

# **RIGHT TO INFORMATION BILL**

## **A BILL**

### **ENTITLED**

## **RIGHT TO INFORMATION ACT, 2005**

AN ACT to provide for the right of access to information held by a government agency subject to the exemptions that are necessary and consistent with protection of the public interest and the operation of a democratic society; to provide for the right of access by an individual to personal information held by a government agency which relates to that individual; to protect from disclosure, personal information held by a government agency to the extent consistent with the preservation of personal privacy; to provide for the internal review of decisions of government agencies by the sector Ministers and judicial review by the High Court of decisions of Ministers and private bodies; to provide for right of appeal; and to provide for matters related to these.

ENACTED by the President and Parliament

*Access to information in custody or under control  
of Government Agencies, responsibility to inform*

### **Right of access to official information**

1. (1) Each person has a right of access to information or part of information in the custody or under the control of a government agency unless the information or that part of the information falls within any of the exemptions specified in sections 3 to 17 of this Act.

(2) A person who applies for access to information is not obliged to give a reason for the application except where the person requests that the application be treated as urgent.

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

## **Responsibility of Government to provide information on governance**

2. Subject to this Act, it is the responsibility of the Government to make available to the people, information on their governance generally without application from a specific person.

### *Exempt information*

## **Information from the President and Vice President's Office**

3. (1) Information is exempt
- (a) if it is information prepared for submission or which has been submitted to the President or Vice-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 Vice President.

(2) A certificate under the hand of the Secretary to the President or the Secretary to the Vice-President that information is exempt information establishes that the information is exempt subject to a ruling by the High Court.

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

## **Information relating to Cabinet**

4. (1) Information is exempt
- (a) if it is information prepared for submission to Cabinet or submitted to Cabinet for consideration,
  - (b) if it is an official information from Cabinet, not published or released to the public, or
  - (c) if it contains matters the disclosure of which would reveal information on a decision, deliberation or discussion of Cabinet.

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

(3) A certificate under the hand of the Secretary to the Cabinet or the Head of National Security that the information is exempt information within the meaning of this section establishes that the information is exempt, subject to the ruling of the High Court.

(4) Nothing in this section prevents the Cabinet from publishing or granting access to information.

(5) In this section, a reference to the Cabinet includes a reference to a committee or sub-committee of the Cabinet.

### **Information relating to law enforcement, public safety and national security**

5. (1) Information is exempt if it contains matters the disclosure of which can reasonably be expected

- (a) to interfere with the prevention, detection or curtailment of a contravention or possible contravention of a law;
- (b) to prejudice the investigation of a contravention or possible contravention of a law;
- (c) to reveal investigation techniques and procedures in use or likely to be used in law enforcement;
- (d) to disclose the identity of a confidential source of information in respect of a law enforcement matter or disclose the information given by a confidential source;
- (e) to impede a prosecution of an offence;
- (f) to endanger the life or physical safety of a person;
- (g) to prejudice the fair trial of a person or the impartial adjudication of a case;
- (h) to 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) to interfere with the maintenance or enforcement of a lawful method or procedure for protecting the safety of the public;
- (j) to endanger the security of a building, structure or means of transport or system including computer and communication system for which security is reasonably required;

- (k) to prejudice the security of a prison or place for lawful detention;
  - (l) to facilitate the escape of a person from lawful custody; or
  - (m) to prejudice a system or procedure for witness protection or other procedure for protection of persons or property where the protection is required.
- (2) Information is not exempt if
- (a) it consists merely of a report on the extent of success achieved in a programme adopted by an agency to deal with a contravention or possible contravention of the law;
  - (b) it contains a general outline of the structures of a programme adopted by an agency to deal with a contravention or possible contravention of an enactment; or
  - (c) it consists merely of a report on a law enforcement investigation that has already been disclosed to the person the subject of the investigation

and disclosure of the information would be in the public interest.

