information if the disclosure can reasonably be expected to

- (a) prejudice the competitive position of a person, a group of persons or an organisation;
- (b) adversely affect negotiations with a third party;
- (c) result in undue loss or gain to a person, a group, a financial institution or any other body; or
- (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.

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(2) Information which has already been made available to the public by the appropriate person, authority or body is not exempt information under subsection (1).

Information relating to tax

12. (1) Information obtained from a tax return or gathered for the purposes of determining tax liability is exempt information.

(2) Exempt information under subsection (1), may be disclosed if the person to whom the information relates, agrees to the disclosure.

Internal working information of public institutions

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

(a) an opinion, an advice, a report or a recommendation 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 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.

Parliamentary privilege, fair trial, contempt of court

14. Information is exempt information if its disclosure can reasonably be expected to

(a) infringe or contravene a parliamentary privilege,

(b) prejudice the fair trial of a person or the impartial adjudication of a case before a Court or a quasi-judicial body, or

(c) constitute contempt of court or of a quasi-judicial body.

Privileged information

15. (1) Information is exempt information where

(a) it is privileged from disclosure on grounds of

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- (i) lawyer and client professional relationship,
 - (ii) communication between spouses whether married under an enactment or under the common law as defined in clause (2) of article 11 of the Constitution; or
 - (iii) the Evidence Act, 1975 (N.R.C.D. 323); or
- (b) the disclosure of the information reveals confidential communication between a doctor and a patient or any other medical expert in connection with the medical diagnosis or treatment of the patient.

(2) Subsection (1) does not apply where the person entitled to the privilege knowingly waives the privilege.

Disclosure of personal matters

16. (1) Information the disclosure of which involves the unreasonable disclosure of information concerning the personal affairs of an individual whether living or deceased is exempt information.

(2) Disclosure is unreasonable if it reveals or is likely to reveal information about the individual's

- (a) physical or mental health;
- (b) business or trade secrets of commercial value to the individual; or
- (c) confidential professional, commercial or financial affairs.

(3) Disclosure is reasonable if

- (a) the individual to whom the information relates gives prior consent;
- (b) the disclosure is required to promote public health or public safety;
- (c) the disclosure is necessary in order to subject government activities to public scrutiny;
- (d) the disclosure does not unjustifiably damage the reputation of any other person referred to in the information;
- (e) the disclosure is made to the individual to whom the information relates;
- (f) the disclosure does not contravene a provision on exempt information specified in this Act;

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- (g) the disclosure would not have an adverse effect on the affairs of the individual;
- (h) the disclosure would prejudice the future supply of information;
- (i) the information has already been made available to the public by the appropriate person, authority or body;
- (j) the individual to whom the information relates was informed or made aware prior to supplying the information that the information belongs to a class of information that will or might be made available to the public;
- (k) in the case of a deceased person, the applicant is the next of kin or represents the next of kin or is the personal representative of the deceased; or
- (l) 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 eighteen years, or
 - (ii) incapable of understanding the nature of the request and giving access would be in the best interest of the individual.

Disclosure for the protection of public interest

17. (1) Despite a provision 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) a miscarriage of justice;
- (d) an 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.

(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.

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Procedure for Access

Application to access information

18. (1) An application to access information held by a public institution shall

- (a) be made in writing to the public institution;
- (b) contain sufficient description or particulars to enable the information to be identified,
- (c) indicate the form and manner of access required,
- (d) state the capacity of the applicant to the satisfaction of the officer to whom the application is made, if the application is made on behalf of another person,
- (e) state an address to which a communication or notice can be sent, and
- (f) be accompanied with the prescribed fee.

(2) Where an applicant is unable to make the application in writing due to illiteracy or a disability, the applicant may make the request orally.

(3) Where a request is made orally under subsection (2), the request shall be reduced into writing by the officer to whom the application is made, who shall give a copy of the written request as recorded and as duly authenticated to the applicant.

(4) Where an application does not sufficiently describe the information required, the public institution to which the application is made shall so inform the applicant and offer the applicant the necessary assistance to identify the information.

(5) Where a public institution 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.

(6) For the purposes of this section, the reference to "writing" in subsection (3) includes "Braille".

