

## **ACCESS TO INFORMATION BILL, 2021**

### **ARRANGEMENT OF SECTIONS**

#### **Section**

#### **PART I – PRELIMINARY**

1. Short title and Commencement
2. Interpretation
3. Application
4. Act to have overriding effect
5. Act to bind the State

#### **PART II - ACCESS TO INFORMATION OF PUBLIC BODIES**

6. Duties to create, keep, organize and maintain information
7. Proactive disclosure
8. Submission implementation plans, annual reports and publication of information manual
9. Designation of Information Officer
10. Designation of Deputy Information Officers
11. Right of access
12. Request for access
13. Duty to assist requester
14. Response to requests
15. Extension
16. Transfer of request
17. Deemed refusal
18. Deferral of access
19. Information that cannot be found or does not exist
20. Form of access
21. Language of access
22. Fees

#### **PART III - EXEMPTION**

23. Refusal
24. Personal information of a third party
25. Commercial and confidential information of an information holder or a third party
26. Protection of life, health, safety or privacy of an individual
27. National security and defence
28. International relations
29. Economic interest of the State
30. Law enforcement
31. Privileged communications and documents

- 32. Academic or examination professional or recruitment
- 33. Cabinet proceedings
- 34. Severance
- 35. Public interest overrides
- 36. Burden of proof
- 37. Notice to third parties
- 38. Extent of the exemptions

#### **PART IV - REVIEW OF DECISIONS**

- 39. Rights of review
- 40. Decision on review

#### **PART V – THE INFORMATION COMMISSION**

- 41. Establishment of the Information Commission
- 42. Composition of the Commission
- 43. Criteria for appointment of Commissioners
- 44. Vacation of office
- 45. Inquiry before termination of appointment
- 46. Limitation outside work
- 47. Remuneration
- 48. Independence of the Commission
- 49. Staff of the Commission
- 50. Duties of the Executive Secretary
- 51. Power of the Executive Secretary
- 52. Engagement of Experts
- 53. Immunity of the Commission and staff

#### **PART VI - POWERS AND DUTIES OF THE INFORMATION COMMISSION**

- 54. Powers and duties
- 55. Referral powers
- 56. General duties of the Commission
- 57. Annual report to the National Assembly
- 58. Promotion
- 59. Research and law reform
- 60. Monitoring
- 61. Implementation plan
- 62. Publication of information manual
- 63. Annual reports to the Commission
- 64. Proactive disclosure reports to the Commission
- 65. Inspecting powers of the Commission
- 66. Effect of non-compliance

## **PART VIII - APPEAL TO INFORMATION COMMISSION**

- 67. Appeal to the Commission
- 68. Direct appeal
- 69. Notice of intention to investigate or hear a matter
- 70. Notice to third parties
- 71. Right to make representation
- 72. Notices and communication.
- 73. Orders, decisions and directives
- 74. Content of recommendations, findings, orders, directions and directives
- 75. Third-party information released in public domain
- 76. Offences

## **PART VIII- FINANCIAL PROVISIONS**

- 77. Funds of the Commission
- 78. Estimates, accounts and audit
- 79. Annual report to the Minister
- 80. Regulations

## ACCESS TO INFORMATION BILL, 2021

### A BILL ENTITLED

**AN ACT** to provide for the right to access public records and information held by public authorities or by persons providing services for them, to provide for the procedure to obtain access to that information, and for connected purposes.

[            ]

**ENACTED** by the President and the National Assembly.

### PART I - PRELIMINARY

#### 1. Short title

This Act may be cited as the Access to Information Act, 2021.

#### 2. Interpretation

In this Act, unless the context otherwise requires-

**"Commission"** means the Information Commission established under section 41 of this Act;

**"Commissioner"** means an Information Commissioner;

**"head of a public body"** means the administrative head of that body;

**"information"** includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the information holder to whom a request has been made under this Act;

**"information holder"** means a public body;

**"Information Officer"** means a person designated as the Information Officer of a public body in accordance with Section 9 (1) of the Act;



**“inspect”** means to view, manually take notes or listen to an audio recording of any information;

**“international organisation”** means an international organisation of states or established by the governments of states;

**“Minister”** means the Minister responsible for information;

**“personal information”** means information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion;

**“person with disability”** includes a person who has physical, mental, intellectual, or sensory impairments;

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

**“public body”** means a body-

- (a) established by or under the Constitution,
- (b) established by statute,
- (c) which forms part of any level or branch of government,
- (d) a local government authority,
- (e) established for a public purpose which is owned, controlled, or financed by the government; and
- (f) designated by the Minister by regulation made under this Act, to be a public body for the purpose of this Act.

**“request”** means an application made under section 12 of the Act;

**“Requester”** means a person who requests access to information under this Act or any person acting on behalf of the person requesting access;

**“third-party”** means a person other than a public body or the requester; and

**“third-party information”** means personal information or commercial and confidential information of a third party.

### **3. Application**

This Act shall apply to all –

- (a) public bodies;
- (b) public authorities and non-state bodies which are owned or controlled by the government;
- (c) private organisations or private persons who operate with substantial public funds or benefits (directly or indirectly from public funds) or who perform public functions and services using public funds.

### **4. Act to have overriding effect**

- (1) The provisions of this Act shall have effect over anything inconsistent therewith contained in the Official Secrets Act, General Orders of the Government, regulations and bye-laws of any public body.
- (2) Nothing in this Act limits or otherwise restricts any other provision of a written law for a public body to disclose information; and
- (3) An information holder or information officer shall not be liable for releasing information in good faith and in accordance with this Act.

### **5. Act to bind the State**

This Act shall bind the State.

## **PART II – ACCESS TO INFORMATION OF PUBLIC BODIES**

### **6. Duty to create, keep, organize and maintain information**

- (1) Every public body shall create, keep, organize and maintain its information in a manner which facilitates access to information, as provided in this Act.
- (2) For the purpose of sub-section (1), every public body shall –
  - (a) produce information in respect of all its activities, including those expressly provided for under section 7 of this Act;

- (b) arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification and access; and
- (c) keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.

#### **7. Proactive disclosure**

(1) Every public body shall publish in such manner as may be prescribed, the following information as produced by or in relation to that body within thirty days of the information being generated or received by that body –

- (a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privilege or benefits, or to obligations, penalties or other consequences, penalties or other consequences, to or for which persons may be entitled or liable;
- (b) the name designations and other particulars of the Information Officer of the public body, including his or her contact details and electronic addresses where persons may submit requests for information;
- (c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public body;
- (d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formation or implementation of its policies, or similar documents;



- (e) where meetings of the public body, including its Board, Council, Committee or similar body are open to members of the public, the process for direct or indirect engagement and where a meeting is not open to the public, the contents of submissions received, the process for decision making and decisions reached.
- (f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
- (g) all contracts, licences, permits, authorisations and public-private partnerships granted by the beneficiaries;
- (h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body; and
- (i) any other information as directed by the Information Commission.