(3) Information is exempt if it is information that relates to the security of the State and has been created by or is in the custody of the Armed Forces or the Security and Intelligence Agencies established under the Security and Intelligence Agencies Act 1996 (Act 526).

### **Information affecting international relations**

6. (1) Information is exempt if its disclosure can reasonably be expected to
- (a) damage or prejudice the relation between the Government and the government of any other country;
  - (b) reveal information communicated in confidence to a government agency by or on behalf of another government; or
  - (c) reveal information communicated in confidence to an agency by an international organisation of states or a body of that organisation.

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

### **Information that affects the defence of the country**

7. Information is exempt if its disclosure can reasonably be expected to
- (a) damage or prejudice the defence of the Republic or a foreign state allied to or friendly with the Republic, or
  - (b) be prejudicial to the detection, prevention or suppression of terrorism, sabotage or espionage.

### **Economic and other interests**

8. Information is exempt prior to official publication if
- (a) it contains trade secrets or financial, commercial, scientific or technical information that belongs to the Government and the information has monetary or potential monetary value;
  - (b) disclosure of the information can reasonably be expected to damage the financial interest of Government or the ability of the Government to manage the national economy;
  - (c) disclosure of the information can reasonably be expected to create undue disturbance in the ordinary course of business or trade in the country;
  - (d) disclosure of the information can unduly benefit or be injurious to a person because it provides advance information about future economic or financial measures to be introduced by Government;
  - (e) it contains criteria, procedures, positions or instructions that relate to negotiations carried on or to be carried on by or on behalf of the Government; or
  - (f) it contains questions to be used in an examination or test for educational purposes.

### **Economic information of third parties**

9. (1) Information is exempt if disclosure of the information would reveal a trade secret, research or scientific, technical, commercial, financial or labour

related information supplied in confidence whether expressly or impliedly and the disclosure can reasonably be expected

- (a) to prejudice the competitive position or interfere with the contractual or other negotiations of a person, group of persons or organisation;
- (b) to result in undue loss or gain to a person, group, financial institution or other body; or
- (c) to result in similar information no longer being supplied to the agency where it is in the public interest that similar information continue to be supplied.

(2) Information is not exempt under subsection (1) if the information is already available to the public.

### **Information relating to tax**

10. (1) Information is exempt if it is obtained from a tax return or gathered for the purpose of determining tax liability.

(2) Information may be disclosed if the person to whom the information relates agrees to the disclosure.

### **Internal working information of agencies**

11. (1) Information is exempt if disclosure of the information would reveal

- (a) an opinion, advice, report or recommendation contained, prepared or recorded, or
- (b) any consultation or deliberation held

in the course of or for the purpose of making a decision in the public service or an agency of Government if the disclosure can reasonably be expected to frustrate or inhibit the candid deliberative process of an agency or between agencies.

(2) Information is not exempt under subsection (1)

- (a) if it merely contains material that has been publicly mentioned as forming the basis of a public policy or for formulating public policy, or
- (b) if it contains only factual or statistical data.

**Information that relates to parliamentary privilege, fair trial, contempt of court**

12. Information is exempt if disclosure of the information can reasonably be expected

- (a) to infringe or contravene a parliamentary privilege,
- (b) to prejudice the fair trial of any person or the impartial adjudication of a case before a court or a quasi-judicial body, or
- (c) to constitute contempt of court or of a quasi-judicial body.

**Information subject to legal profession and other privilege under law**

13. Information is exempt if it is privileged from disclosure on the following grounds,

- (a) lawyer and client professional relationship,
- (b) communication between spouses whether married under the Ordinance or by custom, or
- (c) under the Evidence Decree

unless the person entitled to the privilege waives the privilege.

**Information subject to medical professional privilege**

14. Information is exempt if disclosure of the information reveals confidential communication between a doctor and patient or other medical professional expert, in connection with the patient's medical diagnosis or treatment.