Person to deal with application

19. An application to access information shall be dealt with by the information officer of the public institution.

Transfer of application

20. (1) Where a public institution is unable to deal with an application because the information requested

(a) is not in the custody or control of the public institution, but to the knowledge of the public institution, it is held by another public institution, or

(b) is in the custody of the public institution but it is more closely related to the functions of another public institution,

the information officer or the designated officer to whom the application is made shall, within ten days of the receipt of the application, transfer the application to the other public institution and give written notice of the transfer to the applicant.

(2) 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 days,

(a) make the necessary enquiry to establish whether any other public institution has the information, and

(b) transfer the application to that other public institution if that public institution has the information, and

(c) notify the applicant accordingly.

(3) A notice of transfer shall state,

(a) the date of the transfer,

(b) the public institution to which the transfer is made, and

(c) the reason for the transfer.

(4) An application transferred from one public institution to another is a request for access to information made to the public institution to which the application is transferred on the date the transfer is received.

Deferred access

21. (1) A public institution may defer access to information if it is information

(a) which is required to be published within ninety days from the receipt of the application or the transfer of the application, or

(b) which has been prepared for submission to any person and is yet to be submitted.

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

- (a) the reason for the deferment; and
- (b) the likely period of the deferment.

Decision on application

22. (1) Where an application for access is received by a public institution, the information officer shall take a decision on the application and send a written notice to the applicant within fourteen days from the date of receipt of the application.

(2) The notice shall state

- (a) whether or not access to the information will be given, and
- (b) whether access to only a part of the information can be given and the reason for giving only a part.

(3) Where the information officer decides to give access, the notice shall state

- (a) the period within which the access will be given and the period shall not be more than fourteen days;
- (b) the form or manner in which the access will be given;
- (c) whether access is to only a part of the information because the other part is exempt information; and
- (d) the day on which the public institution expects the information to be published or submitted, in the case of a deferred access under section 21.

(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.

(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 32 to 41.

(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.

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(7) 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.

(8) Despite subsection (7), 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.

(9) 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.

Information that cannot be found or not in existence

23. (1) Where reasonable and practical steps have been taken to find the information requested and there are reasonable grounds to believe that the information

- (a) is in the possession of the public institution but cannot be found, or
- (b) does not exist,

the information officer or the designated officer shall, by a written declaration signed by that information officer, notify the applicant that it is not possible to give access for the stated reason.

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(2) The notice shall state the steps taken to find the document or to determine its existence.

(3) A notice under this section is a refusal to give access to the information and the applicant may take the steps that are open to the applicant under sections 32 to 41.

(4) Where the information is found after the notice, the information officer shall so notify the applicant and give access, unless the information is exempt or is inaccessible under a provision of this Act.

Payment of deposit

24. (1) Where the cost of providing the information 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.

(2) A deposit requested 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.

(3) A request for a deposit shall be accompanied with a notice that sets out the basis on which the amount of the deposit has been calculated.

(4) The amount of deposit requested by a public institution in respect of an application shall be paid to the public institution within the period of time specified by the public institution in the request.

(5) A public institution may refuse to give access to information if a fee or deposit payable is not paid within the period notified to the applicant.

Extension of time to deal with an application

25. (1) An information officer may extend the time provided for dealing with the application for a further period if

(a) the application is for a large quantity of information or necessitates a search through a large number of records and compliance with the original time limit would unreasonably interfere with the operations of the public institution,

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- (b) the information requested has to be gathered from more than one source, or
- (c) consultations with a person outside the public institution are required and cannot reasonably be complied with within the time limit.

(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.

(3) Where an extension of time is granted under this section, an information officer shall, within thirty days of the receipt of the application, notify the applicant in writing stating,

- (a) the period of the extension,
- (b) the reason for the extension, and
- (c) the right of the applicant to lodge an application for a review under sections 32 to 41 within the prescribed period.

Refusal to process

26. (1) A public institution may refuse to continue to process an application where the public institution has by notice demanded payment of a deposit in relation to the application, and the applicant has not paid the deposit within the period of time specified in the notice.

(2) A public institution which refuses to continue to process an application shall immediately notify the applicant in writing of the refusal.

(3) A refusal to continue to process an application under this section is subject to review and appeal under sections 32 to 41.

Inability to process

27. (1) A public institution which fails to continue to process an application shall immediately notify the applicant in writing of the inability to do so and the reasons for the inability.

