

**Model Law on
Access to Information
for Africa**

**Prepared by the African Commission on
Human and Peoples' Rights**

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Preface

Introduction

A model law is typically a detailed set of provisions embodying the international, regional or sub-regional standards on a particular subject, developed for the purpose of facilitating the adoption of national legislation. As the word ‘model’ suggests, a model law need not be adopted by States in its exact form, but could be adjusted to suit the legal and other realities of each State. Thus, unlike treaties, which are binding once ratified and impose obligations on States Parties, a model law is a non-binding document crafted specifically as a tool to guide law makers in translating obligations emanating from international treaties into detailed national legislation.

Article 1 of the African Charter on Human and Peoples’ Rights (African Charter) obliges States Parties to ‘adopt legislative, or other measures to give effect’ to the ‘rights, duties and freedoms enshrined’ therein. To assist States in fulfilling this obligation, the African Commission on Human and Peoples’ Rights (African Commission) has, since its establishment in November 1987, sought to elaborate on the scope and content of some of the rights contained in the African Charter through the adoption of ‘soft law’. An example is the *Declaration of Principles on Freedom of Expression in Africa* (the Declaration), adopted by the African Commission in 2002 to supplement article 9 of the African Charter which provides that ‘every individual shall have the right to receive information’. While the Declaration and other ‘soft law’ adopted by the African Commission have expanded on States Parties obligations under the African Charter, they do not specifically provide guidance on the form and content of the legislation to be enacted to give effect to these obligations at the domestic level. In adopting the Model Law on Access to Information for Africa, the African Commission has therefore gone a step further than the Declaration, by providing detailed and practical content to the legislative obligations of Member States to the African Charter with respect to the right of access to information, while leaving the specific form in which such laws will be adopted to individual States Parties. Ultimately, each State Party must determine the nature and scope of adjustments that may be required to the content of this

Model Law based on the provisions of its Constitution and the structure of its own legal system.

The adoption of Model Laws by the African Union on issues of shared importance on the continent is by no means a recent phenomenon. Earlier examples of Model Laws include the African Union Model Law on Biosafety in Technology 2000,¹ and the African Union Model Law on the Rights of Local Communities, Farmers, Breeders and Access 2000.² Increasingly, there is growing recognition in Africa of the importance of using Model Laws to shape the development of national legislation in conformity with regional standards, as evidenced by the on-going development of a Draft African Model Law on Counter-Terrorism³ and a Draft African Union Model National Law on the Ratification of Treaties.⁴

Drafting process

During its 48th Ordinary Session held from 10 to 24 November 2010, the African Commission, by Resolution 167 (XLVII), decided to begin a process of drafting a model access to information legislation for Africa. In its decision, the Commission mandated its Special Rapporteur on Freedom of Expression and Access to Information (Special Rapporteur) to lead the process.

The Model Law is the product of a two and a half year long drafting process coordinated by the Centre for Human Rights, University of Pretoria, under the auspices of the Special Rapporteur. Several expert meetings were held, the first of which resulted in the establishment of a ten-member working group of access to information (ATI) experts tasked with developing an initial draft of the Model Law. This first draft was subsequently presented to the African Commission at its 49th Ordinary Session held in Banjul, The Gambia in April 2011.

1. <http://www.au.int/en/dp/hrst/sites/default/files/2001-OAUModelLawSafety-Biotechnology.pdf>.
2. <http://www.farmersrights.org/pdf/africa/AU/AU-model%20law00.pdf>.
3. <http://www.africa-union.org/root/au/Conferences/2010/december/counterterrorism/Communiqu%C3%A9%20Terrorism%20eng.pdf>.
4. Available at <http://www.au.int/en/sites/default/files/PR%20177.pdf>.

To ensure further and more in depth consultation with stakeholders, between June 2011 and June 2012, four sub-regional consultations were held in Mozambique, Kenya, Senegal and Tunisia, to elicit feedback on the draft Model Law. Additionally, a public call for comments on the draft Model Law was made by the African Commission. The feedback received from these consultations and the public call were considered by the working group and informed the final text of the Model Law.

The need for a Model Law on Access to Information for Africa

Access to information is of growing international and regional concern, and is a topic on which African States are increasingly undertaking legislative reform. Properly implemented access to information legislation holds the promise of fostering good governance by improving information management, and by enhancing transparency, accountability and greater participation of the populace in public affairs. By exposing corruption, maladministration and mismanagement of resources, increased transparency and accountability is likely to lead to better management of public resources, improvements in the enjoyment of socio-economic rights and to contribute to the eradication of under-development on the continent.

In recent years, several regional treaties have echoed the need for States Parties to prioritise the adoption of access to information legislation in the context of democracy, fighting corruption and ensuring service delivery. *The African Charter on Democracy, Elections and Governance*, which has as one of its objectives the promotion of the necessary conditions 'for citizen participation, transparency, access to information, freedom of expression and accountability in the management of public affairs', obliges States Parties to 'implement programmes and carry out activities to promote good governance by ensuring transparent and accountable administration'. Similarly, article 9 of the *African Union Convention on Preventing and Combating Corruption* obliges States Parties to adopt such 'legislative and other measures to give effect to the right to access to any information that is required to assist in the fight against corruption and related offences'. More significantly, the *African Charter on the Values and Principles of Public Service and Administration* devotes an entire section to the right

of access to information, albeit in the context of public administration. Furthermore, several other continental treaties such as the *African Youth Charter*, the *African Charter on Statistics* and the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* also recognise the importance of access to information in the African context.

At the sub-regional level, the Southern African Development Community (SADC) *Protocol Against Corruption* requires States Parties undertake to 'adopt measures to create, maintain and strengthen mechanisms to promote access to information, to facilitate eradication and elimination of opportunities for corruption'.⁵ Similarly, the Economic Community of West African States (ECOWAS) *Draft Supplementary Act on a Uniform Framework for Freedom of Expression and the Right to Information* sets out key sub-regional standards on access to information to be observed by its Member States.

While some States Parties have responded to the increased regional and sub-regional emphasis on access to information by enacting access to information legislation, most have failed to do so. The access to information legislative landscape in Africa is thus sparse, with only 11 (Angola, Ethiopia, Guinea, Liberia, Niger, Nigeria, Rwanda, South Africa, Tunisia, Uganda and Zimbabwe) of the 54 African Union Member States having adopted access to information legislation, each with varied degrees of compliance with regional and international standards. Numerous States Parties also have access to information Bills, which are pending at various stages of the legislative process.