**Disclosure of personal matters**

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

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

- (a) physical or mental health,

- (b) marriage or employment record,
  - (c) business or trade secrets of commercial value to the person,  
or
  - (d) professional, commercial or financial affairs.
- (3) Disclosure is not unreasonable, 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 another 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 another provision on exempt information specified in this Act;
  - (g) the disclosure can reasonably be expected not to have an adverse effect on the affairs of the person or prejudice the future supply of the information;
  - (h) the information is already available to the public;
  - (i) 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; or
  - (j) in the case of a deceased person, the applicant is the next of kin or represents the next of kin of the deceased.

### **Frivolous or vexatious application**

16. The information officer of an agency may refuse an application for access if,



- (a) the application is manifestly frivolous or vexatious, or
- (b) the amount of work involved in processing the application will cause unreasonable diversion of the resources of the agency required to make the disclosure, unless the applicant pays in advance an amount determined by the agency as adequate for the processing involved.

### **Disclosure for the protection of public interest**

17. Despite any provision 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, or
- (b) an imminent and serious risk to public safety, health or the environment,
- (c) miscarriage of justice,
- (d) abuse of authority or neglect in performance of official duty

and the benefits of disclosure clearly outweighs the harm or danger that could occur in the absence of disclosure.

### *Compilation and publication of manual on information of an agency*

### **Responsibility of sector Minister in respect of access**

18. (1) Each Minister responsible for a Ministry shall within twelve months from the date of the coming into force of this Act and every twelve months after that date, cause to be compiled and published after consultation with the Public Services Commission and the Head of the Civil Service and in accordance with the guidelines stated in section 19, an up-to-date official information compilation in the form of a manual, listing the government agencies that are under that Ministry.

- (2) The manual shall contain the following,
  - (a) a description of the organizational structure and functions of each agency including details of the responsibility of each division or branch of each agency;
  - (b) a list of the various classes of information which are prepared by or are in the custody or under the control of each agency;

- (c) a list of types of information that may be purchased or inspected free of charge or subject to a fee;
- (d) the name, telephone number, fax, email and address of the information officer of the agency or a designated officer of the agency to whom a request for access can be made;
- (e) the place where information to which access can be made by the agency under this Act or another enactment, can be found or made available;
- (f) an arrangement or procedure in relation to the agency that enables members of the public to participate in formulation of policies of the agency; and
- (g) an arrangement or procedure that enables a member of the public to seek amendment of that member's personal official records with the agency.

### **Provision of guidelines for manual**

19. The Minister responsible for this Act shall provide guidelines for the preparation of the manual by the sector Minister under section 18 and for the implementation of another enactment that relates to access to official information in the custody or control of an agency.

#### *Procedure for Access*

### **Application for access to information held by agency**

20. (1) An application for access to information held by an agency shall
- (a) be submitted in writing to the agency,
  - (b) contain sufficient description or particulars to enable the information to be identified,
  - (c) indicate the type of access required,
  - (d) if the application is made on behalf of another person, state the capacity of the applicant to the satisfaction of the officer to whom the application is made,
  - (e) state an address in the country to which any communication or notice can be sent, and

(f) be accompanied with the relevant fee.

(2) Where in the case of an individual applicant, the person is unable to make the application in writing due to illiteracy or any disability, the applicant shall make the request orally and 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 to the applicant.

(3) Where an application does not sufficiently describe the information required, the agency to which the application is made, shall inform the applicant of this and offer the applicant the necessary assistance to identify the document.

### **Person to deal with application**

21. (1) An application for access to information shall be dealt with by the information officer of the agency or an officer designated by the Minister in the manual referred to in section 18 for that purpose.

(2) The information officer of the agency or the designated officer may delegate the function conferred on him or her.

(3) A delegation

(a) shall be in writing, and

(b) does not prevent the person who made the delegation from performing the function as provided under subsection (1).

### **Transfer of application**

22. (1) Where an agency is unable to deal with an application because the information requested

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

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

the information officer of the agency to whom the application is made shall as soon as practicable and in any event within ten working days of the receipt of the application, transfer the application to the other agency and give written notice of the transfer to the applicant.