(2) Every public body shall annually publish in such manner as may be prescribed, the following information produced by or in relation to that body-

- (a) the particulars of its organization, functions and duties;
- (b) information containing interpretations or particulars of Acts or policies administered by the body;
- (c) details of its processes and procedures for creating, keeping, organizing and maintaining information;
- (d) a list of all the categories of information held by it or under its control;
- (e) a directory of its employees including their powers, duties and titles, indicating the permanent staff, the



temporary staff and the outsourced staff, recruitment procedures and vacancies;

- (f) the salary band for each public employee and officer, including the system of compensation as provided in its laws, and the procedures followed in its decision-making process, including channels of supervision and accountability;
- (g) detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefits received by each employee and officer;
- (h) a description of the composition, functions and appointment procedures of the Board, Council, Committee and other body consisting of two or more persons, constituted for the purpose of advice to or managing the public body;
- (i) the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports;
- (j) the annual reports submitted to the Commission under section 54 of this Act; and
- (k) any other information as directed by the Commission.

#### **8. Submission of implementation plans, annual reports and publication of information manuals**

(1) Every public body shall annually, within the time-frame stipulated by the Commission, submit to the Commission -

- (a) an information publication plan with respect to its proactive disclosure obligations in section 7 of this Act in accordance with section 63 (2) of this Act; and
- (b) annual reports on the implementation of this Act in accordance with section 64 of this Act.

(2) Every public body shall publish in the manner as may be prescribed, the information manuals detailing the categories of information it proactively discloses in accordance with section 65.

#### **9. Designation of Information Officer**

(1) The head of every public body shall, in consultation with the Minister responsible for that public body, designate a suitable officer of that body as Information Officer for the purposes of this Act.

(2) The designation of the Information Officer under sub-section (1) shall be published in the Gazette.

#### **10. Designation of Deputy Information Officers**

(1) To enable an information holder to comply with the requirements of this Act, head of the body may designate a person as deputy Information Officer.

(2) A deputy Information Officer has all the powers, duties and functions of the Information Officer.

(3) Each person designated as a deputy Information Officer of an information holder is subject to the supervision of the Information Officer of that information holder in the performance of the powers, duties and functions of that office under this Act.

#### **11. Rights of access**

Subject to this Act, every person has a right to access information from a public body.

#### **12. Request for access**

(1) A person who wishes to access information under this Act may make a request in writing to the Information Officer of the concerned public body:

(2) A request under sub-section (1) shall be accompanied by such reproduction cost as may be prescribed.

(3) On receipt of a request, the Information Officer shall immediately provide a written acknowledgement of the request to the requester.

(4) Subject to sub-sections (5) (b) and (c), a requester shall not be required to provide a justification or reason for requesting any information.

(5) A request under sub-section (1) shall –

- (a) provide such details concerning the information requested as are reasonably necessary to enable the Information Officer to identify the information;
- (b) if the requester believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief;
- (c) state the nature of the form in which the requester prefers access; and
- (d) if the request is made on behalf of another person, include an authorization from such person.

### **13. Duty to assist requesters**

(1) Where a person–

- (a) wishes to make a request to an information holder; or
- (b) has made a request to an information holder that does not comply with the requirement of this Act,

the Information Officer shall take all necessary steps to assist the person, free of charge, to make the request in a manner that complies with this Act.

(2) Where a person with a disability wishes to make a request, the Information Officer shall take all necessary steps to assist the person to make the request in a manner that meets the needs of the person with disability which and which complies with the Act.

### **14. Response to requests**

(1) Subject to sub-section (2), the Information Officer to whom a request is made under section 11 shall, as soon as reasonably

possible, but in any event within twenty-one days after request is submitted-

- (a) determine whether to grant the request;
- (b) notify the requestor of the decision in writing; and
- (c) subject to sub-section (7), if the request is granted, subject to the payment of any applicable reproduction fee or transcription fee, give the requester access to the information.

(2) Where a request related 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 after the request is submitted-

- (a) determine whether to grant the request;
- (b) notify the requester of the decision in writing; and
- (c) if the request is granted, give the requester access to the information.

(3) If the request is granted, the notice referred to in sub-sections (1) and (2) shall state-

- (a) the reproduction fee or transcription fee payable, if any;
- (b) the form in which access to the information will be given; and
- (c) that the requester may apply for a review of the reproduction or transcription fee payable or the form in which access has been granted in accordance with section 39.

(4) Subject to sub-sections (6) and (7), where a requester has been given notice that his or her request has been granted, that requester shall if-

- (a) a reproduction fee or transcription fee is payable, upon payment of that fee; or
- (b) no reproduction fee or transcription fee is payable,



immediately be given access to the information.

(5) For the purposes of this Act, any information provided to a requester by an information holder is presumed to be true and accurate in content and form and the requester may rely on and use that information on that basis.

(6) Where an Information Officer grants a request under sub-section (2), the requester shall be given access to the information immediately, irrespective of whether any reproduction transcription fee has been paid.

(7) Where the information requested contains third party information, a requester may not be given access to that information until such time as any right of the third party to appeal the release of the information has expired or any appeal lodged by the third party has been finally determined.

(8) If the request for information is refused, the notice referred to in sub-sections (1) and (2) shall-

- (a) state the reasons for the refusal, based on the contents and substance of the request and the information considered by the Information Officer;
- (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
- (c) inform the requester that he or she may apply for a review of the decision in accordance with section 39.

(9) Where an Information Officer considers that a request made under sub-section (2) is not necessary to safeguard the life or liberty of a person, he or she shall within forty-eight hours after the request is made-

- (a) provide notice of the decision with reasons thereof to the requester;
- (b) inform the requester that, subject to the requester's right to apply for a review of the decision, make a decision regarding whether to grant access to the requested information within the time period specified in sub-section (1); and

- (c) inform the requester that he or she may appeal to the Commission in respect of the decision in accordance with section 67.

#### **15. Extension of time**

(1) Subject to sub-section (2), the Information Officer to whom a request is made may extend the period to respond to a request in section 14(1) on a single occasion for a period of not more than fourteen days if-

- (a) the request is for a large amount of information or requires a search through a large amount of an information and meeting the original time limit would unreasonably interfere with the activities of the information holder concerned; or
- (b) consultations are necessary to comply with the request that cannot be reasonably completed within twenty-one days.

(2) If any part of the information requested can be considered by the Information Officer within the time period specified under section 14(1), it shall be reviewed and a response provided to the requester in accordance with that section.

(3) If a period to respond to a request is extended in terms of sub-section (1), the Information Officer shall forthwith after the decision to extend has been taken by him or her, but in any event within twenty-one days after the request is received, notify the requester in writing of that extension.