Aim of the Model Law

The following are some key reasons for developing this Model Law:

Guiding the development of new ATI legislation and the review of existing legislation

In the absence of a regional legislative framework to guide the development of access to information legislation, States Parties have relied on access to information legislation developed in other jurisdictions

⁵. Article 4(1)(d).

in their adoption process. The result has been that many existing and draft access to information laws in Africa do not adequately take into consideration factors such as the poor record keeping culture and pervasive culture of secrecy within the public service in Africa, high levels of illiteracy and poverty, as well as limitations in respect of access to justice for most Africans. These factors are however a reality across Africa and must be addressed to ensure the effectiveness of any access to information legislation on the continent.

This Model Law thus aims to ensure that legislative drafters and policy-makers address all issues relevant to the African context in their adoption or review of access to information legislation. It also serves as a benchmark for measuring compliance with regional and international human rights standards in the adoption and review of access to information legislation by AU Member States.

The Model Law is framed as an ‘Act’ in order to serve as a ‘ready-made’ example that could constitute the basis for national legislation. A State may however change this formation in line with the national domestic system by using, for example, ‘Decree’, ‘Edict’, ‘Law’ or ‘Code’.

An advocacy tool to encourage the adoption of ATI laws

The adoption of this Model Law has the potential to highlight the importance of access to information within specific national contexts, thereby bringing to the fore the need for the adoption of access to information legislation or the review of existing legislation. The Model Law therefore aims to serve as a tool for access to information advocates across Africa to stimulate public debate on access to information at the national level. It aims to raise awareness of the cross-cutting nature of the right of access to information, and the potential of this right to address issues such as poor service delivery, underdevelopment and the effective functioning of the justice system.

Compilation of best practices

Beyond guiding States in the adoption, review or amendment of existing laws, the Model Law also aims to build upon best practices, in terms of legislative drafting, that have emanated from the adoption and implementation of existing laws in Africa and around the world. In this regard, the Model Law seeks to assist States Parties in mitigat-

ing potential challenges and avoid common pitfalls from relevant lessons learned in other jurisdictions, while strengthening provisions that have proven effective in the implementation of existing legislation within and outside the continent.

Reinforcing a common approach and harmonisation of ATI laws

Lack of access to information deprives citizens of their right to participate in the decision-making process and hold elected representatives accountable for their acts or omissions and creates an environment in which corruption, maladministration and mismanagement of national resources may thrive. By and large, these conditions exist throughout Africa, making the adoption of access to information legislation a common approach to a common problem.

This Model Law thus seeks to reinforce a commonality of approach on access to information in Africa, while at the same time leaving room for States Parties to adapt the Model Law's provisions on the basis of their own legal systems and constitutional frameworks.

Conclusion

Member States may elect to adopt this Model Law as it is or adapt it. They may adopt it as a whole or in part. Whatever the manner in which a State decides to utilise the Model Law, efforts must be made to ensure that in the process of adopting or reviewing national legislation on access to information, the principles and objectives of the Model Law are observed to the utmost. It is only by adherence to the spirit and objective of this Model Law, that its potential to establish transparency, accountability and public participation in the decision-making process can be realised.



Pansy Tlakula

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Preamble

The African Commission on Human and Peoples' Rights

Recalling article 9 of the **African Charter on Human and Peoples' Rights** (African Charter) as further elaborated by the **Declaration of Principles on Freedom of Expression in Africa**, which guarantees the right of access to information as a fundamental inalienable human right and as an indispensable component of democracy and development, including socio-economic development;

Recognising the right of access to information as an international human right expressed in various international human rights instruments including in article 19 of both the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights**;

Conscious that the adoption of a model law on access to information in Africa is essential to the fulfilment of the mandate of the African Commission to promote and protect human and peoples' rights in accordance with article 45 of the African Charter;

Noting the express recognition by African Union Member States of the significance of the right of access to information as expressed in article 9 of the **African Union Convention on Preventing and Combating Corruption** requiring Member States to adopt legislative and other means to '*give effect to the right of access to any information that is required to assist in the fight against corruption*', the **African Charter on Democracy, Elections and Governance**, which lists as one of its objectives '*the establishment of the necessary conditions to foster citizen participation, transparency, access to information...*'; and the **African Charter on Values and Principles of Public Service and Administration**, which lists as two of its principles '*institutionalising a culture of accountability and integrity and transparency in public service and administration*' and the '*effective, efficient and responsible use of resources*' and provides in article 6 for the right of access to information;

Noting further that several other African Union instruments such as the **African Youth Charter**, the **African Charter on Statistics** and the **Protocol to the African Charter on Human and People's Rights**

on the Rights of Women in Africa explicitly recognise the importance of access to information;

Welcoming the fact that some Regional Economic Communities have adopted, or are in the process of adopting, legal instruments obliging African Union Member States to promote and protect the right of access to information;

Concerned that, despite the potential of access to information legislation to foster good governance through enhancing transparency, accountability and the participation of persons in public affairs, including exposing corruption and issues associated with underdevelopment on the continent, there is a dearth of access to information legislation in Africa;

Committed to addressing the limited guarantees for access to information on the continent by assisting African states in formulating, adopting or reviewing access to information legislation which meets minimum thresholds of good practice and providing uniform benchmarks for effective implementation of such legislation;

Hereby formulates the following model law on access to information as a guide for the development, adoption or review of access to information legislation by African States.