(2) Where an application for access is made and the agency to which the application is made does not have in its custody the information, the

information officer of the agency shall make the necessary enquiry to establish whether another agency has custody of the information and shall after establishing that, transfer the application to that other agency and notify the applicant accordingly.

(3) A notice of transfer shall state,

- (a) the date of the transfer,
- (b) the agency to which the transfer has been made, and
- (c) the reason for the transfer.

(4) An application transferred from one agency to another shall be taken to have been received by the agency to which the application is transferred on the date the transfer is received.

### **Deferred access**

23. An agency may defer access to information if it is information

- (a) that is required under an enactment to be published but is yet to be published,
- (b) that is to be published within ninety days from the receipt of the application or the transfer of the application, or
- (c) that has been prepared for submission to any person or body and is yet to be submitted.

### **Decision on application**

24. (1) Where an application for access is received by an agency, the information officer of the agency shall determine the application and cause a written notice to be given to the applicant within twenty one working days from the date of receipt of the application.

(2) The notice shall state

- (a) whether or not access will be given to the information;
- (b) whether access can be given to only a part of the information and the reason for this;
- (c) where there has been a transfer under section 22, that fact; and

- (d) where there is deferred access under section 23, that fact.
- (3) Where access is to be given, the notice shall state
- (a) how soon the access can be given;
  - (b) the form or manner in which access will be given;
  - (c) whether access is to only a part of the information because the other part is exempt information;
  - (d) in the case of a deferred access under section 23, the day on which the agency expects the information to be published or submitted;
  - (e) fees payable which shall be reasonable, if any; and
  - (f) the right of the applicant to lodge a complaint about a fee.
- (4) Where the agency decides to refuse access the notice shall state,
- (a) the reason for the refusal;
  - (b) the right of the applicant to seek redress in accordance with the provisions on internal reviews and appeals under sections 39 to 47
  - (c) the name and rank of the officer who dealt with the application; and
  - (d) fees payable for dealing with the application.

(5) An agency that fails to determine an application within twenty one working days after the application is received by the agency shall, for the purposes of this Act, be taken to have determined the application by refusing access to the document.

(6) Subsection (5) does not apply to an application that has been transferred to another agency or which the agency has refused to continue to process for failure to pay a required deposit or a fee.

### **Information that cannot be found or not in existence**

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

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

the information officer of the agency shall by affidavit notify the applicant that it is not possible to give access to the information for the stated reason.

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

(3) A notice under this section shall be taken to be a decision to refuse access to the information and the applicant may take such steps as are open to the applicant under sections 39 to 47.

(4) In the event of the information being found after the notice, the applicant shall be notified and given access, unless the information is exempt or is inaccessible under a provision of this Act.

### **Agencies may require advance deposit**

26. (1) Where, in the opinion of an agency, the costs to the agency for dealing with an application are likely to exceed the amount of the application fee, the agency may request the applicant to pay a reasonable advance deposit determined by the agency.

(2) A deposit requested by an agency under subsection (1) shall not be such that the sum of the application fee, the advance deposit and any further advance deposit paid in respect of the application exceeds the amount which in the opinion of the agency is necessary to cover the costs of dealing with the application.

(3) A request for an advance 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 an advance deposit requested by an agency in respect of an application shall be paid to the agency within the period of time as the agency may specify in the request.

(5) An agency may refuse to give access to information if a fee or advance deposit payable is not paid within a period notified to the applicant and shall in the event of any excess payment refund any part payment to the applicant.

### **Extension of time to deal with an application**

27. (1) The information officer to whom an application is made may extend the time provided for dealing with the application for a further period that is reasonably necessary but in any event not exceeding twenty one working days from the end of the date within which the application should be dealt with if

- (a) the application is for a large quantity of information or necessitates a search through a large number of documents and compliance with the original period would unreasonably interfere with the operations of the agency,
- (b) consultations with a person outside the agency are required and cannot reasonably be complied with within the time limit, or
- (c) the applicant agrees to the extension of time.

