

## FREEDOM OF INFORMATION

### INTRODUCTION

1. Commonwealth Heads of Government at their Durban Meeting in 1999 noted the Commonwealth Freedom of Information Principles, which were endorsed by the Commonwealth Law Ministers at their Meeting in 1999 in Trinidad and Tobago. They recognized the importance of public access to official information, both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process.

### DRAFT MODEL FREEDOM OF INFORMATION BILL

2. The object of a law on freedom of information is to safeguard the right of members of the public to access information held by public authorities with the aim of increasing transparency and accountability of government. To assist member countries which have yet to enact laws providing for access to information, the Secretariat prepared a draft model Bill for examination by Senior Officials, drawing on the laws in existence in various member countries and reflecting the principles adopted by Ministers.

3. Senior Officials examined the model Bill and advised the Secretariat of detailed amendments they considered necessary to improve the Bill. The model Bill as so amended is set out in the *Annex* to this paper

4. Many of the laws upon which the model annexed to this paper draws, establish an office of Information Commissioner. The Bill does not do so because small island states and developing countries often experience human resource constraints which would make the staffing of such a position difficult. It is the view of the Secretariat that freedom of information legislation can work in small countries without the assistance of a dedicated officer. What is needed is commitment of each department of state to the principle that the people should have access to information.

5. Senior Officials recommend to Law Ministers that they support the use of the model Bill by those countries desiring to give effect to the Commonwealth Freedom of Information Principles who seek assistance in the development of an appropriate legislative framework.

### ACTION BY LAW MINISTERS

6. Law Ministers may wish to endorse the annexed Freedom of Information Model Bill and commend it to member countries for adoption (or adaptation to national circumstances).

## FREEDOM OF INFORMATION ACT [.....]

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## FREEDOM OF INFORMATION MODEL BILL

AN ACT to give members of the public rights of access to official documents of the Government and public authorities and to provide for connected matters.

BE IT ENACTED by the Parliament of [*name of country*] as follows:

### PART I

#### PRELIMINARY

- Short title      1. This Act may be cited as the Freedom of Information Act, [*year of enactment*].
- Commencement    2. This Act shall come into operation on a day to be appointed by the Minister, by Order published in the *Gazette*.
- Object of Act    3. (1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by -

- (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices;
- (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities; and
- (c) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect or misleading.

(2) The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

- Interpretation    4. In this Act -

“applicant” means a person who has made a request in accordance with section 13;

“document” means any medium in which information is recorded, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;

“enactment” means an Act or an instrument (including rules, regulations or by-laws) made under an Act;

“exempt document” means a document which, by virtue of any provision of Part IV, is an exempt document;

“exempt information” means information the inclusion of which in a document causes the document to be an exempt document;

“Minister” means the Minister who has been assigned responsibility for [information/public administration] under the Constitution;

“official document” means a document held by a public authority in connection with its functions as such, whether or not it was created -  
(a) by that authority; or  
(b) before the commencement of this Act,  
and, for the purposes of this Act, a document is held by a public authority if it is in its possession, custody or control;

“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing -

- (a) information relating to the race, national or ethnic origin, religion, age or marital status of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, fingerprints or blood type of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- (f) correspondence sent to a public authority by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; or
- (g) the views or opinions of any other person about the individual.

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

“public authority” includes -

- (a) a House of Parliament or a committee of any House of Parliament;
- (b) the Cabinet as constituted under the Constitution;
- (c) a Ministry or a department or division of a Ministry, or the private office of a Minister, wherever located;
- (d) a local authority;
- (e) a public statutory corporation or body;

- (f) a body corporate or an incorporated body established for a public purpose, which is owned or controlled by the state;
- (g) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purposes of this Act;

“responsible Minister” in relation to a public authority means the Minister of Government to whom responsibility for the public authority is assigned.

Non - application of Act

5. (1) This Act does not apply to -

- (a) the [President]; or
- (b) a commission of inquiry issued by the [President]

(2) For the purposes of this Act -

- (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a public authority; or
- (b) a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority.

Act to bind state

6. This Act shall bind the state.

## PART II

### PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

Publication of information concerning functions, etc, of public authorities

7. (1) A public authority shall, with the [approval of/in consultation with] the Minister -

- (a) cause to be published in the *Gazette* as soon as practicable, but not later than twelve months, after the date of commencement of this Act, in a mode approved by the Minister -
  - (i) a statement setting out the particulars of the organisation and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation with or representations by, bodies and persons outside the Government administration in relation to the formulation of policy in, or the administration of, the public authority;
  - (ii) a statement of the categories of documents that are maintained in the possession of the public authority;
  - (iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material; and

(iv) a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority.