PART I – PRELIMINARY PROVISIONS

1 Definitions

In this Act, except insofar as the context or subject-matter otherwise indicates or requires

head of a public body, relevant private body or private 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, relevant private body and/or private body;

information officer means a person designated as the information officer of a public body, relevant private body or private body in accordance with section 10;

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

internal review request means a request made by a requester or a third party for an internal review of a decision of an information officer in accordance with section 41;

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

person means a natural person or a juristic person;

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;

persons with disabilities includes those who have physical, mental, intellectual, or sensory impairments;

private body means:

- (a) a natural person who carries on or has carried on any trade, business or profession or activity, but only in such capacity;
- (b) a partnership which carries on or has carried on any trade, business or profession or activity; or
- (c) any former or existing juristic person or any successor in title; but excludes public bodies and relevant private bodies;

public body means any body:

- (a) established by or under the Constitution;
- (b) established by statute; or
- (c) which forms part of any level or branch of government;

publish means to make available in a form and manner which is easily accessible to the public and includes providing copies or making information available through broadcast and electronic means of communication;

reasonable reproduction cost means the minimum market rate of reproduction;

relevant private body means any body that would otherwise be a private body under this Act that is:

- (a) owned totally or partially or controlled or financed, directly or indirectly, by public funds, but only to the extent of that financing; or
- (b) carrying out a statutory or public function or a statutory or public service, but only to the extent of that statutory or public function or that statutory or public service;

reproduction fee means the fee payable by a requester to an information holder for access to information calculated by the relevant body in accordance with section 23;

request means an application made under section 13;

requester means a person who requests access to information under this Act or any person acting on behalf of the person requesting

access;

sitting days of Parliament means days in which Parliament is in session;

third party means a person other than the information holder or the requester;

third party information means personal information or commercial and confidential information of a third party; and

translation fee means the translation fee payable by a requester to an information holder in accordance with section 23(4).

2 General principles

The right to information is hereby guaranteed in accordance with the following principles:

- (a) Every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively.
- (b) Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.
- (c) This Act and any other law, policy or practice creating a right of access to information must be interpreted and applied on the basis of a presumption of disclosure. Non-disclosure is permitted only in exceptionally justifiable circumstances as set out in this Act.
- (d) Information holders must accede to the authority of the oversight mechanism in all matters relating to access to information.
- (e) Any refusal to disclose information is subject to appeal.
- (f) Public bodies and relevant private bodies must proactively publish information.
- (g) No one is subject to any sanction for releasing information under this Act in good faith.

3 Objectives of Act

The objectives of this Act are to:

- (a) give effect to the right of access to information as guaranteed by the African Charter on Human and Peoples' Rights, to
 - (i) any information held by a public body or relevant private body; and
 - (ii) any information held by a private body that may assist in the exercise or protection of any right;
- (b) establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to information in a manner which enables persons to obtain access to accurate information of information holders as swiftly, inexpensively and effortlessly as is reasonably possible;
- (c) ensure that in keeping with the duty to promote access to information, information holders create, keep, organise and maintain information in a form and manner that facilitates the right of access to information;
- (d) promote transparency, accountability, good governance and development by educating people about their rights under this Act.

4 Primacy of Act

- (1) Save for the Constitution, this Act applies to the exclusion of any provision in any other legislation or regulation that prohibits or restricts the disclosure of information of an information holder.
- (2) Nothing in this Act limits or otherwise restricts any other legislative requirement for an information holder to disclose information.

5 Interpretation

When interpreting this Act, due consideration must be given to the principles and objectives of this Act, the Constitution and any international, regional or sub-regional instruments. In so doing, any reasonable interpretation that favours the presumption of a right to access information must be preferred to any adverse or restrictive interpretation.

PART II – ACCESS TO INFORMATION OF PUBLIC BODIES, RELEVANT PRIVATE BODIES AND PRIVATE BODIES

6 Duty to create, keep, organise and maintain information

- (1) Each information holder must create, keep, organise and maintain its information in a manner which facilitates the right of access to information, as provided in this Act.
- (2) In furtherance of the obligation contemplated in subsection (1), every public body and relevant private body must:
 - (a) produce information in respect of all its activities, including but not limited to 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
 - (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) Each public body and relevant private body must publish the following information produced by or in relation to that body within 30 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, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
 - (b) the names, designations and other particulars of the information officer and deputy information officer of the public body or relevant private body, including their physical 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 or relevant private 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 formulation or implementation of its policies or similar documents;
 - (e) whether meetings of the public body or relevant private body, including its boards, councils, committees or similar other bodies, are open to members of the public and, if so, the process for direct or indirect engagement; but where a meeting is not open to the public, the body must proactively make 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 public body or relevant private body;
 - (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 or relevant private body; and
 - (i) any other information directed by the oversight mechanism.
- (2) Each public body and relevant private body is required to annually publish the following information produced by or in relation to that body:
- (a) the particulars of its organisation, 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, organising 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 title, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
 - (f) the yearly band of remuneration for each public employee and

officer, including the system of compensation as provided in its laws, 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 benefit received by each employee and officer;
- (h) a description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted as its part or for the purpose of advice to or managing the public body or relevant private 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, and for any previous financial years from the date of the commencement of this Act;
- (j) the annual report submitted to the oversight mechanism in terms of section 67 of this Act; and
- (k) any other information directed by the oversight mechanism.

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

(1) Every public body and relevant private body must annually, within the timeframe stipulated by the oversight mechanism, submit to the oversight mechanism:

- (a) an information publication plan with respect to its proactive disclosure obligations in section 7 of this Act, in accordance with section 65(2); and
- (b) annual reports on the implementation of this Act in accordance with section 67.

(2) Every information holder must publish information manuals detailing the categories of information it proactively discloses in accordance with section 68.

9 Unpublished information not to prejudice public

Where a public body or relevant private body has failed to timeously publish information referred to in section 7, a member of the public

who was not aware of that information may not be subjected to any prejudice if he or she could lawfully have avoided that prejudice had they been aware of the information.

10 Designation of information officer

- (1) The head of every information holder must designate an information officer for the purposes of this Act.
- (2) If an information holder fails to designate an information officer, the head of the body will be the information officer for the purposes of this Act.
- (3) A person designated as an information officer must be competent and suitable to exercise the powers and perform the duties and functions of an information officer under this Act.

11 Designation of deputy information officers

- (1) To enable an information holder to comply with the requirements of this Act, the head of the body must designate a person or persons as deputy information officer or officers.
- (2) A deputy information officer has all the powers, duties and functions of an 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.

12 Right of access

- (1) Subject to this Act, every person has an enforceable right to access information from
 - (a) a public body or relevant private body; and
 - (b) a private body, where the information may assist in the exercise or protection of any right.
- (2) Nothing in this Act is intended to prevent or discourage information holders from publishing or giving access to information (including information exempt from disclosure under Part III of this

Act) where they can properly do so or are required by law to do so.

13 Requests for access

(1) A person who wishes to obtain access to information of an information holder must make a request in writing or orally to the information officer of the body.

(2) If a person makes a request orally the information officer must reduce that oral request to writing and provide a copy thereof to the requester.

