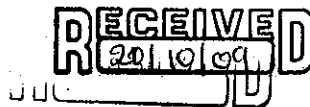


**Cook Islands’ Official Information Act**

Official Information Act 2008.....p.2

Official Information Amendment Act 2009.....p. 34



2008

Official Information

No. 2



## ANALYSIS

- |  |   |
|--|---|
| Title  |   |
| 1.   | Short Title and commencement  |
| 2.   | Interpretation  |
| 3.   | Act to bind the Crown   |
| <b><u>PART 1</u></b>   |   |
| <b><u>PURPOSES AND CRITERIA</u></b>  |   |
| 4.   | Purposes  |
| 5.   | Principle of availability   |
| 6.   | Conclusive reasons for withholding official information                                       |
| 7.   | Special reasons for withholding official information related to New Zealand                   |
| 8.   | Other reasons for withholding official information  |
| 9.   | Information concerning existence of certain information                                       |
| 10.  | Exclusion of public interest immunity   |
| <b><u>PART 2</u></b>   |   |
| <b><u>REQUESTS FOR ACCESS TO OFFICIAL INFORMATION</u></b>                      |   |
| 11.  | Requests  |
| 12.  | Assistance  |
| 13.  | Transfer of requests  |
| 14.  | Decisions on requests   |
| 15.  | Extension of time limits  |
| 16.  | Documents   |
| 17.  | Deletion of information from documents  |
| 18.  | Refusal of requests   |
| 19.  | Requests involving substantial collation or research  |
| 20.  | Duty to consider consulting person if request likely to be refused under section 18(e) or (f) |
| 21.  | Reason for refusal to be given  |
| <b><u>PART 3</u></b>   |   |
| <b><u>PUBLICATION OF, AND ACCESS TO, CERTAIN DOCUMENTS AND INFORMATION</u></b> |   |
| 22.  | Publication setting out functions of Ministries and organisations                             |
| 23.  | Right of access to certain official information   |
| 24.  | Right of access to internal rules affecting decisions   |
| 25.  | Right of access by person to reasons for decisions affecting that person                      |
| <b><u>PART 4</u></b>   |   |
| <b><u>RIGHT OF ACCESS TO PERSONAL INFORMATION</u></b>                          |   |
| 26.  | Right of access to personal information   |
| 27.  | Precautions   |
| 28.  | Correction of information   |
| 29.  | Reasons for refusal of request for personal information                                       |

Price \$12.00

**PART 5**  
**REVIEW OF DECISIONS**

**Division 1**

***Decisions under Part 2 and section 9 of this Act***

30. Functions of Ombudsman
31. Application of Ombudsman Act 1984
32. Requirement of Ombudsman to be complied with within certain period
33. Procedure after investigation
34. Disclosure of certain information not to be recommended
35. Recommendations made to the Ministry or Minister of the Crown or organisation
36. Requirements in relation to Order in Executive Council
37. Right of review
38. Appeals
39. Complainant to be informed of result of investigation
40. Restriction on application for review

**Division 2**

***Decisions under Part 3 and Part 4 of this Act***

41. Application of Ombudsman Act 1984
42. Saving in respect of Ombudsman Act 1984

**PART 6**

**REVIEW BY INDEPENDENT CONSULTANT**

43. Appointment of independent consultant
44. Functions and powers of independent consultant
45. Functions in respect of personal information

**PART 7**

**MISCELLANEOUS PROVISIONS**

46. Assistance of Crown Law Office
47. Regulations
48. Protection against certain actions
49. Power to amend Schedule 1 by Order in Executive Council
50. Consequential amendment
51. Repeal
52. Savings Schedules

**2008, No. 2**

An Act to make official information more freely available, to establish procedures for the achievement of those purposes, and to repeal the Official Secrets Act 1951.

**(18 February 2008)**

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. **Short Title and commencement** - (1) This Act may be cited as the Official Information Act 2008.

(2) This Act shall come into force on the 11<sup>th</sup> February 2009.

2008/02

## Official Information

3

2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Cook Islander" means a member of the Polynesian race indigenous to the Cook Islands;

"Document" means a document in any form, and includes -

- (a) any writing on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored;
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
- (d) any book, map, plan, graph, or drawing;
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

"International Organisation" means any organisation of States or Governments of States or any organ or agency of any such organisation; and includes the Commonwealth Secretariat;

"Member" means, in relation to an organisation, any person (not being an officer or employee of the organisation) who, whether by election or appointment or otherwise, holds office as a member of the organisation and includes -

- (a) where the organisation is a company or corporation, a director; and
- (b) where the organisation is a trust, a trustee; and
- (c) any temporary, acting, or alternative member of the organisation;

"Ministry" includes -

- (a) a Ministry including a department of the Government of the Cook Islands set out in Schedule 1 to this Act;
- (b) a Ministry or department established after the coming into force of this Act, whether by statute or decision of the Executive branch of the Government of the Cook Islands unless, in the statute or decision establishing the Ministry or department, it is specifically excluded from the operation of this Act;

"Official information"

- (a) means any information held by -
  - (i) a Ministry; or
  - (ii) a Minister of the Crown in his or her official capacity; or
  - (iii) an organisation; and

- (b) includes any information held outside the Cook Islands by any branch or post of –
  - (i) a Ministry; or
  - (ii) an organisation; and
- (c) in relation to information held by the Ministry of Justice, includes information held by the Rules Committee established by section 102 of the Judicature Act 1980-81; and
- (d) in relation to information held by the University of the South Pacific, includes only information held by –
  - (i) any full-time member of the academic staff of the University in the Cook Islands; or
  - (ii) any other full-time officer or employee of the University in the Cook Islands; or
  - (iii) any examiner, assessor, or moderator in the Cook Islands in any subject or examination taught or conducted by the University in the Cook Islands; but
- (e) does not include information contained in –
  - (i) library or museum material made or acquired and preserved solely for reference or exhibition purposes; or
  - (ii) material placed in the National Library by or on behalf of persons other than Ministers of the Crown in their official capacity or Ministries; and
- (f) does not include information which is held by a Ministry, Minister of the Crown, or organisation solely as an agent or for the sole purpose of safe custody and which is so held on behalf of a person other than a Ministry or a Minister of the Crown in his or her official capacity or an organisation; and
- (g) does not include evidence given or submissions made to –
  - (i) a commission of inquiry appointed by an Order in Executive Council made under the Commissions of Inquiry Act 1966; or
  - (ii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed pursuant to, and not by, any provision of an Act to inquire into a specified matter; and
- (h) does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsman and any Ministry or Minister of the Crown or organisation and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsman Act 1984, other than information that came into existence before the commencement of that investigation;

“Ombudsman” means the Ombudsman holding office under the Ombudsman Act 1984;

2008/02

## Official Information

"Organisation" means an organisation named in Schedule 1 to this Act and includes any company falling within the classification set out in the said Schedule;

"Permanent resident" means a person who has been granted the status of a permanent resident pursuant to section 5 of the Entry Residence and Departure Act 1971-72 and includes a person who has been granted the status of an honorary resident pursuant to section 5A of that Act;

"Person" includes a corporation sole, and also a body of persons, whether corporate or unincorporated;

"Personal information" means any official information held about an identifiable person;

"Qualified person" means --

- (a) a Cook Islander who is resident in the Cook Islands;
- (b) a permanent resident who is resident in the Cook Islands;
- (c) any other natural person who is resident in the Cook Islands and has been so resident for not less than 3 years;
- (d) a body corporate, wherever incorporated, which has had a place of business in the Cook Islands for not less than 3 years;

"Statutory Officer" means a person --

- (a) holding or performing the duties of an office established by any Act; or
- (b) performing duties expressly conferred on that person by virtue of his or her office by any Act;

"Working day" means any day of the week other than --

- (a) a public holiday as defined in the Public Holidays Act 1999; and
- (b) a day in the period commencing with the 20<sup>th</sup> day of December in any year and ending with the 20<sup>th</sup> day of January in the following year.