(2) Where a public institution is unable to continue to process an application when the applicant has paid part of the deposit, that public institution shall refund to the applicant the deposit paid.

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(3) A failure to continue to process an application under this section is subject to review and appeal under sections 32 to 41.

Refusal of access

28. (1) A public institution may refuse access to information if
- (a) the application is manifestly frivolous or vexatious;
 - (b) the information is an exempt information;
 - (c) the information is contained in a document which is available for inspection at that or any other public institution, whether as part of a public register or otherwise, or whether or not inspection of the document is subject to a fee or charge;
 - (d) the information is contained in a document which is available from, or available for inspection at, that public institution, free of charge, in accordance with that public institution's policies and practices;
 - (e) the information is usually available for purchase; or
 - (f) the information forms part of library material.

(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.

Manner of access

29. (1) Access to information may be given to an applicant
- (a) by giving the applicant
 - (i) a reasonable opportunity to inspect the information, or
 - (ii) a copy of the information,
 - (b) by making arrangements for the applicant to hear the sounds or view the visual images, in the case of information from which sounds or visual images are capable of being reproduced, whether or not with the aid of another device,
 - (c) by giving the applicant a written transcript of the words recorded in the document, in the case of information in which words are recorded in a manner in which they are capable of being reproduced in the form of sound,

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- (d) by giving the applicant a written transcript of the words in the case of information in which words are contained in the form of shorthand writing or in coded form,
 - (e) by giving the applicant the written form, in the case of information in which words are recorded in a manner in which they are capable of being reproduced in a written form, or
 - (f) in any other form, electronic or otherwise, including a computer print-out, diskette, compact disk and downloading.
- (2) Where a request for access to information has been made in a particular form, access to information
- (a) shall be given in that form, or
 - (b) may be refused if
 - (i) it is likely to unreasonably interfere with the operations of the public institution;
 - (ii) it is likely to be detrimental to the preservation of the information; or
 - (iii) having regard to the physical nature of the information, it is not appropriate to grant access in that form.
- (3) 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.
- (4) For the purposes of subsection (3), 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.

Amendment of Personal Records in Custody of a Public Institution

Amendment of personal records

30. A person given access to information contained in the records of a public institution may apply for an amendment of the information if
- (a) the information represents the personal records of that person, and
 - (b) in the opinion of that person, the information is incorrect, misleading, incomplete or out of date.

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Application for amendment of information

31. (1) An application for the amendment of information contained in the records of a public institution shall

- (a) be in writing,
- (b) specify that it is made under this Act,
- (c) contain particulars which will enable the records of the public institution, to which the applicant has been given access, to be identified, and
- (d) specify the area in which the applicant claims the information contained in the records is incorrect, misleading, incomplete or out of date.

(2) Where the applicant claims that the information contained in the records is incomplete or out of date, the application shall be accompanied with the relevant information which the applicant considers necessary to complete the records of the public institution or bring them up to date.

(3) An application shall indicate an address to which a notice under this Act should be sent and the application shall be submitted at the office of the public institution.

Internal Reviews and Appeals

Right to internal review

32. 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.

Application for internal review

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

- (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.

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(3) 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.

(4) 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.

(5) 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.

Decision on internal review

34. (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 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 subsection (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 42 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

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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 67 and the process of lodging that appeal.

Notice to third parties

35. (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.

Exercise of power

36. The head of the public institution shall exercise the power conferred under section 34.

Affirmation of decision

37. 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.

Application to High Court for judicial review

38. (1) Where an applicant is refused access to information by a public institution

(a) because the disclosure

- (i) will be prejudicial to the security of the State, or
- (ii) will be injurious to the public interest, or

(b) for any other reason,

the applicant may apply to the High Court for a judicial review of the decision.

(2) The application for judicial review shall be lodged within twenty-one days after receipt of the notification of the decision.

Powers of the High Court

39. (1) In addition to its powers under the Constitution, the High Court may, in respect of an application for judicial review under section 38,

- (a) require the relevant information under the control of the public institution to be produced before it for examination and scrutiny,
- (b) enter and inspect premises occupied by the public institution concerned in the appeal,
- (c) require to see original documents, and
- (d) summon and examine on oath a person who the High Court considers may have information relevant to the appeal.