(3) On receipt of a request, an information officer must immediately provide a written acknowledgement of the request to the requester.

(4) If an information officer is able to provide an immediate response to a person making a request and such response is to the satisfaction of the requester, the information officer must make and retain a record of the request and the response thereto.

(5) Subject to subsections 6(b) and (c), a requester does not have to provide a justification or reason for requesting any information.

(6) A request must:

- (a) provide such detail concerning the information requested as is 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) if the request is to a private body, provide an explanation of why the requested information may assist in the exercise or protection of any right;
- (d) identify the nature of the form and language in which the requester prefers access; and
- (e) if the request is made on behalf of someone else, include an authorisation from the person on whose behalf the request is made.

14 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 requirements of this Act,

the information officer must 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, an information officer must take all necessary steps to assist the person to make the request in a manner that meets their needs.

15 Response to request

- (1) Subject to subsection (2), the information officer to whom a request is made, as soon as reasonably possible, but in any event within 21 days after the request is submitted must

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

- (2) Where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 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.

Access granted

- (3) If the request is granted, the notice referred to in subsections (1) and (2) must state

- (a) the reproduction fee, translation fee and/or transcription fee (if any) payable;
 - (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 fee, translation fee and/or transcription fee payable or the form in which access has been granted in accordance with section 41.
- (4) Subject to subsections (6) and (7), where a requester has been given notice that his or her request has been granted, that requester must
- (a) if a reproduction fee, translation fee and/or transcription fee is payable, upon payment of that fee; or
 - (b) if no reproduction fee, translation 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 in form and the requester may rely on and use that information on that basis.

(6) Where an information officer must respond to a request within 48 hours under subsection (2) and grants the request, the requester must be given access to the information immediately, irrespective of whether any reproduction fee, translation fee or 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.

Access refused

- (8) If the request is refused, the notice referred to in subsections (1) and (2) must
- (a) state adequate 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 41.

48 hour request refused

(9) If upon reviewing a request and the information that is the subject of the request the information officer does not consider that the information requested reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 hours after the request is submitted

- (a) provide notice of the decision, including adequate reasons for the decision, to the requester;
- (b) inform the requester that, subject to the requester's right to apply for a review of the decision, the information officer will make a decision regarding whether to grant access to the requested information within the time period specified in subsection (1); and
- (c) inform the requester that he or she may appeal directly to the oversight mechanism in respect of the decision in accordance with section 74.

16 Extension of time

(1) Subject to subsection (2), the information officer to whom a request is made may extend the period to respond to a request in section 15(1) on a single occasion for a period of not more than 14 days if

- (a) the request is for a large amount of information or requires a search through a large amount of 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 21 days.

(2) If any part of the information requested can be considered by the information officer within the time period specified under section 15(1), it must 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 subsection (1), the information officer must forthwith after the decision

to extend has been taken by him or her, but in any event within 21 days after the request is received, notify the requester in writing of that extension.

- (4) The notice in terms of subsection (3) must 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 41.

17 Transfer of request

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

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

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

(2) A public body or relevant private body that transfers a request in accordance with subsection (1) must

- (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 or relevant private body that receives a transferred request must immediately notify the requester of the receipt in writing.

(4) Where a request is transferred to another public body or relevant private body in accordance with subsection (1), the request is deemed to have been

- (a) made to the public body or relevant private body to which it was transferred; and

- (b) received by that public body or relevant private body on the day the body to which it was originally made received it.

18 Deemed refusal

If an information officer fails to give a decision on a request within the time specified in section 15(1) or, where that time period has been extended in accordance with section 16, within any extended period of time, the information officer is deemed to have refused the request.

19 Deferral of access

(1) An information officer who receives a request may defer the provision of access to the information if

- (a) the information has been prepared for presentation to Parliament, but only until the expiration of five sitting days of Parliament; or
- (b) the information 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 35 days from the date of the request, whichever is the earlier.

(2) If an information officer determines to defer access to information under subsection (1), the information officer must notify the requester in writing

- (a) of the decision as soon as possible but not later than 21 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 14 days of receiving notice, make written or oral representations to the information officer regarding why the information is required before such presentation.

(3) If a person makes oral representations in accordance with subsection (2)(d), the information officer must reduce those oral representations to writing and provide a copy thereof to the requester.

(4) If a requester makes a representation in terms of subsection

(2)(d), the information officer, after due consideration of those representations, must, 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 subsection (2)(c).

20 Information that cannot be found or does not exist

(1) If an information officer

- (a) has taken all reasonable steps to find the information requested; and
- (b) has concluded that the information
 - (i) is in the possession of the information holder but cannot be found; or
 - (ii) does not exist,

the information officer must, as soon as possible but in any event within 21 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 subsection (1) must include an affidavit or affirmation, signed by the information officer stating the substantive details of all steps taken to find the information or to determine whether the information exists, including, but not limited to -

- (a) details of all locations searched for the information and the 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 to 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 subsection (1), the information officer must immediately notify the requester in writing and thereafter as soon as possible but in any event within 14 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 and/or transcription fee, give the requester access to the information.
- (4) If access to the information is granted, the notice referred to in subsection (3) must comply with section 15(3) and access must be given in accordance with sections 15(4) and 15(7).
- (5) If access to the information is refused, the notice referred to in subsection (3) must comply with section 15(8).

21 Form of access

- (1) Access to information must be given to a requester in one or more of the 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 available in computer readable form, by supplying a copy in that form.
- (2) Subject to subsection (4), where the requester has requested access to information in a particular form, access must be given in that form.
- (3) A requester may amend their preferred form of access on receipt of notice of the reproduction fees, translation fees 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, not be appropriate,

access in that form may be refused if access is 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 subsection (4) access in that form is refused but access is given in 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 of the information holder must, 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.

22 Language of access

Information must be provided to a requester in such official language as the requester prefers.

Where the information holder does not hold the information in the language the requester prefers, the information holder must cause the information to be translated into the preferred language of the requester; and may recover the reasonable costs associated with the translation from the requester.