(2) Where information is held by an unincorporated body (being a board, council, committee, subcommittee, or other body) -

- (a) which is established for the purpose of assisting or advising, or performing functions connected with, any Ministry or Minister of the Crown or organisation; and
- (b) which is so established in accordance with the provisions of an Act or by any Ministry or Minister of the Crown or organisation,

that information shall, for the purposes of this Act, be deemed --

- (c) in any case where that body is established in respect of any Ministry or organisation, to be information held by that Ministry or organisation; and

## Official Information

2008/02

- (d) in any case where that body is established in respect of a Minister of the Crown, to be information held by that Minister.

(3) Where subsection (2) of this section applies in respect of any unincorporated body and that body is established for the purpose of assisting, advising, or performing a function connected with any Ministry or organisation, that unincorporated body shall, for the purposes of this Act, be deemed to be part of that Ministry or organisation.

(4) Information held by an officer or employee or member of a Ministry or organisation in his or her capacity as such an officer or employee or member or in his or her capacity as a statutory officer (other than information which he would not hold but for his or her membership of a body other than a Ministry or organisation) shall, for the purposes of this Act, be deemed to be held by the Ministry or organisation of which he or she is an officer or employee or member.

(5) Any information held by an independent contractor engaged by any Ministry or Minister of the Crown or organisation in his capacity as such contractor shall, for the purposes of this Act, be deemed to be held by the Ministry or Minister of the Crown or organisation.

(6) For the avoidance of doubt, it is hereby declared that the terms "Ministry" and "organisation" do not include –

- (a) a Court; or
- (b) in relation to its judicial functions, a Tribunal; or
- (c) a Commission of Inquiry appointed by an Order in Executive Council made under the Commissions of Inquiry Act 1966; or
- (d) a Commission of Inquiry or Board of Inquiry or Court of Inquiry or committee of inquiry appointed, pursuant to and not by, any provision of an Act, to inquire into a specified matter.

3. Act to bind the Crown - This Act shall bind the Crown.

**PART 1****PURPOSES AND CRITERIA**

4. Purposes - The purposes of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament –

- (a) to increase the availability of official information to the people of the Cook Islands in order –
    - (i) to enable their more effective participation in the making and administration of laws and policies; and
    - (ii) to promote the accountability of Ministers of the Crown and officials,
- and thereby to enhance respect for the law and to promote the good government of the Cook Islands;

2008/02

## Official Information

7

- (b) to provide for proper access by each person to official information relating to that person;
- (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

5. Principle of availability - The question whether any official information is to be made available, where that question arises under this Act, shall be determined in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it, except where this Act otherwise expressly requires.

6. Conclusive reasons for withholding official information - Good reason for withholding official information exists, for the purpose of section 5 of this Act, if the making available of that information would be likely to -

- (a) prejudice the security or defence of the Cook Islands or the international relations of the Government of the Cook Islands; or
- (b) prejudice the entrusting of information to the Government of the Cook Islands on a basis of confidence by -
  - (i) the government of any other country or any agency of such a government; or
  - (ii) any international organisation; or
- (c) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) endanger the safety of any person; or
- (e) damage the economy of the Cook Islands by disclosing prematurely decisions to change or continue Government economic or financial policies relating to -
  - (i) the regulation of banking or credit;
  - (ii) taxation;
  - (iii) the stability, control, and adjustment of prices of goods and other costs, and rates or wages, salaries, and other incomes;
  - (iv) the borrowing of money by the Government of the Cook Islands; and
  - (v) the entering into of overseas trade agreements.

7. Special reasons for withholding official information related to New Zealand - Good reason for withholding information exists for the purpose of section 5 of this Act, if the making available of the information would be likely to prejudice -

- (a) the security or defence of New Zealand;
- (b) relations between the Governments of the Cook Islands and of New Zealand; and
- (c) the international relations of the Government of New Zealand.



8. Other reasons for withholding official information – (1) Where this section applies, good reason for withholding official information exists for the purpose of section 5 of this Act unless, in the circumstances of the particular case the withholding of that information is outweighed by other consideration which render it desirable, in the public interest, to make that information available.

(2) Subject to sections 6, 7, 9 and 18 of this Act, this section applies if, and only if, the withholding of the information is necessary to –

- (a) protect the privacy of natural persons, including that of deceased natural persons; or
- (b) protect information where the making available of the information –
  - (i) would disclose a trade secret; or
  - (ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or
- (c) protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of an Act, where the making available of the information –
  - (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
  - (ii) would be likely otherwise to damage the public interest; or
- (d) avoid prejudice to measures protecting the health or safety of members of the public; or
- (e) avoid prejudice to the substantial economic interests of the Cook Islands or
- (f) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
- (g) maintain the constitutional conventions for the time being which protect –
  - (i) the confidentiality of communications by or with the Sovereign or Her representative;
  - (ii) collective and individual ministerial responsibility;
  - (iii) the political neutrality of officials;
  - (iv) the confidentiality of advice tendered by Ministers of the Crown and officials; or
- (h) maintain the effective conduct of public affairs through –
  - (i) the free and frank expression of opinion by or between or to Ministers of the Crown or member or an organisation or officers and employees of any Ministry or organisation in the course of their duty; or

2008/02

## Official Information

9

- (ii) the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment; or
- (i) maintain legal professional privilege; or
- (j) enable a Minister of the Crown or any Ministry or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or
- (k) enable a Minister of the Crown or any Ministry or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (l) prevent the disclosure or use of official information for improper gain or improper advantage.

9. Information concerning existence of certain information – Where a request under this Act relates to information to which section 6 or section 7 or section 8(2)(b) of this Act applies, or would if it existed apply, the Ministry or Minister of the Crown or organisation dealing with the request may, if it or he is satisfied that the interest protected by section 6 or section 7 or section 8(2)(b) of this Act would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that it or he neither confirms nor denies the existence or non-existence of that information.

10. Exclusion of public interest immunity – (1) Subject to subsection (2) of this section, the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of -

- (a) any investigation by or proceedings before the Ombudsman; or
- (b) any application for the prerogative writs of certiorari, mandamus or injunction sought in respect of any decision under this Act,

but not so as to give any party any information that he or she would not, apart from this section, be entitled to.

- (2) Nothing in subsection (1) of this section affects –
  - (a) section 34 of this Act; or
  - (b) section 17 of the Ombudsman Act 1984.

**PART 2****REQUESTS FOR ACCESS TO OFFICIAL INFORMATION**

11. Requests – (1) Any qualified person may request a Ministry or Minister of the Crown or organisation to make available to him or her or it, any specified official information.