(2) The proceedings of the High Court shall be held *in camera* and the High Court may prohibit the publication of information relating to the proceedings.

(3) The High Court shall not, in the course of a review, disclose to a party other than the representative of the public institution and the Attorney-General, information which is exempt from disclosure under this Act.

Ruling of the High Court

40. (1) The High Court may, after hearing the application and presentations made before it, make an appropriate order.

(2) Where the High Court orders that access should be given to information, the High Court shall specify the period within which access should be given.

Appearance before the Commission

41. A person who applies for access to information, the public institution concerned and a person affected by any proceedings under this Act whether before a Minister or a Court, may

- (a) be represented by a lawyer; or
- (b) call an expert witness.

Establishment of the Right to Information Commission

Establishment of the Commission

42. (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

43. The object of the Commission is to

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

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

Independence of the Commission

44. (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 responsible for Finance, submit the budget of the Commission to Parliament for approval annually.

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

Powers of the Commission

45. (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 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) issue written orders requesting for the production of information;
- (g) 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;
- (h) 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 exempt information;
- (i) limit access to information by parties in terms of this Act;
- (j) take any action that is necessary to enable the Commission resolve a complaint before it; and
- (k) undertake any action that it considers necessary for the effective performance of its functions.

Functions of the Commission

46. (1) To achieve its object, the Commission shall

- (a) determine and issue general directions for the hearing of a matter including notice to 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 simple language guide to this Act in all official languages to assist users in requesting information.

Promotion of right to information

47. (1) The Commission shall

- (a) promote and sustain awareness within the country, and
- (b) educate the public on the right to information.

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

- (a) assess all implementation plans required to be submitted by public institutions 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;

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- (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 institutions 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.

Research and law reform

48. (1) The Commission may undertake or commission any research it considers necessary or appropriate for the attainment of the objectives of this Act.

(2) 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 the Act.

(3) To discharge its obligations under subsection (2), the Commission shall submit recommendations for reform on proposed or emerging legislation to the relevant authorities.

(4) The Commission shall in its annual report to Parliament include a report covering reports of recommendations for any research and reform undertaken by the Commission.

Monitoring powers of the Commission

49. (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 notice to a public institution or a relevant private body before taking an action under subsection (4);

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- (c) issue directives to a 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 paragraph (e) of subsection (2) 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 inspection;
- (c) engage a public institution or a relevant private body;
- (d) request a public institution or a relevant private body to provide to the Commission information to facilitate and enhance its monitoring activities;
- (e) issue an order compelling the provision of further information; and
- (f) access any information 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 paragraph (b) of subsection (2), the Commission may impose an administrative penalty that the Commission considers necessary.

Governing body of the Commission

50. (1) The governing body of the Commission is a Board consisting of

- (a) a chairperson;
- (b) one deputy chairperson; and
- (c) three other persons one of whom is a woman.

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

(3) The Board shall ensure the proper and effective performance of the functions of the Commission.

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Tenure of office

51. (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 from office.

(3) 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.

(2) 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.

Meetings of the Board

52. (1) The Board shall meet at least once every three months for the despatch of business at the time and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extra-ordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is three members of the Board or a greater number determined by the Board in respect of an important matter.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, the deputy chairperson shall preside and in the absence of the deputy chairperson, a member of the Board elected by the members present from among their number shall preside.

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Disclosure of interest

53. (1) A member of the Board who has an interest in a matter for consideration

(a) shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) shall not participate in the deliberations of the Board in respect of the matter.

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and

(a) fails to disclose that interest; or

(b) participates in the deliberations on the matter.

Establishment of committees

54. (1) The Board may, establish committees consisting of members of the Board or non-members or both to perform a function of the Board.

(2) A committee shall be chaired by a member of the Board.

(3) The Board may assign to a committee a function determined by the Board but a committee composed of non-members is advisory only.

(4) Section 53 applies to members of the committee.

Allowances

55. Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

Limitation on outside work

56. A member of the Commission shall not, while in office, occupy any office of profit or engage in any partisan political activity.

Administrative and Financial Provisions

Appointment of Executive Secretary

57. (1) The Commission shall have an Executive Secretary.

(2) The President shall, in accordance with article 195 of the Constitution appoint the Executive Secretary for the Commission.