23 Fees

(1) A requester is not required to pay any fee

- (a) on lodging a request;
- (b) in relation to time spent by an information holder searching for

- the information requested; or
- (c) in relation to time spent by the information holder examining the information to determine whether it contains exempt information or deleting exempt information from a document.
- (2) Subject to subsection (3), an information holder may charge the requester a reproduction fee consisting of the reasonable reproduction costs incurred by the information holder.
- (3) No reproduction fee is payable
- (a) for reproduction of personal information of the requester, or where the request is made on behalf of another person, the personal information of the person on whose behalf the request is made;
 - (b) for reproduction of information which is in the public interest;
 - (c) where an information holder has failed to comply with the time for responding to a request under section 15(1) or, where an extension of time has been made under section 16, within that extended period of time; or
 - (d) where the requester is indigent.
- (4) Where a request is made that information released under this Act be made available in a language other than a language in which it is already held by the information holder under section 22(2), the information holder may recover the reasonable costs of such translation from the requester.
- (5) Where a request is made that a written transcription be produced of any information released under this Act, the information holder may recover the reasonable costs of such transcription from the requester.

PART III – EXEMPTIONS

24 Refusal

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

25 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 outweighs the public interest in the release of the information.

(2) An information officer must consider whether subsection (1) applies in relation to any information requested before refusing access on the basis of an exemption stated in this Part.

26 Classified information

Information is not exempt from access under this Act merely on the basis of its classification status.

27 Personal information of a third party

(1) Subject to subsection (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 may not be refused in terms of subsection (1) where

- (a) the third party does not make a representation under section 39(3) stating why access to the information should not be granted;
- (b) the third party consents to the disclosure;
- (c) the third party has been deceased for more than 10 years;
- (d) the information is in the public domain;
- (e) the information relates to the physical or mental wellbeing of an individual who is under the care of the requester and who is
 - (i) under the age of 18 years; or
 - (ii) incapable of understanding the nature of the request,

and giving access would be in the individual's interests;

- (f) the information is about a deceased individual and the requester is

- (i) the individual's next of kin or legal personal representative;
- (ii) making the request with the written consent of the individual's next of kin or legal personal 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) the 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 or relevant private body;
- (h) the 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 might be made available to the public.

28 Commercial and confidential information of an information holder or a third party

- (1) Subject to subsection (2), an information officer may refuse a request for information if it contains
- (a) trade secrets of the information holder or a third party; or
 - (b) information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or third party.
- (2) A request may not be refused in terms of subsection (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.

29 Protection of life, health and safety of an individual

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

30 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 or strategy or military 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 of the state or a strategic asset of the state, whether inside or outside the state; or
- (c) a foreign or hostile intelligence operation.

31 International relations

An information officer may refuse to grant access to information

- (a) supplied by or on behalf of the state to another state or an international 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.

32 Economic interests 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.

33 Law enforcement

An information officer may refuse to grant access to information, where to do so would cause prejudice to

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice; or
- (d) the assessment or collection of any tax or duty.

34 Legally-privileged documents

An information officer may refuse a request if the information

- (a) consists of confidential communication between a medical practitioner and his or her patient;
- (b) consists of confidential communication between a lawyer 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 entitled to the privilege consents to the release or has waived the privilege.

35 Academic or professional examination and recruitment processes

- (1) An information officer may refuse a request for information relating to an academic or professional examination or 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 subsection (1) must be released on request after the academic or professional examination or recruitment or selection process has been completed.

36 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 must be severed or redacted from the record or document and access to the remainder of the information must be granted to the requester.
- (2) Where an information officer severs or redacts any portion of a record or document, the information officer must indicate the length or amount of information severed or redacted in the response to the requester.

37 Manifestly vexatious requests

- (1) An information officer may refuse a request if the request is manifestly vexatious.
- (2) Where an information officer refuses a request on the basis of

subsection (1), the notice referred to in section 15(8) must include an affidavit signed by the information officer stating the reasons that the information officer considers the request to be manifestly vexatious.

38 Burden of proof

An information officer that 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.

39 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, the information officer must take reasonable steps to inform the third party to whom or 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 subsection (9), when informing the third party under subsection (1), the information officer must 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 subsection (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 the information officer may give access even if the third party makes a representation under subsection (3); and
- (e) that if the information officer determines to release the information, the third party may lodge an appeal under section 41.

(3) Subject to subsection (10), within 10 days of being informed of a

request under subsection (1), a third party may

- (a) inform the information officer, orally or 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, orally or in writing, stating why the request for access to the information should not be granted.
- (4) If consent is given or a representation is made orally under subsection (3), the information officer must reduce that consent or representation to writing and provide a copy thereof to the third party.
- (5) Where a third party does not provide a response under subsection (3) within 10 days or cannot be located after reasonable steps have been taken to do so, the information officer must assume that the third party does not object to the information being granted to the requester.
- (6) Where a third party cannot be located, an information officer must prepare and sign an affidavit stating all steps taken to locate the third party, and retain such affidavit.
- (7) On determining whether to grant the requester access to the personal or commercial or confidential information of the third party, the information officer must notify the third party in writing of the decision as soon as possible, but in any event within three days.
- (8) 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 subsection (7) must state
- (a) the reason(s) for granting the request;
 - (b) that the third party may apply for a review of the decision under section 41 within 10 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 10-day period.
- (9) If the information officer is considering a request which the information officer must respond to within 48 hours under section 15(2) and that information contains personal information of a natural third party or commercial or confidential information of a third party, the information officer must 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 the information officer released the information to the requester.

(10) Where an information officer must respond to a request within 48 hours under section 15(2), a third party does not have the right to make a representation to the information officer stating why the request should not be granted.

PART IV – INTERNAL REVIEW OF DECISIONS

40 Right of internal review

- (1) A requester may apply for an internal review of any decision of an information officer.
- (2) A third party may apply for an internal review of a decision of an information officer to grant access to information containing its third party information.

41 Application for internal review

- (1) A requester may make an internal review request in writing or orally to the information officer of the relevant body within 60 days of the receipt of the relevant decision of an information officer.
- (2) A third party may make an internal review request in writing or orally to the information officer of the relevant body within 10 days of the receipt of a decision of an information officer referred to in section 40(2).
- (3) If a requester or a third party makes an internal review request orally, the information officer must reduce that oral request to writing and provide a copy thereof to the relevant party.
- (4) An internal review request must identify the request and decision of the information officer which is the subject of the internal review.
- (5) If an internal review request referred to in subsection (1) is lodged after the expiry of 60 days, the information officer must, upon good cause shown, allow the late lodging of the request.