(2) The official information requested shall be specified with due particularity in the request.

(3) If the person making the request asks that his request be treated as urgent, he shall give his reasons for seeking the information urgently.

12. Assistance – It is the duty of every Ministry, Minister of the Crown, and organisation to give reasonable assistance to a person, who -

- (a) wishes to make a request in accordance with section 11 of this Act; or
- (b) in making a request under section 11 of this Act, has not made that request in accordance with that section; or
- (c) has not made his or her request to the appropriate Ministry or Minister of the Crown or organisation,

to make a request in a manner that is in accordance with that section or to direct his or her request to the appropriate Ministry or Minister of the Crown or organisation.

13. Transfer of requests – Where –

- (a) a request in accordance with section 11 of this Act is made to a Ministry or Minister of the Crown or organisation; and
- (b) the information to which the request relates –
  - (i) is not held by the Ministry or Minister of the Crown or organisation but is believed by the person dealing with the request to be held by another Ministry or Minister of the Crown or organisation; or
  - (ii) is believed by the person dealing with the request to be more closely connected with the functions of another Ministry or Minister of the Crown or organisation, -

the Ministry or Minister of the Crown or organisation to which the request is made shall promptly, and in any case not later than 10 working days after the day on which the request is received, transfer the request to the other Ministry or Minister of the Crown or organisation, and inform the person making the request accordingly.

14. Decisions on requests – (1) Subject to this Act, the Ministry or Minister of the Crown or organisation to whom a request is made in accordance with section 11 or is transferred in accordance with section 13 of this Act shall, as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that Ministry or Minister of the Crown or organisation, -

- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and
- (b) give or post to the person who made the request, notice of the decision on the request.

(2) Every Ministry or Minister of the Crown or organisation (including an organisation whose activities are funded in whole or in part by another person) may charge for the supply of official information under this Act.

2008/02

## Official Information

(3) Any charge fixed shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available to, and to any costs incurred pursuant to, a request of the applicant to make the information available urgently.

(4) The Ministry or Minister of the Crown or organisation may require that the whole or part of any charge be paid in advance.

(5) Where a request in accordance with section 11 of this Act is made or transferred to a Ministry, the decision on that request shall be made by the permanent head of that Ministry or an officer or employee of that Ministry authorized by that permanent head unless that request is transferred in accordance with section 13 of this Act to another Ministry or to a Minister of the Crown or to an organisation.

(6) Nothing in subsection (5) of this section prevents the permanent head of a Ministry or any officer or employee of a Ministry from consulting a Minister of the Crown or any other person in relation to the decision that the permanent head or officer or employee proposes to make on any request made to the Ministry in accordance with section 11 of this Act or transferred to the Ministry in accordance with section 13 of this Act.

15. Extension of time limits – (1) Where a request in accordance with section 11 of this Act is made or transferred to a Ministry or Minister of the Crown or organisation, the permanent head or that Minister of the Crown or that organisation may extend the time limit set out in section 13 or section 14(1) of this Act in respect of the requests if -

- (a) the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the Ministry or the Minister of the Crown or the organisation; or
- (b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

(2) Any extension under subsection (1) of this section shall be for a reasonable period of time having regard to the circumstances.

(3) The extension shall be effected by giving or posting notice of the extension to the person who made the request within 20 working days after the day on which the request is received.

(4) The notice effecting the extension shall -

- (a) specify the period of the extension; and
- (b) give the reasons for the extension; and
- (c) state that the person who made the request for the official information has the right, under section 30(3) of this Act, to make a complaint to an Ombudsman about the extension; and
- (d) contain such other information as is necessary.

## Official Information

2008/02

16. Documents – (1) Where the information requested by any person is comprised in a document, that information may be made available in one or more of the following ways –

- (a) by giving the person a reasonable opportunity to inspect and copy the document; or
- (b) by providing the person with a copy of the document; or
- (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the person to hear or view those sounds or visual images; or
- (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document; or
- (e) by giving an excerpt or summary of the contents; or
- (f) by furnishing oral information about its contents.

(2) Subject to section 17 of this Act, the Ministry or Minister of the Crown or organisation shall make the information available in either way preferred by the person requesting it unless to do so would –

- (a) impair efficient administration; or
- (b) be contrary to any legal duty of the Ministry or Minister of the Crown or organisation in respect of the document; or
- (c) prejudice the interests protected by section 6 or section 7 or section 8 of this Act and (in the case of the interests protected by section 8 of this Act) there is no countervailing public interest.

(3) Where the information is not provided in the way preferred by the person requesting it, the Ministry or Minister of the Crown or organisation shall, subject to section 9 of this Act, give to that person in writing –

- (a) the reason for not providing the information in that way; and
- (b) if that person so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 6 or 7 or section 8 of this Act and (in the case of the interests protected by section 8 of this Act) there is no countervailing public interest.

17. Deletion of information from documents – (1) Where the information requested is comprised in a document and there is a good reason for withholding some of the information contained in that document, the other information in that document may be made available by making a copy of that document available with such deletions or alterations as are necessary.

2008/02

## Official Information

13

(2) Where a copy of a document is made available under subsection (1) of this section, the Ministry or Minister of the Crown or organisation shall, subject to section 9 of this Act, give to the applicant in writing –

- (a) the reason for withholding the information; and
- (b) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 6 or section 7 or section 8 of this Act and (in the case of the interests protected by section 8 of this Act) there is no countervailing public interest.

18. Refusal of requests – A request made in accordance with section 11 of this Act may be refused only for one or more of the following reasons, namely –

- (a) that, by virtue of section 6 or section 7 or section 8 of this Act, there is good reason for withholding the information;
- (b) that, by virtue of section 9 of this Act, the Ministry or Minister of the Crown or organisation does not confirm or deny the existence or non-existence of the information requested;
- (c) that the making available of the information requested would –
  - (i) be contrary to the provisions of any Act; or
  - (ii) constitute contempt of Court or of Parliament;
- (d) that the information requested is or will soon be publicly available;
- (e) that the document alleged to contain the information requested does not exist or cannot be found;
- (f) that the information requested cannot be made available without substantial collation or research;
- (g) that the information requested is not held by the Ministry or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either –
  - (i) held by another Ministry or Minister of the Crown or organisation; or
  - (ii) connected more closely with the functions of another Ministry or Minister of the Crown or organisation;
- (h) that the request is frivolous or vexatious or that the information requested is trivial.

19. Requests involving substantial collation or research – (1) In deciding whether to refuse a request under section 18(f), the Ministry, Minister of the Crown, or organisation must consider whether doing either or both of the following would enable the request to be granted –

- (a) fixing a charge under section 14;
- (b) extending the time limit under section 15.

## Official Information

2008/02

(2) For the purposes of refusing a request under section 18(f), the Ministry, Minister of the Crown, or organisation may treat as a single request 2 or more requests from the same person -

- (a) that are about the same subject matter or about similar subject matters; and
- (b) that are received simultaneously or in short succession.

20. Duty to consider consulting person if request likely to be refused under section 18(e) or (f) - If a request is likely to be refused under section 18(e) or (f), the Ministry, Minister of the Crown, or organisation must, before that request is refused, consider whether consulting with the person who made the request would assist that person to make the request in a form that would remove the reason for the refusal.