(4) The notice in terms of sub-section (3) shall state -

- (a) the period of the extension;
- (b) adequate reasons for the extension, based on the provisions of this Act; and
- (c) that the requester may apply for a review of the decision in accordance with section 39.

#### **16. Transfer of request**

(1) Where a request is made to a public body requesting information which the public body does not hold and -

- (a) which the public body knows or reasonably considers that it is held by another public body; or
- (b) the subject matter of which is more closely connected with the functions of another public body,

the body to which such request is made shall transfer the request, or such part of it as may be appropriate, to that other public body.

(2) A public body that transfers a request in accordance with sub-section (1) shall-

- (a) make the transfer as soon as practicable but in any event within five days from the date of receipt of the request; and
- (b) immediately notify the requester of the transfer in writing.

(3) A public body that receives a transferred request shall immediately notify the requester of receipt of the request in writing.

(4) Where a request is transferred to another public body in accordance with sub-section (1), the request is deemed to have been-

- (a) made to the public body to which it was transferred; and
- (b) received by that public body on the day the body to which it was originally made received it.

#### **17. Deemed refusal**

If an Information Officer fails to give a decision on a request, within-

- (a) the time specified in section 14(1); or
- (b) any extended period of time where that time period has been extended in accordance with section 15,

he or she is deemed to have refused the request.

#### **18. Deferral of access**

(1) An Information Officer who receives a request for information may



defer the provision of access to the information if the information-

- (a) has been prepared for presentation to National Assembly, but until it has been presented to the National Assembly; or
- (b) constitutes a report or part thereof that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the state, but only until the report has been presented or made available to that body or person or upon the expiration of thirty-five days from the date of the request whichever is earlier.

(2) If an Information Officer decides to defer access to information under sub-section (1), the Information Officer shall notify the requester in writing-

- (a) of the decision as soon as possible but not later than twenty-one days after receiving the request;
- (b) of the reason for the decision, including the provisions of this Act relied on;
- (c) of the likely period for which access is to be deferred; and
- (d) that the requester may, within fourteen days of receiving notice, make written representations to the Information Officer regarding why the information is required before such presentation.

(3) If a requester makes a representation in terms of sub-section (2)(d), the Information Officer, after due consideration of those representations, shall as soon as reasonably possible but in any event within five days, grant the request for access if there are reasonable grounds for believing that the requester will suffer substantial prejudice if access to the information is deferred for the likely period referred to in sub-section (2) (c).

#### **19. Information that cannot be found or does not exist**

(1) If the Information Officer has-

- (a) taken all reasonable steps to find the information requested -



(b) concluded that the Information -

- (i) is in the possession of the information holder but cannot be found, or
- (ii) does not exist,

he or she shall, as soon as possible but in any event within twenty-one days of the receipt of the request, notify the requester in writing that the information cannot be found or does not exist.

(2) The notice referred to in sub-section (1) shall include an affidavit or affirmation, signed by the Information Officer stating the substantive details of all steps taken to find the information or whether the information exists, including, but not limited to-

- (a) details of all locations for the information and person or persons that conducted those searches;
- (b) details of any communications with any person that the Information Officer contacted in searching for the information or attempting establish the existence of the information; and
- (c) any evidence relating to the existence of the information including-
  - (i) any evidence that the information was destroyed, and
  - (ii) the location in which the information was last known to be held.

(3) If information is found after notice is given to a requester under sub-section (1), the Information Officer shall immediately notify the requester in writing and thereafter as soon as possible, but in any event within fourteen days;

- (a) determine whether to grant the request;
- (b) notify the requester of the decision in writing; and
- (c) if the request is granted, subject to the payment of any applicable reproduction fee, translation fee or transcription fee, give the requester access to the

information.

(4) If access to the information is granted, the notice referred to in sub-section (3) shall comply with section 14(3) and access shall be given in accordance with sections 14(4) and 14(7).

(5) If access to information is refused, the notice referred to in sub-section (3) shall comply with section 14(8).

## **20. Form of access**

(1) Access to information shall be given to a requester in one or more of following forms -

- (a) a reasonable opportunity to inspect the information;
- (b) a copy of the information;
- (c) in the case of information that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear, view, record or copy those sounds or visual images.
- (d) in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form provision by the information holder of a written transcript;
- (e) in the case of information which is held on a computer, or in electronic or machine-readable form and from which the information holder concerned is capable of producing a printed copy of the information or part of it, by supplying such a copy; or
- (f) in the case of information available or capable of being made in computer readable form, by supplying a copy in that form.

(2) Subject to sub-section (4), where the requester has requested access to information in a particular form, access shall be given in that form.

(3) A requester may amend his or her preferred form of access on receipt of notice of the reproduction fee or transcription fees payable

if access is granted in the form initially requested.

(4) If giving access to information in the form requested by the requester is likely to -

- (a) unreasonably interfere with the operations of the information holder;
- (b) be detrimental to the preservation of the information; or
- (c) having regard to the physical nature of the information, render access in the requested form inappropriate,

access in that form may be refused if access may be given in another form authorised under this Act.

(5) Where a person requests access to information in a particular form and for a reason specified in sub-section (4) access in that form is refused but access is given another form, the reproduction fee charged may not exceed what would have been charged if that requester had been given access in the form requested.

(6) If a requester with a disability is prevented by that disability from reading, viewing or listening to the information concerned in the form in which it is held by the information holder, the Information Officer shall, if that requester so requests, take reasonable steps to make the information available in a form in which it is capable of being read, viewed or heard by the requester.

## **21. language of access**

The information shall be provided to the requester in the language it is kept.

## **22. Fees**

(1) A requester is not required to pay any cost in relation to time spent by-

- (a) an information holder searching for the information requested; or
- (b) the information holder examining the information to determine whether it contains exempt information or

deleting exempt information from a document.

(2) An information holder may charge the requester such reproduction fee as may be prescribed.

(3) Where a request is made that a written transcription be produced of any information provided to the requester, the information holder may recover the costs of such transcription at such rate as may be prescribed from the requester.

### **PART III – EXEMPTIONS**

#### **23. Refusal**

An information holder may refuse to grant access to information only if the information falls within an exemption stated in this Part.

#### **24. Personal Information of a third party**

(1) Subject to sub-section (2), an Information Officer may refuse a request for information if its release would involve the unreasonable disclosure of personal information about a natural third party, including a deceased individual.