(2) Where an information officer extends the time the information officer shall as soon as reasonably possible, but in any event 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 39 to 47 within the prescribed period.

### **Right of agency to refuse process for failure to pay deposit**

28. (1) An agency may refuse to continue to process an application if the agency has by notice demanded payment of an advance deposit in relation to the application, and payment of the deposit has not been made within the period of time specified in the notice.

(2) If an agency refuses to continue to process an application the agency shall refund to the applicant the part of the advance deposit paid in respect of the application which exceeds the costs incurred by the agency in processing the application, and it may retain the remainder of the deposit.

(3) An agency that refuses to continue to process an application shall immediately notify that fact in writing to the applicant.

(4) A refusal to continue to process an application under this section shall be taken to be a determination and is subject to review and appeals under sections 39 to 47.

### **Refusal of access**

29. (1) An agency may refuse access to information if

- (a) the information is exempt;
- (b) the work involved in processing the application for access to the information will, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of the agency's functions;
- (c) the information is contained in a document that is available for inspection at that or another agency, 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 that is available from, or available for inspection at that agency, free of charge, in accordance with that agency's policies and practices;
- (e) the information is usually available for purchase; or
- (f) the information forms part of library material.

(2) An agency shall not refuse to give access to information by virtue of subsection (1)(b) without first assisting the applicant to amend the application so that the work involved in processing it will, if carried out, no longer substantially and unreasonably divert the agency's resources away from their use by the agency in the performance of its functions.

### **Manner of access**

30. (1) Access to information may be given to an applicant,

- (a) by giving the applicant a reasonable opportunity to inspect the document containing the information,



- (b) by giving the applicant a copy of the document containing the information,
- (c) in the case of information contained in a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of another device, by making arrangements for the applicant to hear or view those sounds or visual images,
- (d) in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound, by giving the applicant a written transcript of the words recorded in the document,
- (e) in the case of information contained in a document in which words are contained in the form of shorthand writing or in coded form, by giving the applicant a written transcript of the words contained in the document,
- (f) in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in a written form, by giving the applicant the written form, or
- (g) in another form including computer printouts, diskette, CD rom and downloading.

(2) If an applicant has requested that access to information be given in a particular form, access to the information shall be given in that form, except where the giving of access in the form requested,

- (a) will unreasonably divert the agency's resources away from their use by the agency in the performance of its functions,
- (b) will be detrimental to the preservation of the information or having regard to the nature of the document containing the information, will otherwise not be appropriate, or
- (c) will involve an infringement of copyright subsisting in a matter contained in the information,

access in that form may be refused but shall be given in another form.

(3) If an applicant has requested that access to information be given in a particular form and access in that form is refused but given in another form, the applicant shall not be required to pay a charge in respect of the giving of access

that is greater than the charge that the applicant will have been required to pay had access been given in the form requested.

(4) This section does not prevent an agency from giving access to information in another form agreed on between the agency and the person to whom access is to be given.

*Right to apply for amendment of personal records  
in custody of an agency*

**Amendment of personal records**

31. A person given access to information contained in an agency's records may apply for the amendment of the information if

- (a) the information is personal records on the individual, and
- (b) in the person's opinion, the information is incorrect, misleading, incomplete or out of date.

**Method of application for amendment of information contained in agency records**

32. (1) An application for the amendment of information contained in an agency's records shall

- (a) be in writing,
- (b) specify that it is made under this Act,
- (c) contain particulars reasonably necessary to enable the agency's records, 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 information which the applicant considers necessary to complete the agency's records or bring them up to date.

(3) An application shall indicate an address in the country to which notices under this Act should be sent and the application shall be submitted at the office of the agency.

### **Dealing with an application to amend records**

33. The provisions under sections 21 and 24 on person to deal with applications and the twenty one working day period for dealing with an application respectively shall apply to section 31 with such modifications as may be necessary.