(b) during the year commencing on the first day of January next following the publication, in respect of a public authority, of the statement under subparagraph (i), (ii), (iii) or (iv) of paragraph (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published in the *Gazette* statements bringing up to date the information contained in the previous statement or statements published under that subparagraph.

(2) The mode approved by the Minister under subsection (1) shall be such as he considers appropriate for the purpose of assisting members of the public to exercise effectively their rights under this Act.

(3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

(4) Where a public authority comes into existence on or after the date of commencement of this Act, it shall comply with subsection (1) as soon as practicable after the date it so comes into existence.

Certain documents to be available for inspection and purchase

8. (1) This section applies to documents that are provided by the public authority for the use of, or are used by, the public authority or its officers in making decisions or recommendations, under or for the purposes of any enactment or scheme administered by the public authority, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being -

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the public authority;
- (b) documents containing particulars of such a scheme, not being particulars contained in any other enactment; and
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme,

but not including documents that are available to the public as published otherwise than by the public authority or as published by another public authority.

(2) A public authority shall -

- (a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) not later than twelve months after the date of commencement of this Act, cause to be published in the *Gazette*, a statement (which

may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

- (c) within twelve months after the date of first publication of the statement under paragraph (b) and thereafter at intervals of not more than twelve months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.

(3) The public authority may not comply fully with paragraph (2)(a) before the expiration of twelve months from the date of commencement of this Act, but shall, before that time, comply with that paragraph as far as is practicable.

(4) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such a document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) Where a public authority comes into existence on or after the date of commencement of this Act, subsections (2) and (3) shall apply in relation to that public authority as if the references in those subsections to the date of commencement of this Act were references to the date the public authority so comes into existence.

Unpublished documents not to prejudice public

9. If a document required to be made available in accordance with section 8, being a document containing a rule, guideline or practice relating to a function of a public authority, was not made available and included in a statement in the *Gazette*, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

### PART III

#### RIGHT OF ACCESS TO INFORMATION

Right of access

10. Subject to this Act, every person shall have a right of access in accordance with this Act, to an official document other than an exempt document.

Access to certain documents

11. Where -

- (a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or
- (b) a document is available for purchase by the public in accordance with arrangements made by a public authority,

the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

Access to documents otherwise than under this Act  
Requests for access

12. Nothing in this Act shall prevent a public authority from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where it has the discretion to do so or is required by law to do so.

13. (1) A person who wishes to obtain access to a document of a public authority shall make a request in writing to the public authority for access to the document.

(2) A request shall identify the document or shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify the document.

(3) A request may specify in which of the forms of access set out in section 20 the applicant wishes to be given access.

(4) Subject to section 22, a request may be made for access to all documents of a particular description that contain information of a specified kind or relate to a particular subject matter.

Duty to assist applicant

14. (1) A public authority shall take reasonable steps to assist any person who -

- (a) wishes to make a request under section 13; or
- (b) has made a request which does not comply with the requirements of subsection 13(2),

to make a request in a manner which complies with that section.

(2) Where a request in writing is made to a public authority for access to a document, the public authority shall not refuse to comply with the request on the ground that the request does not comply with subsection 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that complies with that section.

Transfer of request for access

15. (1) Where a request is made to a public authority for access to a document and the request has not been directed to the appropriate public authority, the public authority to which the request is made shall transfer the request to the appropriate public authority and inform the person making the request accordingly.

(2) Where a request is transferred to a public authority in accordance with this section, it shall be deemed to be a request made to that public authority and received on the date on which it was originally received.

Time-limit for determining requests

16. A public authority shall take reasonable steps to enable an applicant to be notified of the decision on a request (including a decision for deferral of access under section 21) as soon as practicable but in any case not later than thirty days from the date on which the request is duly made.

Access to documents

17. Where a request for access to a document is duly made and -

- (a) the request is approved by the public authority; and

- (b) subject to section 19, any fee required to be paid before access is granted has been paid,

access to the document shall be given forthwith in accordance with this Act.

Deletion of  
exempt  
information

18. (1) Where -
- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
  - (b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
  - (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the public authority shall give the applicant access to such a copy of the document.