(2) A request shall not be refused in terms of sub-section (1) where the-

- (a) third party does not make a representation under section 70(3) stating why access to the information should not be granted;
- (b) third-party consents to the disclosure;
- (c) third party has been deceased for more than ten years;
- (d) information is in the public domain;
- (e) information relates to the physical or mental well-being of an individual who is under the care of the requester 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 individual's interests;



- (f) information is about a deceased individual and the requester is-
  - (i) the individual's next of kin or legal representative;
  - (ii) making the request with the written consent of the individual's next of kin or legal representative;
  - (iii) the Executor of the deceased's estate; or
  - (iv) the Trustee of a trust which can benefit from the deceased individual's estate;
- (g) information relates to the position or functions of an individual who is or was an official of the information holder or any other public body; and
- (h) information was given to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it was given, that the information belongs to a class of information that would or may be made available to the public.

**25. Commercial and confidential information of an information holder or a third-party**

(1) Subject to sub-section (2), an Information Officer may refuse a request for information if-

- (a) it contains trade secrets of the information holder or a third party; or
- (b) it contains information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or a third party.
- (c) allowing access would harm the intellectual property right of the information holder or a third party.

(2) A request shall not be refused in terms of sub-section (1) where-

- (a) the disclosure of the information would facilitate

accountability and transparency of decisions taken by the information holder;

- (b) the information relates to the expenditure of public funds;
- (c) the disclosure of the information would reveal misconduct or deception;
- (d) the third-party consents to the disclosure; or
- (e) the information is in the public domain.

## **26. Protection of life health, safety or privacy of an individual**

An Information Officer may refuse a request where the release of the information is likely to endanger the life, health, safety or privacy of an individual.

## **27. National security and defence**

(1) An Information Officer may refuse to grant access to information where to do so would cause substantial prejudice to the security or defence of the State.

(2) For the purpose of this section, security or defence of the State means -

- (a) military tactics, strategy, exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities;
- (b) intelligence relating to -
  - (i) the defence of the State, or
  - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);

- (d) the identity of a confidential source; or
- (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons.

(3) For the purpose of this section, subversive or hostile activities means-

- (a) an attack against the State by a foreign element;
- (b) acts of sabotage or terrorism aimed at the people in the State or a strategic asset of the state, whether inside or outside the State; or
- (c) a foreign or hostile intelligence operation.

#### **28. International relations**

(1) An Information Officer may refuse to grant access to information-

- (a) supplied by or on behalf of the State to another state or an inter-national organisation in terms of an international agreement with that state or organisation which requires the information to be held in confidence;
- (b) required to be held in confidence by international law;
- (c) on the positions adopted or to be adopted by the State, another state or an international organisation for the purpose of present or future international negotiations; or
- (d) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the country,

if the release of the information would cause substantial prejudice to the international relations of the State.

### **29. Economic interest of the State**

An Information Officer may refuse to grant access to information which relates to the determination of –

- (a) currency or exchange rates;
- (b) interest rates; or
- (c) taxes, including duties of customs or excise,

if to do so would cause substantial harm to the economic interests of the State or the ability of the State to manage the economy.

### **30. Law Enforcement**

An Information Officer may refuse to grant access to information, if such access would cause prejudice to the–

- (a) prevention or detection of crime;
- (b) apprehension or prosecution of offenders;
- (c) administration of justice;
- (d) assessment or collection of any tax or duty; or
- (e) security and life of an informant relating to a crime or investigation.

### **31. Privileged communications and documents**

An Information Officer may refuse to grant access to information if it–

- (a) consists of confidential communication between a Medical Practitioner and his or her patient.
- (b) consists of confidential communication between a Legal Practitioner and his or her client;
- (c) consists of confidential communication between a



if the release of the information would cause substantial prejudice to the international relations of the State.

### **29. Economic interest of the State**

An Information Officer may refuse to grant access to information which relates to the determination of –

- (a) currency or exchange rates;
- (b) interest rates; or
- (c) taxes, including duties of customs or excise,

if to do so would cause substantial harm to the economic interests of the State or the ability of the State to manage the economy.

### **30. Law Enforcement**

An Information Officer may refuse to grant access to information, if such access would cause prejudice to the–

- (a) prevention or detection of crime;
- (b) apprehension or prosecution of offenders;
- (c) administration of justice;
- (d) assessment or collection of any tax or duty; or
- (e) security and life of an informant relating to a crime or investigation.

### **31. Privileged communications and documents**

An Information Officer may refuse to grant access to information if it–

- (a) consists of confidential communication between a Medical Practitioner and his or her patient.
- (b) consists of confidential communication between a Legal Practitioner and his or her client;
- (c) consists of confidential communication between a

journalist and his or her source; or

- (d) would otherwise be privileged from production in legal proceedings,

unless the patient, client, source or person, as the case may be, entitled to the privilege consents to the release or has waived the privilege.

### **32. Academic or examination processes**

(1) An Information Officer may refuse a request for information relating to -

- (a) an academic or professional examination; or
- (b) a recruitment or selection process prior to the completion of that examination or recruitment or selection process,

if the release of the information is likely to jeopardise the integrity of that examination or recruitment or selection process.

(2) Information referred to under sub-section (1) shall be released on request after the academic or professional examination or recruitment or selection process has been completed.

### **33. Cabinet proceedings**

An Information Officer may refuse a request for information relating to a submission to the Cabinet for consideration and minutes and decisions of the Cabinet, unless the Cabinet Secretary authorises such release.

### **34. Severance**

(1) Where a portion of a record or document containing requested information is exempt from release under this Part, the exempt portion of the information shall be severed or redacted from the record or document and access to the remainder of the information shall be granted to the requester.

(2) Where an Information Officer severs or redacts any portion of a record or document, he or she shall indicate the length or amount of information severed or redacted in the response to the requester.

### **35. Public interest override**

(1) Notwithstanding any of the exemptions in this Part, an information holder may only refuse a requester access to information if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably out-weighs the public interest in the release of the information.

(2) An Information Officer shall consider whether sub-section (1) applies in relation to any information requested before refusing access on the basis of an exemption stated in this Part.

(3) The exceptions in this Part do not apply in case of serious violations of human rights or crimes against humanity.

### **36. Burden of proof**

An Information Officer who refuses to grant access to information requested has the burden of proving that-

- (a) such information is exempt from disclosure under this Act; and
- (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest in the release of the information.

### **37. Notice to third parties**

(1) If an Information Officer is considering a request for access to personal information of a natural third party or commercial or confidential information of a third party, he or she shall take reasonable steps to inform the third party to whom or to which the information relates or where the third party is deceased, the next of kin or legal representative of the third party, in writing of the request as soon as reasonably possible, but in any event within eight days after the request is received.

(2) Subject to sub-section (7), when informing the third party, the Information Officer shall include in the notice-

- (a) the nature of the request and the content of the information;
- (b) that the third party may consent to the release of the information or make a representation as to why access to the information should not be granted in



accordance with sub-section (3);

- (c) that if the third party does not make a representation as to why access to the information should not be granted, access will be given;
- (d) that he or she may give access even if the third party makes a representation under sub-section (3); and
- (e) that if he or she decides to release the information, the third party may lodge an appeal under section 39.