21. Reason for refusal to be given - Where a request made in accordance with section 11 of this Act is refused, the Ministry or Minister of the Crown or organisation, shall, -

- (a) subject to section 9 of this Act, give to the applicant in writing -
  - (i) the reason for its refusal; and
  - (ii) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 6 or section 7 or section 8 of this Act and (in the case of the interests protected by section 8 of this Act) there is no countervailing public interest; and
- (b) give to the applicant information concerning the applicant's right, by way of complaint under section 30 of this Act to the Ombudsman, to seek an investigation and review of the refusal.

**PART 3**  
**PUBLICATION OF, AND ACCESS TO,**  
**CERTAIN DOCUMENTS AND INFORMATION**

22. Publication setting out functions of Ministries and organisations - (1) The Office of the Prime Minister shall cause to be published, not later than the 11<sup>th</sup> February 2009, a publication that includes in respect of each Ministry and each organisation, -

- (a) a description of its structure, functions, and responsibilities including those of any of its statutory officers or advisory committees; and
- (b) a general description of the categories of documents held by it; and

2008/02

## Official Information

15

- (c) a description of all manuals, and similar types of documents which contain policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or her or its personal capacity; and
- (d) a statement of any information that needs to be available to members of the public who wish to obtain official information from the Ministry or organisation, which statement shall include particulars of the officer or officers to whom requests for official information or particular classes of information should be sent.

(2) The Office of the Prime Minister shall, at intervals of not more than 2 years, bring the material contained in the publication published under subsection (1) of this section up to date either by publishing a new edition of that publication or by publishing supplementary material.

(3) In complying with subsection (2), the Office of the Prime Minister may publish a new edition or supplementary material on an internet website and in an electronic form that is publicly accessible at all reasonable times, so long as the Office also publishes that edition or material in any other manner and form that is necessary in light of the need specified in subsection (5).

(4) Each Ministry and each organisation shall assist the Office of the Prime Minister to comply with subsections (1) and (2) of this section and shall supply to that Office such information as it requires for the purposes of those subsections.

(5) In complying with subsection (1) and (2) of this section, the Office of the Prime Minister shall have regard, among other things, to the need to assist members of the public to obtain official information and to effectively exercise their rights under this Act.

(6) Where there is good reason under section 6 or section 7 or section 8 (2)(b) of this Act for withholding official information, nothing in this section requires the publication of that official information.

23. Right of access to certain official information – (1) Every person has a right to and shall, on request made under this subsection, be given access to the latest edition of the publication published under section 22 of this Act and to any published supplementary material bringing that edition up-to-date.

(2) Every qualified person has a right to and shall, on request made under this subsection, be given access to any category of official information that is declared by regulations made under this Act to be a category of official information in respect of which a right of access exists.

(3) The giving of access to any official information to which subsection (2) of this section applies shall be subject to the provisions of any regulations made under this Act.



24.— Right of access to internal rules affecting decisions — (1) Subject to section 6 (a) to (d), section 7, section 8 (2) (a), (b), (c), (j), and (k), and section 9 of this Act and to subsections (2) and (6) of this section, every qualified person has a right to and shall, on request made under this section, be given access to any document (including a manual) which is held by a Ministry or Minister of the Crown or organisation and which contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or its personal capacity.

(2) Section 11(2) and (3), 12 to 15, and 21 of this Act shall apply with all necessary modifications, to a request made under subsection (1) of this section.

(3) Where, by virtue of any of the provisions of section 6(a) to (d), section 7, section 8 (2)(a), (b), (c), (i) and (j) of this Act, there is a good reason for withholding some of the information contained in a document to which subsection (1) of this section relates, the Ministry or Minister of the Crown or organisation shall, unless it is impracticable to do so, either —

- (a) make a copy of that document available with such deletions or alterations as are necessary;
- (b) provide another document stating the substance and effect of the document except as it relates to the information withheld.

(4) Where a document is made available under subsection (3) of this section, the Ministry or Minister of the Crown or organisation shall, subject to section 9 of this Act, give to the applicant —

- (a) the reason for withholding the information; and
- (b) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 6(a) to (d) or section 7 or section 8(2)(a), (b), (c), (i) or (j) of this Act and (in the case of the interests protected by section 8(2)(a), (b), (c), (i) or (j) of this Act) there is no countervailing public interest.

25. Right of access by person to reasons for decisions affecting that person —

(1) Subject to section 6(a) to (d), section 7, section 8(2)(b) and 9 of this Act and to subsections (2), (4) and (5) of this section where a Ministry or Minister of the Crown or organisation makes, on or after the date of coming into force of this Act a decision or recommendation in respect of any qualified person being a decision or recommendation in respect of that qualified person in his or its personal capacity, that qualified person has the right to and shall, on request made within a reasonable time of the making of the decision or recommendation, be given a written statement of —

- (a) the findings on material issues of fact; and
- (b) subject to subsection (2) of this section, a reference to the information on which the findings were based; and
- (c) the reasons for the decision or recommendation.

## Official Information

17

(2) A reference to the information on which any findings were based need not be given under subsection 1(b) of this section if -

- (a) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise -
  - (i) which was made to the person who supplied the information; and
  - (ii) which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or
- (b) after consultation undertaken (where practicable) by or on behalf of the Ministry or Minister of the Crown or organisation with a natural person's medical practitioner, the Ministry or Minister of the Crown or organisation is satisfied that -
  - (i) the information relates to that person; and
  - (ii) the disclosure of the information (being information that relates to the physical or mental health of the person making the request under this section) would be likely to prejudice the physical or mental health of that person; or
- (c) in the case of a natural person under the age of 18, the disclosure of that information would be contrary to that person's interests; or
- (d) the disclosure of that information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person.

(3) For the purposes of subsection (2) of this section, the term "evaluative material" means evaluative or opinion material compiled solely -

- (a) for the purpose of determining the suitability, eligibility, or qualifications of the person to whom the material relates -
  - (i) for employment or for appointment to office; or
  - (ii) for promotion in employment or office or for continuation in employment or office; or
  - (iii) for removal from employment or office; or
  - (iv) for the awarding of contracts, awards, scholarships, honours, or other benefits; or
- (b) for the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled; or
- (c) for the purpose of deciding whether to insure any person or property or to continue or renew the insurance of any person or property.

(4) Sections 11(3), 12 to 15 and 21 of this Act shall apply, with all necessary modifications, to a request made under subsection (1) of this section.

(5) Nothing in this section entitles any person to obtain a written statement of advice given to the Sovereign or Her representative.

(6) In subsection (2)(b), medical practitioner means a health practitioner who is registered with the Medical Council of the Cook Islands as a medical practitioner pursuant to the provisions of the Medical and Dental Practices Act 1976.

#### **PART 4**

#### **RIGHT OF ACCESS TO PERSONAL INFORMATION**

26. Right of access to personal information – (1) Subject to this Part of this Act, to sections 9 and 52 of this Act, and to subsection (2) of this section, every person has a right to and shall, on request, be given access to any personal information which –

- (a) is about that person; or
- (b) is about a child of that person or a child who is under the legal guardianship of that person; or
- (c) is about someone who is under disability and for whom that person has been appointed a trustee pursuant to Part XVII of the Cook Islands Act 1915; and
- (d) is held in such a way that it can readily be retrieved.