(2) Where access is granted to a copy of a document in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any information deleted is exempt information.

Fees

19. The Minister may, by regulation -
- (a) prescribe the fee to be charged by a public authority for the making of a request for access to a document;
  - (b) prescribe the fee payable where access to a document is to be given in the form of printed copies or copies in some other form such, as on tape, disk, film or other material;
  - (c) prescribe the manner in which any fee payable under this Act is to be calculated and the maximum amount it shall not exceed; and
  - (d) exempt any person or category of persons from paying any fees under this Act, where the information contained in the document for which access is requested is in the public interest.

Forms of  
access

20. (1) Access to a document may be given to a person in one or more of the following forms:
- (a) a reasonable opportunity to inspect the document;
  - (b) provision by the public authority of a copy of the document;
  - (c) delivery by the public authority of a copy of the document in electronic form;
  - (d) in the case of a document 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 or view those sounds or visual images; or
  - (e) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the public authority of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 18, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant -

- (a) would interfere unreasonably with the operations of the public authority; or
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document,

access in that form may be refused and access given in another form.

Deferral of access

21. (1) A public authority which receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

Refusal of access in certain cases

22. A public authority dealing with a request may refuse to grant access to a document in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably interfere with the normal operations of the public authority, and if before refusing to provide information on these grounds, the public authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.

Decisions to be made by authorised persons

23. A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the responsible Minister, or the chief executive officer of the public authority or, subject to the regulations, by an officer of the public authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the responsible Minister or the chief executive officer of the public authority.

Reasons for decisions to be given

24. (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall -

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;

- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 18, state that the document is a copy of a document from which exempt information has been deleted;
- (d) where the decision is to the effect that the document does not exist, state that a thorough and diligent search was made to locate the document; and
- (e) inform the applicant of the right to apply to court for a review of the decision in accordance with section 41.

(2) A public authority is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

## PART IV

### EXEMPT DOCUMENTS

Cabinet  
documents

25. (1) A document is an exempt document if it is -
- (a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister of Government to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;
  - (b) an official record of any deliberation or decision of the Cabinet;
  - (c) a document that is a draft of copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or
  - (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.

(3) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.

(4) Where a document is a document referred to in paragraph (1)(c) or (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (3) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(5) In this section, any reference to "Cabinet" shall be read as including a reference to a committee of the Cabinet.

Formulation of policy

26.(1) A document is an exempt document if the disclosure of the document under this Act would prejudice the formulation or development of policy by government, by having an adverse effect on –

- (a) the free and frank provision of advice; or
- (b) the free and frank exchange of views for the purposes of deliberation.

(2) Where a document is a document referred to in subsection (1) only by reason of a matter contained in a particular part or particular parts of a document, a public authority shall identify that part or those parts of the document that are exempt.

Documents affecting national security, defence, and international relations

27. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure -

- (a) would prejudice the security, defence or international relations of [name of country];
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of [name of country].

(2) Where the responsible Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), such Minister may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where the responsible Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) For the purposes of this section “responsible Minister” in relation to Parliament shall mean [.....].

Documents affecting enforcement or administration of the law

28. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to -

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;

- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

Documents affecting legal proceedings or subject to legal professional privilege

29. (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in section 8(1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).

Documents to which secrecy provisions apply

30. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.

Documents affecting personal privacy

31. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to [court] for a review of the decision in accordance with section 41.

(4) Where a request is made to a public authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the public authority that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the public authority may direct that the document containing that information, that would otherwise be given to that person is not to be given to him or her but is to be given instead to a medical practitioner to be nominated by that person.

Documents relating to trade secrets, business affairs etc

32. (1) A document is an exempt document if its disclosure under this Act would disclose –

- (a) trade secrets;
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an undertaking, being information -

(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that undertaking in respect of its lawful business; commercial or financial affairs; or

(ii) the disclosure of the information under this Act would be contrary to public interest by reason that the disclosure would be reasonably likely to prejudice the ability of the Government or a public authority to obtain similar information in the future for the purpose of administration of a law or the administration of matters administered by the public authority.

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning -

(a) the business or professional affairs of that person; or

(b) the business, commercial or financial affairs of an undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.

Documents affecting national economy

33. (1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have an adverse effect on the national economy.