(3). Subject to sub-section (10), within ten days of being informed of a request under subsection (1), a third party may-

- (a) inform the Information Officer in writing that he or she consents to the release of the information to the requester; or
- (b) make a representation to the Information Officer in writing stating why the request for access to the information should not be granted.

(4) Where a third party -

- (a) does not provide a response under sub-section (3) within ten days of the receipt of the intimation; or
- (b) cannot be located after reasonable steps have been taken to do so,

the Information Officer may assume that the third party does not object to the information being granted to the requester.

(5) On determining whether to grant the requester access to the personal or commercial or confidential information of the third party, the Information Officer shall notify the third party in writing of the decision as soon as possible, but in any event within three days after the decision.

(6) If the Information Officer has granted the request for access in circumstances where the third party objected to the granting of access, the notice referred to in sub-section (5) shall state-

- (a) the reasons for granting the request;
- (b) that the third party may apply for a review of the



decision under section 40 within ten days of receipt of the notice; and

- (c) that the requester will be granted access to the information unless an appeal is lodged within the ten-day period.

(7) If the Information Officer is considering a request which he or she is required to respond to within forty-eight hours under section 14(2), and that information contains personal information of a natural third party or commercial or confidential information of a third party, the Information Officer shall take reasonable steps to inform the third party to whom or which the record relates, in writing of-

- (a) the nature of the request and the content of the information;
- (b) the name of the requester; and
- (c) whether he or she released the information to the requester; and

(8) Where the Information Officer responds to a request within forty-eight hours under section 14(2), a third party shall not have the right to make a representation to the Information Officer stating why the request should not be granted.

### **38. Extent of the exemptions**

The exemptions in this Part are not exhaustive and, may from time to time be expanded by the Minister.

## **PART IV - REVIEW OF DECISIONS**

### **39. Right of review**

(1) The head of an information holder may, on application, review a decision taken by the Information Officer under this Act.

(2) A requester may apply for a review of any decision of an Information Officer.

(3) A third party may apply for a review of a decision of an Information Officer to grant access to information containing third party information.

(4) An application for review under sub-section (2) shall be filed with

the Information Officer of the public body within sixty days of the receipt of the relevant decision of an Information Officer.

(5) An application for review under sub-section (3) shall be filed with the Information Officer of the relevant body within ten days of the receipt of a decision of an Information Officer.

(6) An application for review shall identify the request and decision of the Information Officer which is the subject of the review.

(7) If an application under sub-section (1) is lodged after the expiry of sixty days, the Information Officer may, upon good cause shown and with the approval of the head of the information holder, allow the late lodging of the application.

(8) As soon as possible, but in any event within five days after receipt of a review application, the Information Officer shall submit to the head of the information holder the-

- (a) review application;
- (b) information Officer's reasons for the decision; and
- (c) information that is the subject of the review, and notify the requester and the third party in writing that the documents have been so submitted.

#### **40. Decision on review**

(1) The head of the information holder to whom a review application is submitted in accordance with section 39, shall as soon as reasonably possible, but in any event within fifteen days after the review application is received by the Information Officer-

- (a) make a decision; and
- (b) notify the requester or the third party, as the case may be, of that decision in writing.

(2) If the head of the information holder decides to grant access to the information, the notice to the requester referred to in sub-section (1) shall state-

- (a) the reproduction fee or transcription fee, if any payable;

(b) the form in which access will be given; and

(c) that the requester may appeal to the Commission under section 68 against the decision in respect of the reproduction fee, or transcription fee payable or the form of access and the process for lodging that appeal.

(3) Subject to sub-section (4), where a requester has been given notice under sub-section (2), that requester shall if-

(a) a reproduction fee or transcription fee is payable upon payment of that fee; or

(b) no reproduction fee or transcription fee is payable, immediately,

be given access to the information.

(4) Where the head of the information holder has decided to release information containing third party information, the requester may not be granted access to that information until such time as any right of the third party to appeal against the decision under section 67 has expired or any appeal lodged by the third party has been finally determined.

(5) If the head of the information holder decides not to grant access to the information, the notice to the requester referred to in sub-section (1) shall-

(a) state reasons for the refusal, based on the contents and substance of the request and the information considered by the head of the information holder;

(b) contain a reference to specific provisions of this Act upon which the refusal is based; and

(c) inform the requester that he or she may appeal to the Commission against the decision in accordance with section 58, and the process of lodging that appeal.

(6) Where a third party has lodged an application for review, the notice referred to in sub-section (1) shall state –

(a) reasons for the decision; and

(b) that the third part may appeal to the Information



- (2) Members of the Commission shall be appointed by the President, after consultation with the Public Service Commission and subject to confirmation by the National Assembly.
- (3) The Chairperson of the Commission shall hold office for five years and all other Commissioners shall hold office for four years and be eligible for re-appointment to one further term of five years.

#### **43. Criteria for appointment of Commissioners**

(1) A person is eligible to be appointed an Information Commissioner if he or she -

- (a) is a fit and proper person;
- (b) has requisite academic qualifications and working experience;
- (c) is a publicly recognised human rights advocate;
- (d) is independent, impartial and accountable; and
- (e) has demonstrable knowledge in access to information, transparency or public and corporate governance.

(2) A person is disqualified from being appointed as an Information Commissioner if she or she -

- (a) has been convicted of a felony or a crime involving dishonesty;
- (b) is an undischarged bankrupt; or
- (c) holds a political office or position at any level of the State or within a political party at the time of nomination, or has held such office or position in the five years preceding the nomination.

#### **44. Vacation of office**

(1) A Commissioner may resign his or her office on giving one month written notice to the President.



Commission under section 67 against the decision, and the process for lodging that appeal.

(7) If the head of the information holder fails to give a decision on a review application within the time specified in sub-section (1), he or she is deemed to have affirmed the original decision of the Information Officer and the requester may appeal to the Commission under Section 67.

## **PART V – THE INFORMATION COMMISSION**

### **41. Establishment of the Information Commission**

(1) There is established by this Act, the Information Commission.

(2) The Commission is a body corporate with perpetual succession, capable of -

(a) acquiring, holding and disposing of property;

(b) suing and being sued in its corporate name; and

(c) subject to this Act, of performing all functions as bodies corporate may by law perform.

(3) The Commission shall have a common seal, the use of which shall be authenticated by the signatures of the Chairperson and any other member of the Commission generally or specifically authorized by the Commission for that purpose.

(4) Every document purporting to be an instrument executed or issued by or on behalf of the Commission and to be sealed with the common seal of the Commission in the manner stated in sub-section (1) shall be deemed to be so executed or issued without further proof, unless the contrary is proved.

(5) In appropriate cases, the seal may be affixed to documents outside The Gambia.