(6) As soon as possible, but in any event within five days after receipt of an internal review request, the information officer must submit to the head of the information holder the

- (a) internal review request;
- (b) information officer's reasons for the decision; and
- (c) information that is the subject of the review,

and notify the requester and, where relevant, the third party in writing that the documents have been so submitted.

42 Decision on internal review

(1) The head of the information holder to whom an internal review request is submitted in accordance with section 41 must as soon as reasonably possible, but in any event within 15 days after the internal review request is received by the information officer-

- (a) make a fresh decision on behalf of the body; and
- (b) notify the requester and, where relevant, the third party of that decision in writing.

Access granted

(2) If the head of the information holder determines to grant access to the information, the notice to the requester referred to in subsection (1) must state

- (a) the reproduction fee, translation fee and/or transcription fee (if any) payable;
- (b) the form in which access will be given; and
- (c) that the requester may apply to the oversight mechanism under section 71 for a review of the decision in respect of the reproduction fee, translation fee and/or transcription fee payable or the form of access and the process for lodging that appeal.

(3) Subject to subsection (4), where a requester has been given notice that access to the information has been granted, that requester must, subject to subsection (4)

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

payable, immediately,
be given access to the information.

(4) Where the head of the information holder has determined 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 the release of the information under section 71 has expired or any appeal lodged by the third party has been finally determined.

Access refused

(5) If the head of the information holder determines not to grant access to the information, the notice to the requester referred to in subsection (1) must

- (a) state adequate 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 apply to the oversight mechanism for a review of the decision in accordance with section 71, and the process of lodging that appeal.

Third party

(6) Where a third party has lodged an internal review request, the notice referred to in subsection (1) must state

- (a) adequate reasons for the decision; and
- (b) that the third party may apply to the oversight mechanism under section 71 for a review of the decision, and the process for lodging that appeal.

43 Non-delegable duty

The decision referred to in section 42 must be made by the head of the information holder personally and may not be delegated to any other person.

44 Deemed refusal

If the head of the relevant information holder fails to give a decision on an internal review request within the time specified in section 42, the head of the body is deemed to have affirmed the original decision of the information officer.

PART V – OVERSIGHT MECHANISM

Division 1: Establishment of oversight mechanism

45 Purpose of Part

This Part establishes an independent and impartial oversight mechanism comprised of information commissioners for the purposes of the promotion, monitoring and protection of the right of access to information.

46 Appointment

Selection and appointment of the information commissioners of the oversight mechanism must be undertaken by the appropriate authority subject to the following conditions:

- (a) the call for nominations must be made public and issued by the appropriate authority;
- (b) identification of candidates and the interview process must be transparent and include public participation;
- (c) due consideration must be given to the need for gender balance in the selection and appointment processes; and
- (d) timeframes within which selection and appointment must be completed are to be stipulated by Parliament.

47 Criteria for appointment

- (1) Information commissioners must
 - (a) be fit and proper persons;
 - (b) have requisite academic qualifications and working experience;

- (c) be publicly-recognised human rights advocates;
 - (d) be independent, impartial and accountable; and
 - (e) have demonstrable knowledge in access to information, transparency or public and corporate governance.
- (2) Information commissioners must not
- (a) have been convicted of a serious crime;
 - (b) be declared insolvent; or
 - (c) hold a political office at any level of the state or occupy a position within a political party at the time of nomination, or have held such office or position in the five years preceding the nomination.

48 Term of office

Information commissioners hold office for a stipulated term, subject to reappointment for only one further term.

49 Termination of office

- (1) The appointment of information commissioners may be terminated before the expiry of their term
- (a) where the person is mentally or physically incapable of performing the functions and duties of the office;
 - (b) where the person is declared insolvent;
 - (c) where the person has performed actions amounting to gross misconduct or brought the oversight mechanism into disrepute;
 - (d) where the person has been convicted of a serious crime; or
 - (e) on grounds of incompetence.
- (2) Before terminating the appointment of an information commissioner
- (a) the appropriate authority must appoint an independent commission of enquiry to investigate any allegation against the information commissioner. Any investigation conducted by the commission of enquiry must be closed to the public, unless the information commissioner who is the subject of the enquiry requests otherwise.
 - (b) Upon the completion of the investigation, the commission of enquiry must send its findings and recommendation to the appro-

priate authority.

- (c) A decision by the appropriate authority to terminate the appointment of an information commissioner must be approved by a two-thirds majority of Parliament.

50 Interim information commissioner

- (1) The appropriate authority may appoint an interim information commissioner for a period not exceeding six months if an information commissioner is incapacitated, removed from office or resigns.
- (2) The appropriate authority must not make successive appointments of interim information commissioners.

51 Limitation on outside work

During his or her term of office, an information commissioner or interim information commissioner must not occupy or engage in any other activity, profession or trade for financial gain, or any political activity.

52 Remuneration

- (1) Information commissioners receive a salary equivalent to that of other similar bodies in the state.
- (2) Any other issues relating to the payment of salaries, expenses, pensions or compensation of information commissioners must be guided by legislation relevant to those issues applicable to other similar bodies in the state.

Division 2: Independence, structure and operations of the oversight mechanism

53 Independence

- (1) The oversight mechanism enjoys independence and autonomy in its operation and administration.
- (2) Parliament must appropriate the budget presented by the over-

sight mechanism annually upon its presentation.

(3) The oversight mechanism must, through a process of public consultation, develop its own rules, procedures and code of conduct to regulate its affairs. Any amendments to these rules, procedures and code of conduct must be made public, including publication in the official gazette, and widely disseminated within 30 days of adoption.

(4) Where concurrent or other related oversight mechanisms exist, the oversight mechanism has the power to determine and align its rules and procedures with the existing mechanisms to the extent necessary for the purposes of discharging its mandate.

(5) The exercise of the oversight mechanism's powers under subsection (4) include formal and informal recommendations to Parliament, legislative authorities and research bodies for reform to the existing oversight mechanism model.

(6) The oversight mechanism is accountable to Parliament for the execution of its mandate, operations and performance.

54 Structure of the oversight mechanism

(1) The oversight mechanism is presided over by a chairperson.

(2) Information commissioners must determine who among them will serve as the chairperson of the oversight mechanism and such other matters related to the role of the chairperson, including whether the position of chairperson is to be fixed or rotated amongst them.

(3) The oversight mechanism has all of the rights of a juristic person, including the right to acquire, hold or dispose of property.