(2) The right conferred by subsection (1) of this section may be exercised only by a qualified person.

(3) Sections 11(3), 12 to 17, and 21 of this Act shall apply, with all necessary modification, to a request made under subsection (1) of this section.

(4) Where any person is given access to personal information under this section, that person shall be advised of that person's right, under section 28 of this Act, to request the correction of that information.

(5) Nothing in this section requires, or imposes any responsibility on, any Ministry or Minister of the Crown or organisation to compile files or data banks of personal information.

(6) In this section and in section 27, "child" means a person under the age of 18 years.

27. Precautions – Where a request is made under section 26(1) of this Act, the Ministry or Minister of the Crown or organisation –

- (a) shall not give access to that information unless it or he or she is satisfied concerning the identity of the person making the request; and
- (b) shall ensure, by the adoption of appropriate procedures, that information intended for a person is received –
  - (i) only by that person; or
  - (ii) where the request is made by an agent, parent, guardian or trustee of the person, only by that agent, parent, guardian or trustee; and

2008/02

## Official Information

19

- (c) shall ensure that, where the request is made by an agent of the person, the agent has the written authority of that person to obtain the information or is otherwise properly authorised by that person to obtain the information;
- (d) shall ensure that, where the request is made by a legal guardian of the person, the guardian has been appointed as such by a Court of competent jurisdiction and that the order remains in effect;
- (e) shall ensure that, where the request is made by a trustee of the person, the trustee has been appointed as such by the High Court and that the order remains in effect.

28. Correction of information – (1) Every person who is given access under section 26(1) of this Act to personal information may, by letter addressed to the Ministry or Minister of the Crown or organisation, -

- (a) request correction of the personal information where the person believes that the information –
  - (i) is inaccurate; or
  - (ii) is incomplete and gives a misleading impression;
 and
- (b) require that a notation be attached to the information indicating the nature of any correction requested but not made.

(2) Where a Ministry or Minister of the Crown or organisation receives a letter pursuant to subsection (1) of this section, it or he or she shall inform the person by whom or by which the letter was sent of the action taken by the Ministry or Minister of the Crown or organisation as a result of the letter.

29. Reasons for refusal of request for personal information – (1) A Ministry or Minister of the Crown or organisation may refuse to disclose any personal information requested under section 26(1) of this Act if, and only if, -

- (a) the disclosure of the information would be likely to prejudice any of the interests protected by section 6(a) to (d) or section 7 or section 8(2)(b) of this Act and (in the case of the interests protected by section 8(2)(b) of this Act) there is no countervailing public interest; or
- (b) the disclosure of the information would involve the unwarranted disclosure of the affairs of another person or of a deceased person; or
- (c) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise –
  - (i) which was made to the person who supplied the information; and
  - (ii) which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or

## Official Information

2008/02

- (d) the disclosure of the information would breach legal professional privilege; or
  - (e) the request is frivolous or vexatious, or the information requested is trivial.
- (2) No reasons other than one or more of the reasons set out in subsection (1) of this section justifies a refusal to disclose any personal information requested under section 26(1) of this Act.
- (3) For the purposes of subsection (1)(c) of this section, the term "evaluative material" means evaluative or opinion material compiled solely -
- (a) for the purposes of determining the suitability, eligibility, or qualifications of the person to whom the material relates for the awarding of contracts, awards, or other benefits; or
  - (b) for the purpose of determining whether any contract, award, or benefit should be continued, modified, or cancelled; or
  - (c) for the purpose of deciding whether to insure any person or property or to continue or renew the insurance of any person or property.

## PART 5 REVIEW OF DECISIONS

### *Division 1*

#### *Decisions under Part 2 and section 9 of this Act*

30. Functions of Ombudsman - (1) It shall be a function of the Ombudsman to investigate and review any decision by which a Ministry or Minister of the Crown or organisation -

- (a) refuses to make official information available to any person in response to a request made by that person in accordance with section 11 of this Act; or
- (b) decides, in accordance with section 16 or section 17 of this Act, in what manner or, in accordance with section 14 of this Act, for what charge a request made in accordance with section 11 of this Act is to be granted; or
- (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 11 of this Act.

(2) It shall be a function of the Ombudsman to investigate and review any decision by which the permanent head of a Ministry or an officer or an employee of a Ministry authorised by its permanent head or a Minister of the Crown or an organisation extends any time limit under section 15 of this Act.

(3) An investigation and review under subsection (1) or subsection (2)

may be made by the Ombudsman only on complaint being made to the Ombudsman in writing.

(4) If, in relation to any request made in accordance with section 11 of this Act, any Ministry or Minister of the Crown or organisation fails within the time limit fixed by section 14(1) of this Act (or, where that time limit has been extended under this Act, within that time limit as so extended) to comply with paragraph (a) or paragraph (b) of section 14(1) of this Act, that failure shall be deemed, for the purposes of subsection (1) of this section, to be a refusal to make available the official information to which the request relates.

(5) Undue delay in making official information available in response to a request for that information, shall be deemed, for the purposes of subsection (1) of this section, to be a refusal to make that information available.

31. Application of Ombudsman Act 1984 - (1) Except as otherwise provided by this Act, the provisions of the Ombudsman Act 1984 shall apply in respect of investigations and other proceedings carried out under this Part of this Act in respect of decisions under Part 2 or section 9 of this Act as if they were investigations carried out under the Ombudsman Act 1984.

(2) Nothing in sections 11 and 22 of the Ombudsman Act 1984 shall apply in relation to any function or power conferred on the Ombudsman by this Act or in relation to any proceeding, decision, recommendation, or act of the Ombudsman under this Act.

32. Requirement of Ombudsman to be complied with within certain period -

(1) Subject to this section, where, during the course of an investigation under section 30 of this Act, of any decision of any Ministry or Minister of the Crown or organisation, the Ombudsman, pursuant to any power conferred on the Ombudsman by section 16 of the Ombudsman Act 1984, requires that Ministry or Minister of the Crown or organisation to furnish or produce to the Ombudsman any information or document or paper or thing which relates to that investigation, that Ministry, Minister of the Crown, or organisation shall, as soon as reasonably practicable, and in no case later than 20 working days after the day on which that requirement is received by that Ministry or Minister of the Crown or organisation, comply with that requirement.

(2) Where any requirement to which subsection (1) of this section applies is made to any Ministry or Minister of the Crown or organisation, the permanent head of that Ministry or an officer or employee of that Ministry authorised by that permanent head or that Minister of the Crown or that organisation may extend the time limit set out in subsection (1) of this section in respect of that requirement if -

(a) the requirement relates to, or necessitates a search through, a large quantity of information or a large number of documents or papers or things, and meeting the original time limit would unreasonably interfere with the operations of the Ministry or the Minister of the Crown or the organisation; or

- (b) consultations necessary before the requirement can be complied with are such that the requirement cannot reasonably be complied with within the original time limit;
- (c) the complexity of the issues raised by the requirement are such that that requirement cannot reasonably be complied with within the original time limit.

(3) Any extension under subsection (2) of this section shall be for a reasonable period of time having regard to the circumstances.

(4) The extension shall be effected by giving or posting notice of the extension to the Ombudsman within 20 working days after the day on which the requirement is received.