### **42. Composition of the Commission**

(1) The Commission shall consist of five Commissioners, one of whom shall be the Chairperson and at least two of the Commissioners shall be females.

(2) The office of a Commissioner shall become vacant if he or she-

- (a) is absent from three meetings of the Commission without permission from the Chairperson, and in the case of the Chairperson if he or she is absent from three meetings without the permission of the Minister;
- (b) is declared insolvent or adjudged bankrupt;
- (c) is convicted of a felony or an offence involving dishonesty;
- (d) is declared to be of unsound mind or physically incapable of carrying out the functions and duties of a Commissioner;
- (e) is found to be incompetent;
- (f) dies; or
- (g) commits gross misconduct.

(3) Where a vacancy arises, the person appointed to fill such vacancy shall hold office for the remainder of the term for which his or her predecessor in office would have held office if such vacancy had not occurred.

#### **45. Inquiry before termination of appointment**

(1) The President shall only remove a Commissioner from office after an independent inquiry is conducted into the allegation levelled against the Commissioner and the report of the independent inquiry confirms the allegation.

(2) A decision to terminate the appointment shall be approved by the National Assembly before the Commissioner is terminated.

#### **46. Limitation on outside work**

A Commissioner shall not –

- (a) hold any other job;
- (b) occupy or engage in any trade or profession for financial gain; or

- (c) engage in any party-political activity.

#### **47. Remuneration**

The remuneration of Commissioners shall be approved by the National Assembly on the recommendation of the Minister.

#### **48. Independence of the Commission**

- (1) The Commission shall be -

- (a) independent and autonomous; and
- (b) accountable only to the National Assembly for the execution of its mandate, operations and performance.

- (2) Subject to sub-section (1), the Commission shall not in the performance of its functions under this Act, be subject to the direction or control of any other person or authority.

#### **49. Staff of the Commission**

- (1) The Commission shall be assisted by a secretariat consisting of-

- (a) the Executive Secretary; and
- (b) such other administrative and technical staff as may be required for the efficient performance of its functions.

- (2) The Executive Secretary and other staff of the Commission shall be appointed by the Commission on such terms and conditions as it may determine.

#### **50. Duties of the Executive Secretary**

- (1) Subject to the direction and general control of the Commission, the Executive Secretary-

- (a) shall be responsible for carrying out the policy decisions of the Commission;
- (b) shall be responsible for the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission;



(c) may sign documents on behalf of the Commission;  
and

(d) shall perform such other duties as may be assigned  
by the Commission.

(2) The Executive Secretary shall unless otherwise directed in writing, attend all meetings of the Commission.

#### **51. Powers of the Executive Secretary**

The Executive Secretary shall formulate rules and procedures providing for-

(a) the control, direction and administration of the Commission;

(b) the discipline, training, classification and promotion of other staff of the Commission;

(c) the terms and conditions of service; and

(d) such other matters as he or she may consider necessary or expedient for the smooth operation of the Commission.

#### **52. Engagement of Experts**

(1) The Commission may, whenever it deems appropriate, appoint experts to assist it in gathering information, conducting research, investigations and analysing issues pertaining to the performance of any of its functions under this Act.

(2) In appointing such experts, the Commission shall include qualified representatives from appropriate civil society and other interest groups.

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

(1) The Executive Secretary, the staff and members of the Commission shall not be subject to any criminal or civil proceedings or be personally liable for any act done or omitted to be done in good faith in the performance of their functions.

(2) A staff who discloses wrongdoing within the Commission may



not be subject to any punishment in the course of their employment by reason of the disclosure.

## **PART VI - POWERS AND DUTIES OF THE COMMISSION**

### **54. Powers and duties**

(1) The Commission shall have the power to determine the nature, process and undertaking necessary to discharge its mandate in terms of this Act, including all work necessary for the promotion, monitoring and protection of the right to access information.

(2) The Commission shall at its own discretion and power-

- (a) resolve a matter through negotiation, conciliation, or mediation as it deems such recourse appropriate;
- (b) determine the need for, form of and type of investigation required for the determination of any matter;
- (c) make any determination it considers just and equitable including issuing recommendation, imposing such fines or penalties in matters before it as it considers appropriate;
- (d) dismiss a matter it considers manifestly vexatious; and
- (e) authorise or undertake any action it deems necessary or appropriate for the execution of its mandate under this Act;

(3) The Commission may-

- (a) determine and issue general directions for the hearing of a matter including notification of parties;
- (b) issue specific directions where issues of sensitivity to the state are concerned;
- (c) issue specific directions in matters concerning confidential information or minor circumstances which it deems appropriate;
- (d) decide on all matters relating to the need for, form of, issuing and service of notices and communication; and

- (e) decide on issues of representation where necessary.

(4) The Commission has the power to -

- (a) issue written orders obliging the production of information;
- (b) examine, reproduce, take extracts from or hold information for as long as is necessary;
- (c) require the production of information to which access has been refused on the basis of an exemption under Part III, for the purpose of deciding whether it is an exempt document;
- (d) limit access to information to parties in terms of this Act;
- (e) take any such action or issue and serve notices as may be appropriate for the resolution of any matter before it.

#### **55. Referral powers**

(1) The Commission has the power to make direct referrals to the High Court or the Supreme Court on questions of law or such other matters it considers appropriate.

(2) The Commission may where it deems necessary -

- (a) bring actions in its name before the High Court or Supreme Court; or
- (b) join any proceedings in these Courts which relate to the implementation of the mandate of the Commission.

#### **56. General duties of the Commission**

(1) The Commission shall-

- (a) conduct matters with as little technicality or formality and as expeditiously as possible;
- (b) consider the needs of persons who wish to make protected disclosures, minors, and other vulnerable groups;

- (c) hold hearings in public unless it is inappropriate to do so; and
- (d) publish quarterly, its findings, recommendations, orders, decisions and directives.

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

#### **57. Annual report to the National Assembly**

The Commission shall within three months before the end of each year submit an annual report to the National Assembly which shall include complaints about offences noted during investigation under this Act and findings of any audit undertaken by the Commission.

#### **58. Promotion**

(1) The Commission has the mandate to promote awareness, educate and popularise the right of access to information.

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

- (a) assess all implementation plans required in terms of section 61 to ensure information holders have clear obligations and processes which support awareness raising and education interventions at community level including disadvantaged groups;
- (b) consult and collaborate with civil society organisations and interest groups;
- (c) provide recommendations and guidelines to information holders for internal training of personnel, and provide training on request, if resources are available;
- (d) monitor internal training of staff within public bodies and relevant private bodies and issue notices for mandatory training where necessary;
- (e) assist both requesters and information holders on matters of interpretation of the Act;
- (f) develop such material as it deems necessary to



advance promotion of access to information; and

- (g) make public and widely disseminate the annual report of the Commission.