55 Staff

(1) The information commissioners must appoint such staff as are necessary to fulfil the functions of the oversight mechanism.

(2) Where the oversight mechanism is subsumed into existing mechanisms, staff of the oversight mechanism must

- (a) have clear terms and conditions of service;
- (b) have specific performance areas and lines of accountability; and

- (c) be independent of other personnel within the existing mechanism within which the oversight mechanism is to operate.

56 Engagement of experts

- (1) The oversight mechanism may, whenever it deems appropriate, convene a panel of experts for the purpose of exercising any power, duty or function under this Act.
- (2) Any panel of experts convened must include representation from appropriate civil society organisations and/or interest groups.

57 Immunity of the oversight mechanism and staff

- (1) No criminal or civil proceedings lie against the oversight mechanism, or against any person acting on behalf, or under the direction of, the oversight mechanism, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the oversight mechanism under this Act.
- (2) Staff who disclose wrongdoing within the oversight mechanism may not be subject to any detriment in the course of their employment by reason of the disclosure.

Division 3: Powers and duties of the oversight mechanism

58 General powers of the oversight mechanism

- (1) The oversight mechanism has the power to determine the nature, process and undertakings 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 in all sectors of society.
- (2) The oversight mechanism has the discretion and power to
 - (a) resolve a matter through negotiation, conciliation or mediation where it deems such recourse appropriate;
 - (b) determine the need for, form of and type of investigation required

- for the determination of any matter;
- (c) exempt any category of organisations operating on a non-profit basis that are relevant private bodies by virtue of subsection (b) of the definition of relevant private body carrying out a public service, from any of the obligations in this Act;
 - (d) make any such determination as it considers just and equitable including issuing such fines, recommendations and/or penalties in matters before it as it considers appropriate;
 - (e) dismiss a matter it considers manifestly vexatious;
 - (f) dismiss a matter where the applicant has failed to comply with the requirements of this Act;
 - (g) grant condonation where appropriate on the facts of the matter; and
 - (h) authorise and/or undertake any such action it deems necessary or appropriate for the execution of its mandate under this Act.
- (3) The oversight mechanism must
- (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 minors or circumstances which it deems appropriate for such action;
 - (d) decide on all matters relating to the need for, form of, issuing and service of notices and communications; and
 - (e) decide on issues of representation where necessary.
- (4) The oversight mechanism 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, including information found in any premises entered pursuant to subsection (e);
 - (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 by the parties in terms of this Act;
 - (e) develop regulations related to any entry, search and seizure procedures necessary for the execution of its mandate; and
 - (f) take any such other action or issue and serve notices as may be

appropriate for the resolution of any matter before it.

59 Referral powers of the oversight mechanism

- (1) The oversight mechanism has the power to make direct referrals to an appropriate court on questions of law or such other matters it considers appropriate.
- (2) The oversight mechanism has the power to bring actions in its own name before an appropriate court or join proceedings, where it deems necessary.

60 General duties of the oversight mechanism

- (1) The oversight mechanism has a duty to
 - (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 oversight mechanism must prepare a plain language guide to this Act, in all official languages, to assist users in requesting information.

61 Reports by the oversight mechanism

- (1) The oversight mechanism must annually report on its activities to parliament, which report must include
 - (a) complaints about offences noted during investigations under this Act; and
 - (b) the findings of any audit undertaken.
- (2) The oversight mechanism must produce such reports on the state of implementation of access to information and any such further access to information matter as may be required by the African Commission on Human and Peoples' Rights or the African Union and any of its bodies.

(3) In addition to the reporting obligation in subsection (2), the oversight mechanism must report to such other regional or sub regional bodies in terms of any request or obligation requiring such response.

Division 4: Promotion

62 Promotion

(1) The oversight mechanism 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 oversight mechanism must

- (a) assess all implementation plans required in terms of section 65 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 oversight mechanism.

63 Research and law reform

(1) The oversight mechanism must 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 must, in regard to its obligations

under subsection (1), submit recommendations for reform on proposed or emerging legislation to the relevant authorities.

(3) The oversight mechanism 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 oversight mechanism must be presented to Parliament in the annual report of the oversight mechanism.

Division 5: Monitoring

64 Monitoring

(1) Information holders are obliged to provide such reports as are required by this Act to the oversight mechanism.

(2) The oversight mechanism must, following public consultation, develop and publicise guidelines which detail the reporting requirements, including the manner, means and timeframes that apply to information holders.

(3) The oversight mechanism has the discretion to 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.

65 Implementation plan

(1) Every public body and relevant private body must submit an implementation plan to the oversight mechanism within 18 months of the commencement of this Act, or within 6 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 subsection (1) must 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 section 65(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 oversight mechanism may call for further plans or amended plans at its discretion.

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

(5) The oversight mechanism may require the plan produced in terms of section 65(1) to be reviewed within such timeframes and at such frequencies as it deems necessary.

66 Publication of information manual

(1) As soon as possible but in any event within two years of the commencement of this Act, or within 6 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 oversight mechanism.

(2) The manual referred to in subsection (1) must 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 oversight mechanism must 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 oversight mechanism must 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 must, together with the information required in subsection (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 officers;
- (c) the plain language guidelines developed by the oversight mechanism under section 60(2);
- (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 must

- (a) update and publish its information manual whenever material changes to the information therein occur, but at least every 2 years; and

- (b) submit the updated information manual to the oversight mechanism.

67 Annual reports to the oversight mechanism

(1) The information officer of each public body and relevant private body must annually, but no later than the end of the first quarter, submit to the oversight mechanism 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 25;
- (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 section 15 were extended in terms of section 16;
- (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 18;
- (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 oversight mechanism 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 legislation, common law, sector regulation or practise relevant to the optimal realisation of the objectives of this Act.
- (2) The oversight mechanism may impose penalties on public bodies and relevant private bodies that do not comply with the annual reporting obligation.
- (3) Public bodies must incorporate the annual report submitted to the oversight mechanism under this Act into their annual reports to Parliament.

68 Proactive disclosure reports to the oversight mechanism

The information officer of each public body and relevant private body must annually, but no later than the end of the first quarter, submit to the oversight mechanism a report stating the categories of information that have been proactively disclosed by the public body, including those documents referred to in section 7, and where the public can access that information.