(5) The notice effecting the extension shall –

- (a) specify the period of the extension; and
- (b) give the reasons for the extension; and
- (c) contain such other information as is necessary.

(6) If any Ministry or Minister of the Crown or organisation fails, within the time limit fixed by subsection (1) of this section (or, where that time limit has been extended under subsection (2) of this section, within that time limit as so extended) to comply with any requirement to which subsection (1) of this section applies, the Ombudsman may report such failure to the Prime Minister, and may thereafter make such report through the Speaker to Parliament on the matter as the Ombudsman thinks fit.

(7) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under subsection (6) of this section, make any comment that is adverse to any person unless the person has first been given an opportunity to be heard.

33. Procedure after investigation – (1) Where, after making an investigation of a complaint made under section 30 of this Act, an Ombudsman is of the opinion –

- (a) that the request made in accordance with section 11 of this Act should not have been refused; or
- (b) that the decision complained of is unreasonable or wrong or is otherwise a decision to which subsection (1) or subsection (2) of section 19 of the Ombudsman Act 1984 applies, –

the Ombudsman shall, subject to subsection (3) of this section,

- (c) report his or her opinion and his or her reasons therefore to the appropriate Ministry or Minister of the Crown or organisation; and
- (d) subject to section 34 of this Act, make such recommendation as he thinks fit; and
- (e) give to the complainant –
  - (i) a copy of his or her recommendations (if any); and
  - (ii) such other information as he or she thinks proper.

(2) The Ombudsman shall also send a copy of his or her report and recommendations to such Minister of the Crown as he or she considers appropriate.

(3) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this section, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

(4) Except as provided in subsection (1) of this section, nothing in section 19 of the Ombudsman Act 1984 shall apply in respect of a decision that may be investigated and reviewed under section 30(1) or section 30(2) of this Act.

34. Disclosure of certain information not to be recommended – Where –

- (a) the Prime Minister certifies that the making available of any information would be likely to prejudice –
  - (i) the security or defence of the Cook Islands or the international relations of the Government of the Cook Islands; or
  - (ii) any interest protected by section 7 of this Act; or
- (b) the Attorney-General acting after consultation with the Solicitor-General certifies that the making available of any information would be likely to prejudice the prevention, investigation, or detection of offences,

the Ombudsman shall not recommend that the information be made available, but may recommend that the making available of the information be given further consideration by the appropriate Ministry or Minister of the Crown or organisation.

35. Recommendations made to the Ministry or Minister of the Crown or organisation – (1) Where a recommendation is made under section 33(1) of this Act to a Ministry or to an organisation named in Schedule 1 –

- (a) a public duty to observe that recommendation shall be imposed on that Ministry or organisation from the commencement of the twenty-first working day after the day on which that recommendation is made to the Ministry or organisation unless, before that day, the Queen's Representative by Order in Executive Council, otherwise directs; and
- (b) the public duty imposed by paragraph (a) of this subsection shall be imposed not only on the Ministry or organisation itself but also on –
  - (i) the members of the organisation and its governing body (if any); and
  - (ii) every officer and employee of that Ministry or organisation to whom that recommendation is applicable; and
  - (iii) every body within that Ministry or organisation to whom that recommendation is applicable; and
  - (iv) every statutory officer to whom that recommendation is applicable.



(2) Where a recommendation is made under section 33(1) of this Act to a Minister of the Crown, a public duty to observe that recommendation shall be imposed on that Minister from the commencement of the twenty-first working day after the day on which that recommendation is made to that Minister unless, before that day, the Queen's Representative by Order in Council, otherwise directs.

(3) As soon as practicable after an Order in Executive Council is made under this section, the Minister who recommended the making of that Order in Council shall give a copy of that Order to the Ombudsman who made the recommendation.

(4) Nothing in this section prevents effect being given to any interim order made by the High Court or to any declaration contained in any such interim order.

36. Requirements in relation to Order in Executive Council - (1) Every Order in Executive Council made under section 35 of this Act shall forthwith after it is made be published in the *Gazette* and shall be laid before Parliament as soon as practicable after it is made.

(2) Every Order in Executive Council made under section 35 of this Act shall set out the reasons for which it is made and the grounds in support of those reasons.

(3) An Order in Executive Council made under section 35 of this Act in relation to a recommendation made under section 33(1) of this Act may be made for all or any of the reasons for the decision reviewed by the Ombudsman (being reasons that were before the Ombudsman when the recommendation was made) but for no other reasons.

37. Right of review - (1) Where -

- (a) a recommendation is made under section 33(1) of this Act in respect of a request made under section 11 of this Act; and
- (b) an Order in Executive Council is made under section 35 of this Act in respect of that recommendation,

the person who made that request may within 21 days of the publication of the Order in the *Gazette* apply to the High Court for a review of the making of that Order in Executive Council.

(2) An application under subsection (1) of this section may be made only on the ground that the Order in Executive Council was beyond the powers conferred by sections 35 and 36 of this Act or was otherwise wrong in law.

(3) On an application under subsection (1) of this section, the High Court may -

- (a) make an order confirming that the Order in Council laws were validly made; or
- (b) make an order declaring that the making of the Order in Council was beyond the powers conferred by sections 35 and 36 of this Act or was otherwise wrong in law.

38. Appeals - Any party to an application under section 37 of this Act who is dissatisfied with any final or interlocutory order in respect of the application may appeal to the Court of Appeal and Part II of the Judicature Act 1980-81 shall apply to any such appeal.

39. Complainant to be informed of result of investigation - The Ombudsman after investigating a complaint made for the purposes of section 30(3) of this Act shall inform the complainant, in such manner and at such time as he or she thinks proper, of the result of the investigation.

40. Restriction on application for review - Where any person makes a request under this Act that official information be made available to him or her and a decision to which section 30(1) or section 30(2) of this Act applies is made in relation to that request, that person shall not commence any proceedings in which that decision is sought to be challenged, quashed, or called in question in any Court, unless a complaint made by that person in respect of that decision has first been determined under this Part of this Act.

### *Division 2*

#### *Decisions under Part 3 and Part 4 of this Act*

41. Application of Ombudsman Act 1984 - (1) It shall be a function of the Ombudsman to investigate, pursuant to the Ombudsman Act 1984, any decision made under Part 3 or Part 4 of this Act -

- (a) including any such decision made by -
  - (i) a Minister of the Crown; or
  - (ii) an organisation named in Schedule 1 to this Act; but
- (b) not including a decision made under section 9 this Act in relation to a request made under Part 3 or Part 4 of this Act.

(2) The provisions of section 32 of this Act, so far as they are applicable and with the necessary modifications, shall apply in respect of any requirement, made by any Ombudsman in the course of any investigation conducted pursuant to subsection (1) of this section, whereby the Ombudsman, pursuant to any power conferred on that Ombudsman by section 16 of the Ombudsman Act 1984 requires any Ministry or Minister of the Crown or organisation to furnish or produce to that Ombudsman any information or document or paper or thing which relates to that investigation.

(3) Where the Ombudsman, after making his or her investigation, forms an opinion of the kind described in subsection (1) or subsection (2) or subsection (3) of section 19 of the Ombudsman Act 1984 he or she shall, subject to subsection (7) of this section, report his or her opinion to the appropriate Ministry or Minister of the Crown or organisation, and may make such recommendations as he or she thinks fit in accordance with section 19(3) of the Ombudsman Act 1984.