### **Incomplete applications**

34. An agency shall not refuse to accept an application to amend personal records merely because the application does not contain sufficient particulars to enable the agency's records that contain the information to which the applicant has been given access to be identified, without first taking steps as are reasonably practicable to assist the applicant to provide the particulars.

### **Determination of applications**

35. (1) An agency shall determine an application in respect of personal records

- (a) by amending its records in accordance with the application, or
- (b) by refusing to amend its records.

(2) An agency that fails to determine an application within twenty one working days after the application is received by the agency shall, for the purposes of this Act, be taken to have determined the application by refusing to amend its records in accordance with the application.

### **Refusal to amend records**

36. An agency may refuse to amend its records in accordance with an application,

- (a) if it is satisfied that its records are complete, correct, up to date or not misleading in any material respect, or
- (b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect.

### **Notice of determination**

37. Section 24 that requires notice of a decision to be given by the information officer of an agency to an applicant within twenty one working days applies to

provisions on the right to apply for amendment of personal records in custody of an agency with the necessary modifications.

### **Notations to be added to records**

38. (1) If an agency refuses to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation

- (a) specifying the aspects in which the applicant claims the records to be incomplete, incorrect, out of date or misleading, and
- (b) if the applicant claims the records to be incomplete or out of date setting out the information the applicant claims is necessary to complete the records or to bring them up to date.

(2) The agency shall comply with the requirements of the notice lodged and shall cause written notice of the notation to be given to the applicant.

(3) If an agency discloses to another person any information contained in the part of its records to which a notice relates, the agency

- (a) shall also give to that person, when the information is disclosed, a statement
  - (i) stating that the person to whom the records relates claims that the information in the record is incomplete, incorrect, out of date or misleading, and
  - (ii) setting out particulars of the notation added to its records, and
- (b) may include in the statement the reason for the agency's refusal to amend its records in accordance with the notation.

### *Internal reviews and appeals*

#### **Internal review by the sector Minister**

39. (1) Except as otherwise provided in this Act, a person aggrieved by a decision of the information officer of an agency under this Act may submit an application for review of the decision by the Minister with responsibility for the agency.

(2) An application for review shall be addressed to the Minister and be submitted within twenty-one working days of the receipt of the notification of the decision sought to be reviewed.

(3) An application for review shall be in writing and shall be accompanied with the prescribed fee.

### **Action by sector Minister**

40. (1) On the receipt of an application for review, the sector Minister shall
- (a) inform the information officer of the agency who dealt with the original application and any other person affected by the review, and
  - (b) call for and examine any document of relevance to the review.

(2) The Minister may by notice require the applicant and any other person affected by the review to make any submission either in person or in writing to the Minister for the purpose of the review.

(3) A review by the Minister under section 39 shall be conducted in private.

(4) The Minister shall not in the course of reviewing the decision of an agency, disclose to the applicant or a person other than the information officer of the agency, information the disclosure of which is prohibited under this Act.

### **Decision of sector Minister on review**

41. (1) The sector Minister shall within twenty one working days of receipt of an application for a review, notify the applicant of the Minister's decision on the application for review, unless there is delay or other default on the part of the applicant.

- (2) The notice shall state
- (a) the reason for the decision and the provision of this Act relied upon, and
  - (b) where the review is dismissed, that the applicant may file an application for a judicial review of the decision of the Minister with the High Court or the Supreme Court as is applicable.

(3) Where the Minister fails to notify the applicant of a decision on the review within the twenty one working days the Minister shall be taken to have determined the review against the applicant.

(4) Where the Minister determines a review in favour of the applicant and it is to the effect that access to information should be given to the applicant, the information officer of the agency shall promptly or as soon as practicable and in any event not more than forty-eight hours after the Minister's decision has been communicated to the applicant, give access to the relevant information.