(2) The kinds of documents to which subsection (1) may apply include but are not restricted to, documents containing information relating to -

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, including duties of customs or of excise;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) proposals for expenditure;

(f) foreign investment in [*name of country*]; or

(g) borrowings by the Government.

Documents containing material obtained in confidence

34. (1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and -

(a) the information would be exempt information if it were generated by a public authority; or

(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information -

- (a) acquired by a public authority from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

Documents disclosure of which would be contempt of court or contempt of Parliament

35. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the state -

- (a) be in contempt of court;
- (b) be contrary to an order made or given by a commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of Parliament.

Disclosure of exempt document in the public interest

36. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where, in all the circumstances of the case, to do so is in the public interest, having regard both to any benefit and to any damage that may arise from doing so in matters such as, but not limited to -

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds.

[Minister may declare document exempt in certain cases]

36. [(1). *The Minister may, in consultation with a public authority, by Order, declare a document to which sections 25 to 36 are not applicable, to be an exempt document for the purposes of this Act if its disclosure would cause exceptional damage to the national interest.*]<sup>1</sup>

Duty to act in good faith

(2) In considering whether or not to claim exemption under this Part, the public authority, [or the Minister, as the case may be]<sup>2</sup>, shall act in good faith and use its or the Minister's best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with [national] or public interest.

## PART V

### MISCELLANEOUS

Correction of personal information

\*38. (1) Where a document of a public authority to which access has been given under this Act or otherwise, contains personal information of a person and that person claims that the information -

- (a) is incomplete, incorrect or misleading; or
- (b) not relevant to the purpose for which the document is held,

the public authority may, subject to subsection (2), on the application of that person, amend the information upon being satisfied of the claim.

(2) An application under subsection (1) shall -

- (a) be in writing; and
- (b) as far as practicable, specify:
  - (i) the document or official document containing the record of personal information that is claimed to require amendment;
  - (ii) the information that is claimed to be incomplete, incorrect or misleading;
  - (iii) whether the information is claimed to be incomplete, incorrect or misleading;
  - (iv) the applicant's reasons for so claiming; and
  - (v) the amendment requested by the applicant.

(3) To the extent that it is practicable to do so, the public authority shall, when making any amendment under this section to personal information in a document, ensure that it does not obliterate the text of the document as it existed prior to the amendment.

(4) Where a public authority is not satisfied with the reasons for an application under subsection (1), it may refuse to make any amendment to the information and inform the applicant of its refusal together with its reasons for so doing.

**[\*Note: This section is to be included only if no privacy legislation is enacted]**

Protection against actions for defamation or breach of confidence

39. (1) Where access has been given to a document and -

- (a) the access was required by this Act to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

no action for defamation or breach of confidence lies by reason of the authorising or giving of the access, against the Government or a public authority or against the Minister or officer who authorised the access or any person who gave the access.

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the access was given.

Protection in respect of offences

40. Where access has been given to a document and -

- (a) the access was required by this Act to be given; or
- (b) the access was authorised by a Minister or by an officer having authority, in accordance with section 23, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving of the access.

Review of  
decision of  
public  
authority [or  
Minister]

41. (1) Any person aggrieved by a decision of a public authority under this Act or Minister under subsection 26(2) [or subsection 37(1)]<sup>3</sup> may apply to the [name court] for a review of the decision and the court, after considering the application, may confirm, vary, remit or set aside the decision.

(2) Any person aggrieved by the issue of a certificate under subsection 25(3) or 27(2), [or an Order under subsection 37(1)] may apply to the court for a review as to whether the document referred to in the certificate is [one] of a kind referred to in section 25 or section 27, or a document described in section 26 [or subsection 37(1)] as the case may be, and if the court finds that it is not, may quash the certificate or the decision of the Minister.

[(3) Notwithstanding any other law to the contrary, where an application for judicial review of a decision of a public authority under this Act or a Minister under section 26 [or subsection 37(1)] is made under subsection (1), that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of the parties, directs otherwise.]

(4) In this section, “decision of a public authority” includes the failure of a public authority to comply with provisions of this Act.

Report to  
Parliament

42. (1) The Minister shall, as soon as practicable after the thirty-first of December of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before Parliament.

(2) Each responsible Minister shall, in relation to the public authorities within his or her portfolio, furnish to the Minister such information as he or she requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

Regulations

43. (1) The Minister may make regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may prescribe -

- (a) the fees in respect of access to documents (including the provision of copies or transcripts) in accordance with this Act;
- (b) the officers who may make decisions on behalf of a public authority; or
- (c) requirements concerning the furnishing of information and keeping of records for the purposes of section 42.