(3) The Executive Secretary shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Executive Secretary

58. (1) The Executive Secretary

(a) is responsible for the day to day administration of the Commission and is answerable to the Board in the performance of the functions under the Act; and

(b) shall perform any other function determined by the Board.

(2) The Executive Secretary may delegate a function to an officer of the Commission but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

59. 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.

Secretary to the Board

60. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Secretary to the Board.

(2) The Secretary shall perform the functions directed by the Executive Secretary or the Board.

(3) The Secretary is, in the performance of functions, answerable to the Executive Secretary.

Engagement of expert

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

Funds of the Commission

62. The funds of the Commission include

(a) moneys approved by Parliament; and

(b) administrative penalties imposed by the Commission.

Bank account

63. The moneys for the Commission shall be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General.

Expenses of the Commission

64. The expenses of the Commission shall be paid from moneys provided for the Commission under section 62.

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Accounts and audit

65. (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

66. (1) The Commission shall within one month after the receipt of the audit report submit an annual report to the Minister covering the activities and the operations of the Commission for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(2) The Commission shall also submit to the Minister any other report which the Minister may require in writing.

Application for Review by the Commission

Application to the Commission

67. (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.

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Exhaustion of internal review procedure

68. Subject to subsections (1) and (2) of section 67, an application to
- (a) the Commission for the review of the decision of a public institution or a relevant private body shall only be made to the Commission after the applicant has exhausted all rights of internal review offered by the public institution or relevant private body, or
 - (b) the High Court for the review of the decision of a public institution or a relevant private body shall only be made to the High Court after the applicant has exhausted all rights of review by the Commission.

Direct access

69. (1) Despite section 68, 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 a wrongdoing under this Act, may contact the Commission without exhausting any applicable internal procedures.

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Right to make representations

70. (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

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

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

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(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 Commission

72. A public institution, a relevant private body or an interested party shall assist the Commission in the course of an application or investigation.

Orders, Decisions and Directives of the Commission

Orders, decisions and directives

73. (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;
 - (c) setting aside the decision of the public institution or relevant private body;
 - (d) making a ruling;
 - (e) 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;
 - (f) imposition of an administrative penalty 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;
 - (g) mandating negotiation, conciliation and arbitration for the purpose of the resolution of a complaint; or
 - (h) any other summary order it considers just and equitable.

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

General and Miscellaneous Provisions

Burden of proof

74. (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.

Information officers

75. For the purposes of this Act, an information officer of a public institution or an officer designated as an information officer shall perform the functions assigned to an information officer under this Act.

Protection in respect of actions for defamation or breach of confidence

76. (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.

(2) The giving of access to information under this Act or the making of a decision to give access does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information by the person to whom access is given.

Protection in respect of certain criminal actions

77. Where access to information is given in good faith under this Act, the person by whom the decision is made or a person concerned in giving access to the information has not committed an offence in respect of the decision to give access.

Fees and charges of public institution

78. (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).

- (2) Despite subsection (1), a fee or charge shall not be payable for
- (a) the reproduction of personal information of the applicant;
 - (b) the reproduction of personal information of a person on whose behalf an application is made;
 - (c) the reproduction of information which is in the public interest;
 - (d) information that should have been provided within the stipulated time under this Act;
 - (e) information to an applicant who is indigent;
 - (f) information to a person with disability;
 - (g) time spent by an information officer or information reviewing officer in reviewing the information requested;
 - (h) time spent by an information officer or information reviewing officer in examining whether the information requested is exempt information; or
 - (i) preparing the information for which access is to be provided.

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(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.

(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.

Retention of fees and charges

79. (1) Subject to the Constitution, a public institution is authorised to retain fees received by that public institution under this Act .

(2) The fees retained by the public institution under subsection (1), shall

- (a) only be used to defray expenses incurred by the public institution in the performance of functions under this Act; and
- (b) be paid into a bank account opened for the purpose with the approval of the Controller and Accountant-General.

Responsibility of the Commission

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

(2) Subsection (1) is in addition to paragraph (c) of article 296 of the Constitution.

(3) The Commission may

- (a) conduct public education programmes and provide information for the implementation of this Act,
- (b) initiate research to be conducted into matters affecting the purposes of this Act, and
- (c) receive representations from the public in respect of the operation of this Act.