#### **59. Research and Law**

(1) The oversight mechanism shall take such measures as are necessary to ensure that all proposed or emerging legislation of any status, regulations and practices are aligned to this Act.

(2) The oversight mechanism shall, with regard to its obligations under sub-section (1), submit recommendations for reform on proposed or emerging legislation to the relevant authorities.

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

(4) Reports of recommendations for reform and any research undertaken by the Commission shall be presented to National Assembly in the annual report of the Commission.

#### **60. Monitoring**

(1) Information holders shall provide such reports as are required by this Act to the Commission.

(2) The Commission shall, following public consultations, develop and publicise guidelines which detail the reporting requirements, including the manner, means and timeframes that apply to information holders.

(3) The Commission may request any further information from information holders to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

#### **61. Implementation plan**

(1) Every public body and relevant private body shall submit an implementation plan to the Commission within eighteen months of the commencement of this Act, or within six months of the establishment of the body, whichever is the earlier, detailing-

- (a) its operational plan to implement its obligations under this Act; and



- (b) an information publication plan in respect of its proactive disclosure responsibilities in section 7.

(2) The plan referred to in sub-section (1) shall include-

- (a) budgetary projections for implementation against available resources for implementation;
- (b) staff estimates per capita and identification of said staff;
- (c) processes, mechanisms and policies to facilitate and enhance implementation of this Act, including measures to secure optimal responsiveness to requests for information and record management;
- (d) mechanisms it will use to monitor and track applications, notifications and responses;
- (e) steps to secure continued capacity building and compulsory training plans for staff;
- (f) plans for public consultations, community outreach, information sharing and awareness raising;
- (g) plans for, and frequency of self-initiated implementation audits; and;
- (h) for the purpose of sub-section(1)(b) -
  - (i) policies and plans for the purposes of realising its proactive disclosure obligations, including information classification processes; and
  - (ii) measures to ensure frequent and accurate proactive disclosure of information.

(3) The Commission may call for further plans or amended plans at its discretion.

(4) The oversight mechanism may issue directives on specific plans for enhanced implementation.

(5) The oversight mechanism may require the plan produced in terms of sub-section (1) to be reviewed within such time frames and at such frequencies as it deems necessary.

## **62. Publication of Information Manual**

(1) As soon as possible but in any event within two years of commencement of this Act, or within six months of the establishment of the body, whichever is the earlier, all information holders must prepare information manuals to be widely disseminated, including in the official Gazette, and submitted to the Commission.

(2) The manual referred to in sub-section (1) shall include the categories of information that the information holder will proactively disclose and those which will be made available only through the formal request process.

(3) With regard to proactively disclosed information, the Commission shall from time to time determine-

- (a) measures to be undertaken to ensure accessibility of information;
- (b) accessibility guarantees in terms of medium, format and language;
- (c) measures to ensure accuracy of information; and
- (d) additional categories of information not listed in section 7 that must be proactively disclosed.

(4) With regard to all other information, the Commission shall determine -

- (a) measures to be adopted to ensure periodic and frequent updating of all categories of information held by the information holder;
- (b) measures to be undertaken to ensure accessibility of information;
- (c) accessibility guarantees in terms of medium, format and language; and
- (d) measures to ensure accuracy of information.

(5) The information manual shall, together with the information required in sub-section (2), include the following information about the information holder-

- (a) a description of the structure and its functions, powers and duties;
- (b) physical and electronic contact details of the Information Officer and any deputy Information Officer;
- (c) the plain language guidelines developed by the Commission,
- (d) a description of any arrangement or provision for a person to make recommendations or to otherwise participate in the formulation of policy or the exercise of powers or performance of duties by the information holder;
- (e) a description of remedies available in respect of an act or omission by the information holder; and
- (f) the manner of payment of reproduction fees, translation fees and transcription fees.

(6) An information holder shall-

- (a) update and publish its information manual whenever material changes to the information therein occur, but at least every two years; and
- (b) submit the updated information manual to the Commission.

### **63. Annual reports to the Commission**

(1) The Information Officer of each public body and relevant private body shall no later than the end of the first quarter of each year, submit to the Commission a report stating in relation to the body in respect of the preceding year -

- (a) the number of requests for access received;
- (b) the number of requests for personal information received;



- (c) the number of requests for access granted in full;
- (d) the number of requests for access granted in terms of the public interest override in section 35;
- (e) the number of requests for access refused-
  - (i) in full, and
  - (ii) in part;
- (f) the number of times each provision of Part III was relied on to refuse access in full or part;
- (g) the number of cases in which the periods stipulated in this Act were extended,
- (h) the number of internal appeals lodged with the relevant authority;
- (i) the number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 17;
- (j) the number of cases in which, as a result of an internal appeal, access was given to information;
- (k) the number of appeals referred to the Commission and the outcome of those appeals;
- (l) the number of appeals referred to an appropriate court and the outcome of those appeals;
- (m) a description of the steps or efforts taken by the head of the body to encourage all officers of that body to comply with the provisions of this Act;
- (n) any facts which indicate an effort by the body to administer and implement the spirit and intention of the Act according to its submitted plan;
- (o) particulars of any penalties issued against any person under this Act;

- (p) particulars of any disciplinary action taken against any person under this Act;
- (q) particulars of any difficulties encountered in the implementation of this Act in terms of the operations of the body, including issues of staffing and costs; and
- (r) recommendations for reform, or amendment of this Act, other laws, regulations or practice relevant to the optimal realisation of the objectives of this Act.

(2) The Commission may impose penalties on public bodies and relevant private bodies that do not comply with the annual reporting obligation.

(3) All public bodies shall incorporate the report submitted to the Commission under this Act into their annual reports to the National Assembly.

#### **64. Proactive disclosure reports to the Commission**

The Information Officer of each public body shall no later than the end of the first quarter of each year, submit to the Commission a report stating the categories of information that have been proactively disclosed by the public body, including documents referred to in section 8, and the place where the public can access that information.

#### **65. Inspecting powers of the Commission**

(1) The Commission shall inspect compliance by an information holder with this Act.

(2) The powers of the Commission to conduct an inspection under sub-section (1) includes the power to-

- (a) conduct inspections;
- (b) undertake any investigation it deems appropriate in furtherance of the inspection;
- (c) engage with staff of the body;
- (d) request copies of any information;
- (e) access any information it deems necessary to

undertake the inspection; and

(f) penalise non-compliance.

(3) The obligations of the Commission in this regard include the duty to-

- (a) notify the information holder of the information;
- (b) issue time-bound recommendations to the information holder;
- (c) monitor implementation of its recommendations; and
- (d) investigate reasons for non-compliance, if any.

#### **66. Effect of non-compliance**

(1) In the event of non-compliance by an information holder with any of the obligations under this Part, the Commission may issue a notice specifying a timeframe for compliance with the obligation and any further directives as the Commission considers necessary or appropriate.