69 Auditing powers of oversight mechanism

- (1) The oversight mechanism must audit compliance by an information holder with this Act.
- (2) The powers of the oversight mechanism to conduct an audit under subsection (1) include the power to
- (a) conduct inspections;
 - (b) undertake any investigation it deems appropriate in furtherance of the audit;
 - (c) engage with staff of the body;

- (d) request copies of any information;
 - (e) access any information it deems necessary to undertake the audit; and
 - (f) penalise non-compliance.
- (3) The obligations of the oversight mechanism in this regard include the duty to
- (a) notify the information holder of the audit;
 - (b) issue time-bound recommendations to the information holder;
 - (c) monitor implementation of its recommendations; and
 - (d) investigate reasons for non-compliance, if any.

70 Effect of non-compliance

- (1) In the event of non-compliance by an information holder with any of the obligations under this Division, the oversight mechanism may issue a notice specifying a timeframe for compliance with the obligation and any further directives as the oversight mechanism considers necessary or appropriate.
- (2) If the information holder fails to comply with a notice issued by the oversight mechanism under subsection (1), the oversight mechanism may impose such a fine as it considers necessary or appropriate.

Division 6: Applications to the oversight mechanism

71 Applications to the oversight mechanism

- (1) A requester may apply to the oversight mechanism for a review of any decision of an information holder.
- (2) A third party may apply to the oversight mechanism for a review of a decision of an information holder to grant a requester access to its third party information.

72 Form of application

- (1) An application to the oversight mechanism under section 71 may be made orally or in writing.

(2) Where an application is made orally, the oversight mechanism must reduce the oral application to writing and provide a copy thereof to the applicant.

73 Must exhaust internal review process

Subject to sections 74(1) and 74(2), a requester or third party may only apply to the oversight mechanism for the review of a decision of an information holder under section 71 if the requester or third party has exhausted the internal review procedure in Part IV of this Act.

74 Direct access

(1) Any person may make an application to the oversight mechanism without exhausting the internal review procedure in Part IV of this Act where

- (a) the information requested is the personal information of the applicant and the initial request to the information holder has been refused;
- (b) the information requested was previously in the public domain; or
- (c) the head of the information holder is the information officer of that body.

(2) 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 48 hours of the request

may apply directly to the oversight mechanism for review of the decision.

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

(4) Any staff member of an information holder, who wishes to report wrongdoing under this Act, may contact the oversight mecha-

nism without exhausting any applicable internal procedures.

Division 7: Procedure

75 Onus of proof

- (1) Subject to subsection (3), the information holder bears the onus of proof in all applications and investigations.
- (2) An information holder that refuses to grant access to information requested has the onus 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.
- (3) The requester bears the onus of proof where
 - (a) a request to a private body is refused on the basis that the information requested does not assist in the exercise or protection of any right; or
 - (b) he or she asserts that no reproduction fee is payable, on the basis that the information requested is in the public interest or that he or she is indigent, as set out sections 23(3) (b) and (d) of this Act.

76 Notice of intention to investigate or hear a matter

The oversight mechanism must 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.

77 Notice to third parties

- (1) The head of an information holder must, 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 subsection (3), the oversight mechanism must 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 oversight mechanism has the discretion to dispense with notification to third parties where it considers it necessary.

78 Right to make representations

(1) In any matter before the oversight mechanism, a reasonable opportunity to make representations must 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 right to be present during a hearing must be upheld except when, in the view of the oversight mechanism, the circumstances dictate the holding of a hearing in camera.

(3) With respect to any matter before it, the oversight mechanism 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.

79 Notices and communications

(1) The oversight mechanism must serve notice of the finding of an investigation, audit, summary finding, application or decision on a 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 oversight mechanism, service of the notice of the finding will cause prejudice due to the sensitive nature of exempt information, such finding must be amended in a manner considered appropriate by the oversight mechanism.

(3) The oversight mechanism may in appropriate circumstances decide to dispense with notification and 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.

80 Duty to assist oversight mechanism

Information holders and interested parties must assist the oversight mechanism in the course of any application or investigation.

Division 8: Orders, decisions and directives of the oversight mechanism

81 Orders, decisions and directives

(1) The oversight mechanism 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) imposition of a fine in cases of a failure by an information holder to comply with an obligation under the Act;
- (f) directing the execution of warrants and search and seizure;

- (g) mandating negotiation, conciliation, and arbitration, pursuant to section 58(2)(a);
 - (h) imposing a contempt order, a cost order, or a summary order or any other order it considers just and equitable.
- (2) The oversight mechanism may issue such directives it deems necessary to enforce its decisions.

82 Content of recommendations, findings, orders, decisions and directives

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

PART VI – JUDICIAL REVIEW

83 Application for judicial review

An application may be made to the appropriate court for judicial review of a decision of the oversight mechanism.

PART VII – TRANSITIONAL PROVISIONS

84 Extended period for dealing with requests during the first two years

- (1) For 12 months from the date that Part II takes effect, the reference to 21 days in section 15 and any other reference to that period in other provisions of this Act must be construed as a reference to 45 days;
- (2) For 12 months following the 12 months referred to in paragraph (1), the reference to 21 days in section 15 and any other reference to that period in other provisions of this Act must be construed as a reference to 35 days.

PART VIII – MISCELLANEOUS PROVISIONS

85 Operation of the law

This Act applies to information of information holders regardless of whether the information came into existence before the operation of this Act.

86 Information released is in public domain

(1) Subject to subsection (2), information to which a requester is granted access under this Act is thereafter 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 only by reason of that grant of access.

87 Protection against criminal and civil liability

(1) No person is criminally or civilly liable for the disclosure or authorisation of the disclosure in good faith of any information under this Act.

(2) No person may be subjected to any detriment in the course of their employment by reason of the disclosure or authorisation of the disclosure in good faith of any information under this Act.

88 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 or obstructs the work of the oversight mechanism; or
- (f) directs, proposes, counsels or causes any person in any manner to do any of the above,

commits a criminal offence and is liable to a fine or imprisonment or both.

(2) Where a person, without reasonable cause

- (a) refuses to receive a request;
- (b) has not responded to a request within the time specified in section 15 or where that time period has been extended in accordance with section 16 within any extended period of time;
- (c) has vexatiously denied the request;
- (d) has given incorrect, incomplete or misleading information; or
- (e) obstructs in any manner the release of information,

the oversight mechanism or an appropriate court may impose a financial penalty each day until the request is received or determined.

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