(5) The sector Minister may delegate the power of review to an officer of a rank higher than the information officer.

### **Delegation of power of Minister**

42. The Minister may in writing delegate the power conferred under sections 39 to 41.

### **Application to the High Court for Judicial review**

43. (1) Except as provided in subsection (2) and section 44, a person dissatisfied with a decision of a sector Minister in a review may file an application for a judicial review of the decision of the Minister at the High Court.

(2) A person refused access to information held by the Office of the President or Vice-President or the Cabinet under sections 3(2) or 4(3) may apply to the High Court for a review.

(3) An application for judicial review shall not be dealt with by the High Court unless the right to apply for a review under section 39 has been exhausted.

(4) A person aggrieved by a determination of the High Court may further appeal to the Court of Appeal and has a right of further appeal to the Supreme Court.

### **Application to Supreme Court for judicial review in respect of access to exempt information**

44. (1) Where an applicant is refused access to information by an agency because the disclosure of the information will be prejudicial to the security of the State or will be injurious to the public interest, the applicant may apply to the Supreme Court for a judicial review of the decision

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

## **Power of the Supreme Court**

45. (1) Subject to the Constitution, the Supreme Court has power in respect of any application for judicial review under section 44,

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

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

(3) The Supreme Court shall not in the course of a review disclose to a party other than the representative of the agency and the Attorney General information the disclosure of which is prohibited under this Act.

## **Ruling of the Supreme Court**

46. (1) The Supreme Court after hearing the application and presentations made before it, may make an order that it considers just.

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

## **Right to a lawyer or other expert**

47. A person who applies for access to information, the information officer of the agency concerned and a person affected by any proceedings under this Act whether before a Minister or a court is entitled to be represented by a lawyer or an expert.

## *General and miscellaneous provisions*

### **Burden of proof**

48. In proceedings for a review of a decision of a person who has authority to grant or refuse access to information under this Act, the burden of proof that the decision is justified lies on that person.

### **Appointment of information officers**

49. For the purposes of this Act there shall be designated by every agency an officer known as an information officer to perform the functions assigned to information officers under this Act.

### **Protection in respect of actions for defamation or breach of confidence**

50. (1) Where access to information is given under this Act, and the person by whom the decision to give access believes in good faith, when making the decision, that this Act permits or requires the decision to be made, no action for defamation or breach of confidence lies against the Republic, an agency, an information officer, a Minister or a member of staff of an agency because of the making of the decision or the giving of access.

(2) Neither the giving of access to information under this Act nor the making of a decision to give access shall be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorization or approval of the publication of the information by the person to whom access is given.

### **Protection in respect of certain criminal actions**

51. Where access to information is given under this Act, and the person by whom the decision to give access is made, believes in good faith, when making the decision that this Act permits or requires the decision to be made, neither the person by whom the decision is made nor a person concerned in giving access to the information commits an offence merely because of the decision to give access.

### **Fees and charges of agency**

52. (1) There shall be paid for access to information of an agency under this Act such fee or charge as the Attorney General may by guidelines specify to the agencies.

(2) The fees and charges shall specify the amount payable for



- (a) a search for every hour of manual search required in excess of two hours to locate information,
- (b) computer access and other costs incurred in locating, retrieving, processing and photo copying information,
- (c) the cost of preparing the information for disclosure, and
- (d) postage costs.

### **Waiver of fee on basis of financial hardship**

53. An information officer of an agency may waive a fee or charge for giving access to information where in the opinion of the information officer, the applicant will suffer financial hardship if required to pay the fee or charge.

### **Fees and charges not to form part of Consolidated Fund**

54. Fees and charges received by agencies under this Act shall not form a part of the Consolidated Fund and shall be kept by the agencies in an identified account to be used to defray the costs incurred by the agencies in the performance of their functions under this Act.

### **Responsibility of Attorney General and Minister for Justice for this Act**

55. (1) The Attorney General and Minister for Justice has ministerial responsibility for the full and effective implementation of this Act and may for that purpose issue written guidelines to agencies and ministries.