(2) If the information holder fails to comply with a notice issued by the Commission under sub-section (1), the Commission may impose such penalty as it considers necessary or appropriate.

### **PART VIII – APPEAL TO THE INFORMATION COMMISSION**

#### **67. Appeal to the Commission**

A requester or a third party may appeal against the decision of the head of the Information holder in writing to the Commission.

#### **68. Direct appeal**

(1) A requester who requests access to information reasonably believed to be necessary to safeguard the life or liberty of a person and is-

- (a) refused access to the record within 48 hours of the request; or
- (b) receives no notice of the decision of the Information



Officer within forty-eight hours of the request, may apply directly to the oversight mechanism for review of the decision.

(2) Where the oversight mechanism receives an application under sub-section (1), it may, upon assessment of the facts, determine the matter summarily or undertake further investigation, if necessary, before such determination.

(3) Any staff member of an information holder, who wishes to report wrongdoing under this Act, may contact the Commission without exhausting any applicable internal procedures.

#### **69. Notice of intention to investigate or hear a matter**

The Commission shall notify the head of the information holder concerned of the intention to carry out an investigation or hearing and on the substance of the application, as is appropriate, before commencing an investigation or hearing under this Act.

#### **70. Notice to third parties**

(1) The head of an information holder shall, immediately on receipt of a notice of a hearing or investigation from the oversight mechanism, inform the oversight mechanism of all third parties to whom the information relates.

(2) Subject to sub-section (3), the Commission shall issue such directions as 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 has the discretion to dispense with notification to third parties where it considers it necessary.

#### **71. Right to make representation**

(1) In any matter before the Commission, a reasonable opportunity to make representations shall be given to-

- (a) the person who made the application, and the requester, if he or she did not make the application;
- (b) the head of the information holder concerned; and
- (c) a third-party if the information requested contains third

party information and the third party can reasonably be located.

(2) The Commission shall uphold the right to be present during a hearing.

(3) With respect to any matter before it, the Commission has the power to -

- (a) summon witnesses, heads of organs of state or any person where necessary;
- (b) summon expert witnesses where appropriate;
- (c) allow interested parties on application to join proceedings;
- (d) provide assistance to applicants where appropriate;
- (e) allow relevant persons to participate in hearings through any medium they chose;
- (f) compel any witness or evidence it considers necessary for the resolution of a matter; and
- (g) administer oaths and receive any such evidence it deems necessary under oath or on affidavit.

## **72. Notices and communication**

(1) The Commission shall serve notice of the finding of an investigation, audit, summary finding, application or decision on an hearing or of a referral to an appropriate court, including any rights of appeal, on all relevant parties.

(2) Where in the view of the Commission, service of the notice of the finding will cause prejudice due to the sensitive nature of exempt information, such finding shall be amended in a manner appropriate by the Commission.

(3) The Commission may in appropriate circumstances, decide to dispense with notification or communication where it 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 unjustifiable prejudice to the commercial interests of a private business or private individual; or
- (e) impair relations between states.

### **73. Orders, decisions and directives**

(1) The Commission may issue binding orders or recommendations on any matter before it, including-

- (a) affirming the decision of the information holder;
- (b) varying the type of access originally granted or requested;
- (c) setting aside the decision of the information holder and making a ruling;
- (d) requiring the information holder to take such steps as may be necessary to secure compliance with its obligations under the Act;
- (e) mandating negotiation, conciliation, and arbitration; and
- (f) imposing a contempt order, a cost order, or a summary order or any other order it considers just and equitable.

(2) The Commission may issue such directives it deems necessary to enforce its decisions.

### **74. Content of recommendations, findings, orders, decisions and directives**

The Commission shall produce a statement of facts, findings and reasoning for decisions on matters before it, a copy of which shall be provided to all parties to the matter free of charge.

### **75. Third party information released in the public domain**



(1) Subject to sub-section (2), a third-party information which a requester is granted access shall thereafter be an information in the public domain.

(2) Where a requester is granted access to his or her personal information or personal information of his or her next of kin or someone for whom he or she is the legal personal representative, that information will not be in the public domain by reason of that grant of access.

## **76. Offences**

(1) A person who with intent to deny a right of access to information under this Act-

- (a) destroys, damages or alters information;
- (b) conceals information;
- (c) falsifies information or makes a false record;
- (d) obstructs the performance by an information holder of a duty under this Act;
- (e) interferes with or obstructs the work of the Commission; or
- (f) directs, proposes, counsels or causes any person in any manner to do any of the above,

commits an offence and is liable on conviction to a fine not less than fifty thousand dalasis and not more than five hundred thousand dalasis or imprisonment not less than six months and not more than one year.

## **PART VIII - FINANCIAL PROVISIONS**

### **77. Funds of the Commission**

The funds of the Commission shall consist of-

- (a) such monies as may be appropriated by the National Assembly pursuant to an Appropriation Act for the purposes of the Commission;
- (b) any monies received by the Commission by way of donations or grants or from any other legal sources,

whether domestic or foreign, and

- (c) any proceeds from sale, lease or transfer of movable or immovable property of the Commission.

#### **78. Estimates, accounts and audit**

(1) The Commission shall not later than three months before the end of each financial year, prepare and submit to the Minister for approval, estimates of the income and expenditure of the Commission for the ensuing year.

(2) The Commission shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Commission shall, within three months after the end of each financial year, submit its statement of accounts to the Auditor-General for audit.

(4) The audited accounts of the Commission and the Auditor-General's report on those accounts shall form part of the Auditor-General's overall annual report to the National Assembly.

#### **79. Annual report submitted to the Minister**

The Commission shall not later than two months after the end of each year submit to the Minister and National Assembly, a report of its activities in the previous year.

#### **80. Regulations**

(1) The Minister may make regulations for carrying into effect the purposes of the provisions of this Act in consultation with the Commission.

(2) Without prejudice to the generality of sub-section (1), regulations made, may provide for--

- (a) fees for request for information and the manner of payment as determined by the Commission;
- (b) fees for reproduction or transcription of information and the manner of payment as determined by the Commission; and
- (c) the manner of publication of any matter under the Act.

### **OBJECTS AND REASONS**

This Bill seeks to provide the framework for Gambians to access public records and information held by public authorities or by persons providing services for them, to provide for the procedure to obtain access to that information. In line with international standards, the Bill also provides necessary exceptions to the right of access that should be limited and specific. Thus, the Bill inter-alia protects the privacy of individuals with respect to personal information about themselves held by public bodies, medical records and communication with legal practitioners as well as security sensitive information necessary for law enforcement and the defence of the state. The Bill provides for the setting up of an independent Commission to ensure that decisions on the disclosure of public information should be reviewed independently.

.....  
**HON. DAWDA A. JALLOW**  
**ATTORNEY GENERAL AND MINISTER OF JUSTICE**