(4) Where a report is made under subsection (3) of this section to a Minister of the Crown, the Ombudsman shall request the Minister of the Crown to notify the Ombudsman, within a specified time, of the steps (if any) that the Minister proposes to take to give effect to the Ombudsman's recommendations.

(5) If, within a reasonable time after the report is made under section 19(3) of the Ombudsman Act 1984 (as applied by subsection (3) of this section), no action is taken which seems to an Ombudsman to be adequate and appropriate, the Ombudsman, in his or her discretion, after considering the comments (if any) made by or on behalf of any Ministry or Minister of the Crown or organisation affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he or she thinks fit.

(6) The Ombudsman shall attach to every report sent or made under subsection (5) of this section a copy of any comments made by or on behalf of the Ministry or Minister of the Crown or organisation affected.

(7) Notwithstanding anything in this section, an Ombudsman shall not, in any report made under this section, make any comment that is adverse to any person unless the person has first been given an opportunity to be heard.

(8) If, in relation to any request for official information made under Part 3 or Part 4 of this Act, any Ministry or Minister of the Crown or organisation fails within the time limit fixed by section 14(1) of this Act (or, where that time limit has been extended under this Act, within that time limit as so extended) to comply with paragraph (a) or paragraph (b) of subsection 14(1) of this Act, that failure shall be deemed, for the purposes of subsection (1) of this section, to be a decision made under Part 3 or Part 4 of this Act.

(9) Undue delay in giving any person access to official information in response to a request under Part 3 or Part 4 of this Act for access to that information shall be deemed, for the purposes of subsection (1) of this section, to be a decision made under Part 3 or Part 4 of this Act.

42. Saving in respect of Ombudsman Act 1984 - Except as expressly provided in this Act, nothing in this Act shall derogate from or limit the functions of the Ombudsman under the Ombudsman Act 1984.

## **PART 6**

### **REVIEW BY INDEPENDENT CONSULTANT**

43. Appointment of independent consultant - (1) The Prime Minister, acting with the concurrence of Cabinet, shall not later than the 31<sup>st</sup> December 2011 and may from time to time thereafter (but not more frequently than every three years) appoint an independent person or persons (in subsection (2) of this section and in sections 44 and 45 referred to as the independent consultant) to carry out the functions set out in sections 44 and 45 of this Act, such appointment to be upon such terms and conditions including as to remuneration as shall be determined by Cabinet.

(2) The independent consultant shall prepare a report on the matters referred to in sections 44 and 45, such report to be presented to the Prime Minister.

(3) The Prime Minister shall make copies of the independent consultant's report publicly available immediately following receipt, and shall table the same in Parliament forthwith if Parliament is in session and if Parliament is not in session, shall table the report forthwith at the commencement of the next ensuing session.

2008/02

## Official Information

27

44. Functions and powers of independent consultant - (1) The principal functions of the independent consultant appointed pursuant to section 43 shall be -

- (a) to review, as a first priority, the protection accorded to official information by any Act with a view to seeing whether that protection is both reasonable and compatible with the purposes of this Act;
- (b) to define and review categories of official information with a view to enlarging the categories of official information to which access is given as a matter of right;
- (c) to recommend the making of regulations prescribing -
  - (i) categories of official information to which access is given as a matter of right; and
  - (ii) such conditions (if any) as it considers appropriate in relation to the giving of access to any category of official information.

(2) The independent consultant shall also have the following functions -

- (a) to keep under review the working of this Act and the manner in which -
  - (i) access is being given to official information; and
  - (ii) official information is being supplied;
- (b) to recommend to any Ministry or Minister of the Crown or organisation that that Ministry or Minister of the Crown or organisation make changes in the manner in which it or he gives access to, or supplies, official information or any category of official information;
- (c) to receive and invite representations from members of the public, and from Ministers of the Crown, Ministries and organisations, in relation to any matter affecting access to or the supply of official information;
- (d) to inquire into and report on the question whether this Act should be extended to cover information held by bodies other than Ministries, Ministers of the Crown, and organisations;
- (e) to inquire generally into and report on any matter, including any law, or any practice or procedure, affecting access to or the supply or presentation of official information.

(3) The independent consultant shall also have such other functions as are conferred on him or her by this Act or by any regulations made under this Act.

(4) The independent consultant shall also have such other functions as are reasonably necessary or expedient to enable him or her to carry out his or her functions including power -

- (a) to seek advice from the Ombudsman;
- (b) to consult with and to receive reports from Ministries and organisations on the problems encountered by Ministries and organisations in the administration of this Act;
- (c) to publish information relating to the access to or the supply of official information.

- (5) The independent consultant is not empowered –
- (a) to investigate any decision in respect of which a complaint may be made under Part 5 of this Act; or
  - (b) to inquire into any investigation conducted by the Ombudsman; but,

the fact that any such complaint has been made or that any such investigation has been undertaken shall not limit or affect the power of the independent consultant to carry out the kind of inquiry permitted by this section or section 45 of this Act.

45. Functions in respect of personal information – The independent consultant shall have the following functions in respect of personal information –

- (a) to keep under review, and make recommendation on -
  - (i) the means and procedures by which persons may find out what personal information relating to them is held by any Ministry or Minister of the Crown or organisation; and
  - (ii) the steps to be taken both by a person and by a Ministry or Minister of the Crown or organisation where personal information relating to that person and held by that Ministry or Minister of the Crown or organisation is believed by the person to be incorrect:
- (b) to examine any existing or proposed powers of a Ministry or organisation to require persons to supply information about themselves or any other person and to express its view on whether those powers are fair and reasonable:
- (c) to inquire whether personal information held by any Ministry or organisation is being used for purposes other than those for which it was acquired and, if it considers that any such information is being so used, to express a view on whether such use of the information is proper;
- (d) to recommend means and procedures to prevent the improper use of the personal information held by any Ministry or organisation.

## PART 7

### MISCELLANEOUS PROVISIONS

46. Assistance of Crown Law Office – For the purposes of ensuring compliance with this Act, the Crown Law Office shall advise and assist any Ministry or organisation.

47. Regulations - The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes –

- (a) prescribing forms of applications and other documents required for the purposes of this Act, or authorizing any person to prescribe or approve such forms;

## Official Information

- (b) providing the procedure for the service of notices and documents under this Act;
- (c) prescribing reasonable charges or scales of reasonable charges for the purposes of this Act;
- (d) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

48. Protection against certain actions - (1) Where any official information is made available in good faith pursuant to this Act -

- (a) no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information; and
- (b) no proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to a Ministry or Minister of the Crown or organisation.

(2) The making available of, or the giving access to, any official information in consequence of a request made under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given.

49. Power to amend Schedule 1 by Order in Executive Council - Where any Ministry or organisation named in Schedule 1 of this Act is abolished or any new Ministry or organisation is established, or its name is altered, the Queen's Representative may by Order in Executive Council, make such amendments to that Schedule as may be necessary to give effect to the abolition, establishment, or alteration.

50. Consequential amendment - The Race Relations Act 1972 is amended in the manner indicated in Schedule 2 of this Act.

51. Repeal - The Official Secrets Act 1951 is repealed.

52. Savings - (1) Nothing in this Act authorises or permits the making available of any official information if the making available of that information would constitute contempt of Court or of Parliament.