- (2) The Attorney General may
  - (a) conduct public education programmes and provide information for the implementation of this Act,
  - (b) cause 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.

### **Attorney General party to proceedings**

56. The Attorney General shall under this Act, be taken to be a party to proceedings for the review of a decision of an agency before a Court.

## **Annual reports by agencies**

57. (1) Each agency shall within three months after the 31<sup>st</sup> of December each year, submit a written report on the activities of the agency under this Act during the preceding year to the Attorney General.

(2) A report submitted shall include the following

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

(3) The Attorney-General may in writing request for any other information, as the Attorney-General considers necessary for the purpose of submitting a comprehensive report to Parliament under section 57.

## **Report by the Attorney-General to Parliament**

58. (1) The Attorney-General shall by the 30<sup>th</sup> of June of each year lay before Parliament an annual report on the activities of all the agencies in respect of the preceding year based on the annual reports of the agencies referred to in section 57.

(2) The report of the Attorney-General may contain comments that the Attorney-General considers necessary including an assessment of the extent to which agencies are complying with this Act.

## **Limitation of period for exempt information**

59. (1) Information classified as exempt information under sections 3 to 17 ceases to be an exempt information on the expiry of twenty years calculated from the end of the calendar year in which the information came into existence.

(2) On the expiry of the period specified a person may seek access to the information and the agency, which has custody of the information shall give access in accordance with the procedure for access under this Act.

## **Information held by the national archives, museums and libraries**

60. 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**

61. (1) This Act applies to information regardless of whether it came into existence before or after the coming into force of this Act.

(2) This Act applies to information held by an independent contractor engaged by an agency as a contractor and the information shall for the purposes of this Act be taken to be information held by the agency.

## **Offence of disclosure of exempt information**

62. A person who willfully discloses exempt information, the disclosure of which is prohibited under this Act commits an offence and is liable on summary conviction to imprisonment for a term of not less than twelve months.

## **Other offences**

63. A person who

- (a) seeks or gains access to personal record of another person under false pretences,
- (b) wilfully makes a false statement to mislead or gain access to information, or
- (c) with intent to deny right of access to information,
  - (i) destroys, damages or alters a document,
  - (ii) conceals a document; or
  - (iii) 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 or imprisonment for a term of not less than twelve months or to both.

## **Extension of time**

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

- (a) there is the need for the extension to locate and retrieve the requested information, or
- (b) it is necessary to consult another person for the purpose.

## **Regulations**

65. The Attorney-General and Minister for Justice may by legislative instrument make Regulations

- (a) for further procedures for access to information under this Act, and
- (b) to provide for such matters as are necessary to give full effect to this Act.

## **Interpretation**

66. In this Act unless the context otherwise requires,

“agency” means a government agency;

“exempt information” means information that falls within any of the exemptions specified in sections 3 to 17 of this Act;

“government agency” means a Ministry, government department, District Assembly or a local authority, a statutory or other body corporate or unincorporated, a public office funded in whole or in part from public funds or in which the Government has an interest, fund or otherwise;

“information” means recorded matter or material,

- (a) regardless of form or medium;
- (b) in the possession or under the control or custody of an agency or a private body; and

- (c) whether or not it was created or made by the agency or private body ;

“information officer” means an officer so designated for the purposes of this Act;

“international organisation” means any organisation of States or Government of States or any organ of such an organization;

“state secret” means information considered confidential by the Government which has not been officially disclosed or published to the general public and which it would be prejudicial to the security of the State or injurious to the public interest to disclose;

“trade secret” means a secret formula technique, process, programme, device or product known and used to the advantage by only one manufacturer and the disclosure of which would cause significant economic loss to the owner or manufacturer.

### **Modification to existing enactments**

67. Where an enactment in existence immediately before the coming into force of this Act, provides for the disclosure of information upon authority, the disclosure of the information shall be subject to this Act.