(3) All regulations made under this Act shall be laid before Parliament as soon as may be after the making thereof and shall be subject to [negative/affirmative] resolution.

Preservation  
of records and  
documents

44. (1) A public authority shall maintain and preserve or cause to be maintained and preserved records in relation to its functions and a copy of all official documents which are created by it or which come at any time into its possession, custody or power, for such period of time as may be prescribed.

(2) A person who wilfully destroys or damages a record or document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine of [.....] and imprisonment for [.....].

(3) A person who knowingly destroys or damages a record or document which is required to be maintained and preserved under subsection (1) while a request for access to the record or document is pending commits an offence and is liable on summary conviction to a fine of [.....] and imprisonment for [.....].

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1. Clause 37(1) is included in square brackets as an optional clause for use by those countries that consider it essential to expand the grounds enumerated in clauses 25 to 36.
  2. The words in square brackets are to be included only if subsection 37(1) is enacted.
  3. The cross references to subsection 37(1) in subsections (1), (2) and (3) of section 41 are to be included if subsection 37(1) is enacted.

Consequences of including 37(1) must be considered carefully, as subsection 37(1) may significantly expand states' rights to withhold information.

FREEDOM OF INFORMATION BILL

AMENDMENTS PROPOSED FOR CONSIDERATION OF MINISTERS BY SENIOR OFFICIALS

Senior Officials recommend that Ministers endorse the Model Bill contained in paper LMM(02)6 with the following amendments:

A new clause be inserted after Clause 25 as follows:-

Formulation of policy 25A.(1) A document is an exempt document if the disclosure of the document under this Act would prejudice the formulation or development of policy by government, by having an adverse effect on –

- (a) the free and frank provision of advice, or
- (b) the free and frank exchange of views for the purposes of deliberation.

Formulation of policy (2) Where a document is a document referred to in subsection (1) by reason only of the matter contained in a particular part or particular parts of the document, a public authority shall identify that part or those parts of the document that are exempt.

(3) Subsection (1) does not apply to a document in so far as it contains publicly available factual, statistical, technical or scientific material or the advice of a scientific or technical expert which analyses or gives an expert opinion of such material.

Clause 35 be deleted and replaced with the following: -

Disclosure of exempt document in the public interest 35. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where, in all the circumstances of the case, to do so is in the public interest, having regard both to any benefit and to any damage that may arise from doing so in matters such as, but not limited to -

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds.

Clause 36 be amended as follows:-

[Minister to declare document exempt in certain cases] 36. [(1). *The Minister may, in consultation with a public authority, by order, declare a document to which sections 25 to 35 are not applicable, to be an exempt document for the purposes of this Act if its disclosure would cause exceptional damage to the national interest.*]<sup>1</sup>

Duty of authorities to act in good faith (2) In considering whether or not to claim exemption under this Part, the public authority, or the Minister, as the case may be, shall act in good faith and use its or the Minister's best endeavours to achieve the object of this Act to afford to members of the public maximum access to official documents consistent with [national] or public interest.

Amend Clause 40 to read as follows: -

Review of decision of public authority [or Minister] 40. (1) Any person aggrieved by a decision of a public authority under this Act [or Minister under subsection 36(1)]<sup>2</sup> may apply to the [name court] for a review of the decision and the court, after considering the application, may confirm, vary, remit or set aside the decision.

(2) Any person aggrieved by the issue of a certificate under subsection 25(3) or 26(2) may apply to the court for a review as to whether the document referred to in the certificate is [one] of a kind referred to in section 25 or section 26 [or subsection 36(1)] as the case may be, and if the court finds that it is not, it may quash the certificate [or the decision of the Minister].

(3) Notwithstanding any other law to the contrary, where an application for judicial review of a decision of a public authority under this Act [or a Minister under subsection 36(1)] is made under subsection (1), that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of the parties, directs otherwise.]

(4) In this section, "decision of a public authority" includes the failure of a public authority to comply with provisions of this Act.

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<sup>1</sup> Clause 36(1) is included in square brackets as an optional clause for use by those countries that consider it essential to expand the grounds enumerated in clauses 25 to 35.

<sup>2</sup> The cross reference to subsection 36(1) is to be included only if that subsection is enacted.