(2) Except as provided in sections 50 and 51 of this Act, nothing in this Act derogates from -

- (a) any provision which is contained in any other Act and which authorizes or requires official information to be made available; or

**Official Information****2008/02****2008/02**

- (b) any provision which is contained in any other Act and in force immediately before the date of coming into force of this Act and which –
  - (i) imposes a prohibition or restriction in relation to the availability of official information; or
  - (ii) regulates the manner in which official information may be obtained or made available; or
- (c) any provision of any Order in Executive Council made under the Commissions of Inquiry Act 1966 or of any other document under which a commission of inquiry is appointed.

MitA  
I

This Act is administered by the Office of the Ombudsman

## Official Information

31

SCHEDULE 1Ministries (including departments):

Agriculture  
 Audit Office  
 Crown Law Office  
 Cultural Development  
 Disaster Management Office  
 Education  
 Energy  
 National Environment Service  
 Finance and Economic Management  
 Financial Supervisory Commission  
 Foreign Affairs and Immigration  
 Human Resources  
 Health  
 Internal Affairs  
 Justice  
 Marine Resources  
 Meteorological Service  
 Ministerial Support Offices  
 National Library  
 Office of the Minister for Island Administration  
 Office of the Prime Minister  
 Parliamentary Services  
 Police  
 Public Service Commission  
 Transport  
 Waste Management  
 Works  
 Aitutaki Island Administration Office  
 Atiu Island Administration Office  
 Mangaia Island Administration Office  
 Manihiki Island Administration Office  
 Mauke Island Administration Office  
 Mitiaro Island Administration Office  
 Palmerston Island Administration Office  
 Penrhyn Island Administration Office  
 Pukapuka-Nassau Island Administration Office  
 Rakahanga Island Administration Office



**Organisations**

Building Control Committee  
 Business Trade & Investment Board  
 Cook Islands Airport Authority  
 Cook Islands Government Property Corporation  
 Cook Islands Investment Corporation  
 Cook Islands Marine Board  
 Cook Islands National Superannuation Fund  
 Cook Islands Pearl Authority  
 Cook Islands Ports Authority  
 Cook Islands Price Tribunal  
 Cook Islands Tourism Marketing Corporation  
 Cultural and Historic Places Board  
 Higher Salaries Commission  
 Island Councils  
 Island Environment Authorities  
 Leases Approval Tribunal  
 Medical and Dental Council  
 National Arts Council  
 National Environment Council  
 Nursing Council  
 Parole Board  
 Price Tribunal  
 Public Expenditure Review Committee  
 Rarotonga Local Government  
 Remuneration Tribunal  
 Seafood Export Advisory Council  
 Liquor Licensing Authority  
 Te Aponga Uira O Tumutevarovaro  
 Transport Licensing Authority

**Companies:**

Any company in which 50% or more of the shares are owned by the Crown.

**SCHEDULE 2****Consequential Amendment**

Race Relations Act 1972:

Section 13 (5) is amended by deleting the words "the Official Secrets Act or"

# Official Information Amendment Act 2009

## COOK ISLANDS

### OFFICIAL INFORMATION AMENDMENT NO.1 2009

#### ANALYSIS

1. Short title and commencement
2. Interpretation
3. Repeal
- Schedule 1

---

**2009, No.1**

An Act to amend the Official Information Act 2008

**(10 February 2009)**

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short title and commencement - (1) This Act may be cited as the Official Information Amendment Act 2009, and shall be read together with and deemed part of the Official Information Act 2008 ("the principal Act").

(2) This Act shall come into force on 11 February 2009.

2. Interpretation - Section 2 of the principal Act is amended by deleting paragraph (d) of "Qualified person" and substituting the following new paragraph -

"(d) a body corporate, wherever incorporated, which has had a place of business in the Cook Islands for not less than 3 years and continues to have a place of business in the Cook Islands."

3. Repeal - The principal Act is hereby amended by repealing Schedule 1 and substituting the new Schedule 1 attached hereto.

---

This Act is administered by the Office of the Ombudsman

## **SCHEDULE 1**

### **Ministries (including departments) and dates the Act shall apply**

<b>Name of Ministry or department:</b>	<b>Date of application:</b>
Police	11 February 2009
Office of the Public Service Commissioner	11 March 2009
Cultural Development	11 March 2009
Health	11 March 2009
Internal Affairs	11 March 2009
Justice	11 March 2009
Marine Resources	11 March 2009
Agriculture	11 May 2009
Disaster Management Office	11 May 2009
Office of the Prime Minister	11 May 2009
National Environment Service	11 May 2009
Finance and Economic Management	11 May 2009
Foreign Affairs and Immigration	11 May 2009
Human Resources	11 May 2009
Education	11 August 2009
National Library	11 August 2009
Office of the Minister for Island Administration	11 August 2009
Transport	11 August 2009
Waste Management	11 August 2009
Works	11 August 2009
Parliamentary Services	11 August 2009
Audit Office	11 November 2009
Crown Law Office	11 November 2009
Financial Intelligence Unit	11 November 2009
Financial Supervisory Commission	11 November 2009
Aitutaki Island Administration	11 November 2009
Mangaia Island Administration	11 November 2009
Atiu Island Administration	11 February 2010
Mauke Island Administration	11 February 2010
Mitiaro Island Administration	11 February 2010
Palmerston Island Administration	11 February 2010
Manihiki Island Administration	11 May 2010

Penrhyn Island Administration	11 May 2010
Pukapuka-Nassau Island Administration	11 May 2010
Rakahanga Island Administration	11 May 2010

**Organisations and dates the Act shall apply**

<b>Name of Organisation:</b>	<b>Date of application:</b>
Transport Licensing Authority	11 February 2009
Cultural and Historic Places Board	11 March 2009
Medical and Dental Council	11 March 2009
National Arts Council	11 March 2009
Nursing Council	11 March 2009
Seafood Export Advisory Council	11 March 2009
Parole Board	11 March 2009
Cook Islands Investment Corporation	11 May 2009
Cook Island Government Property Corporation	11 May 2009
Cook Island Marine Board	11 May 2009
National Environment Council	11 May 2009
Islands Environment Authorities	11 May 2009
Building Control Committee	11 August 2009
Business Trade & Investment Board	11 August 2009
Cook Islands National Superannuation Fund	11 August 2009
Liquor Licensing Authority	11 August 2009
Remuneration Tribunal	11 August 2009
Cook Islands Airport Authority	11 November 2009
Cook Islands Pearl Authority	11 November 2009
Cook Islands Price Tribunal	11 November 2009
Public Expenditure Review Committee	11 November 2009
Aitutaki Island Council	11 November 2009
Mangaia Island Council	11 November 2009
Cook Islands Ports Authority	11 February 2010
Higher Salaries Commission	11 February 2010
Cook Islands Tourism Marketing Corporation	11 February 2010
Atiu Island Council	11 February 2010
Mauke Island Council	11 February 2010

Mitiaro Island Council	11 February 2010
Palmerston Island Council	11 February 2010
Manihiki Island Council	11 May 2010
Penrhyn Island Council	11 May 2010
Pukapuka Island Council	11 May 2010
Rakahanga Island Council	11 May 2010