Annual reports by public institutions

81. (1) A public institution shall, within three months after the 31st of December each year, submit a written report on the activities of the public institution under this Act during the preceding year to the Commission.

(2) The report shall include

- (a) the number of applications for access during the reporting period;

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- (b) the number of applications approved and the number rejected together with the reasons for the rejection;
- (c) the number of reviews requested, the number granted and the number dismissed together with reasons; and
- (d) the number of applications to the High Court for judicial review and the results of the reviews.

(3) The Minister may in writing request for any other information which the Minister considers necessary for the purposes of submitting a comprehensive report to Parliament under section 82.

Report by the Minister to Parliament

82. (1) The Minister shall by the 30th of June of each year lay before Parliament an annual report on the activities of the public institutions and the Commission in respect of the preceding year based on the annual reports of the public institutions referred to in section 81.

(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.

Limitation of period for exempt information

83. (1) Information classified as exempt information under sections 5 to 16 ceases to be exempt information on the expiry of twenty-five years calculated from the end of the calendar year in which the information came into existence.

(2) On the expiry of the period specified in subsection (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.

Information held by the national archives, museums and libraries

84. This Act does not apply to information held by the national archives, libraries and museums to which the public have access.

Application of Act to existing and future information

85. This Act applies to information which came into existence before, or comes into existence after, the commencement of this Act.

Offence of disclosure of exempt information

86. 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 less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both the fine and the term of imprisonment.

Other offences

87. (1) A failure or neglect by an information officer or other public officer to perform a function authorised by this Act where the occasion arises to perform that function constitutes a gross misconduct.

(2) A person who

(a) seeks or gains access to the personal record of another person under false pretences,

(b) willfully makes a false statement

(i) to mislead any other person in order to gain access,
or

(ii) to gain access to information, or

(c) with intent to deny right to information,

(i) destroys, damages, alters or conceals a document,
or

(ii) makes a false entry in a document,

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

Extension of time

88. Unless extension of time is provided for, where in this Act provision is made for taking a step, for the doing of an act or making a decision within a specified time, the time may be extended for a further period not exceeding fourteen days if

(a) the extension is needed to locate and retrieve the requested information, or

(b) the extension is necessary to enable consultation to be held with another person on the requested information.

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Application to the private sector

89. (1) The Minister may, by legislative instrument, extend the application of this Act to the private sector.

(2) The legislative instrument made under subsection (1) shall specify

- (a) the provisions of the Act which shall apply to the private sector,
- (b) the type of information to which access should be given,
- (c) the exemptions which shall apply to the private sector as they apply in the public sector, and
- (d) the court procedures that may be enforced to make available the requisite information.

Regulations

90. The Minister may, by legislative instrument, make Regulations

- (a) making it obligatory for public institutions and private organisations to maintain their records in good and accessible condition in order to facilitate access to information;
- (b) for further procedures for access to information under this Act; and
- (c) to provide for matters that are necessary to give full effect to this Act.

Interpretation

91. In this Act, unless the context otherwise requires,

- “access” means right to information;
- “access to information” means the right to obtain information from a public institution;
- “Attorney-General” means the Attorney-General appointed under article 88 of the Constitution;
- “Commission” means the Right to Information Commission established under section 42 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;

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- “Court” means a court of competent jurisdiction;
- “designated officer” means an officer so designated for the purposes of this Act;
- “exempt information” means information which falls within any of the exemptions specified in sections 5 to 16;
- “function” includes powers and duties;
- “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;
- “information officer” includes the information officer of the public institution or the officer designated as an information officer to whom an application is made;
- “international organisation” includes an organisation of States or Government of States or an organ of that organisation;
- “Minister” means the Attorney-General and Minister for Justice;
- “public institution” includes a private institution or a private organisation that receives public resources or 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;
- “state secret” includes information considered confidential by the Government which if disclosed would be prejudicial to the security of the State or injurious to the public interest; and
- “trade secret” means a secret formula or technique, process, programme, device or product known and used to the advantage of only one manufacturer and the disclosure of which would cause significant economic loss to the owner or manufacturer.

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Application to and modification of existing enactments

92. Where an enactment in existence immediately before the coming into force of this Act, provides for the disclosure of information by a person or an authority, the disclosure of the information is subject to this Act.

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