



CENTRE FOR LAW
AND DEMOCRACY

The Maldives

Comments on the draft Right to Information Bill

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SUMMARY

The right to access information is fundamental to establishing government accountability, and the decision by the government of Maldives to table a Right to Information Bill is a very positive step.

The Bill in its current form is a progressive draft, which will go a long way to giving effect to the right to information. At the same time, the Bill contains some shortcomings that should be addressed before it is passed into law. Among the most significant changes that are needed are expanding the Bill's scope to include the Majlis and judiciary, removing the requirement that requests for information state a valid purpose, providing for the right to information law to override other laws to the extent of any inconsistency, tightening up the regime of exceptions and expanding the powers of the Information Commissioner to allow the office to view confidential documents and to proactively compel compliance. In addition, the Bill requires a general editing to tidy up some repetition and inconsistencies noted in this analysis.

These changes, along with others listed in this analysis, will bring the right to information law into line with international standards and will help place the Maldives at the cutting-edge of government transparency and responsibility.

1. Overview

In 2008, the government of the Maldives ratified a new constitution that enshrined the right to access information, and the right to obtain any information held by government. In order to fulfil these guarantees, the Maldives is in the process of preparing a Right to Information Act. The draft version of this Act (draft Bill) was tabled in the Majlis (legislature) in November 2009.¹

The right to access information is one of the cornerstones of a functioning democracy. Without government transparency, it is impossible to foster an informed electorate that can effectively hold their government accountable and that can monitor and control corruption. The right to information is also an essential underpinning of democratic participation. The Centre for Law and Democracy thus welcomes the decision by the government of the Maldives to pass a Right to Information law.

However, the draft Bill has several key shortcomings that might undermine its overall effectiveness. In order to give effect to the right to information in a manner that properly serves the interests of the Maldivian people, it is important that these issues be addressed.

As a general comment, the draft Bill in its current form requires some editing in order to remove inconsistencies and repetition. Section 7(d), for instance, referring to deemed refusals of a request, is largely identical to section 11(b), such that either one or the other should be deleted. Another example is sections 8(b) and 9(a), which provide conflicting instructions for public bodies that receive a request for information that is held at another office. Clearly such inconsistencies need to be removed.

Many of these issues reflect an organisational problem that should be solved by rewriting and reorganising the draft Bill. However, some inconsistencies stem from the draft Bill's reliance on language borrowed from South Africa's Promotion of Access to Information Act 2000. This is, in particular, the case with the extension of the provisions of the law to cover all private institutions (see, for example, section 3(a)). International best practice requires that RTI legislation apply to all public bodies, as well as any private bodies that perform a public function or receive significant public funding. As a result of their unique history, the South African law extends the right to allow individuals to request information from a purely private body if that information is necessary in order to exercise or protect a right. Careful thought should be given to whether or not the Maldives wishes to extend the right of access in this way. It has created certain problems in South African, which is the only country that has taken this route.

¹ An English translation of the draft Right to Information Bill can be found at: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/maldives/maldives_rti_bill_2009_english.pdf.

If this rule is incorporated into the Maldivian law, care must be taken to ensure that it is done so carefully. For example, section 6(a)(iv) requires all requests for information to specify the right that is to be protected or enforced. But this requirement does not make sense in relation to seeking information from a public body. We assume that this is a misapplication of the South African regime.

Recommendations:

- The draft Bill should be reorganised and rewritten to remove inconsistencies and to ensure that any rules borrowed from other countries are properly integrated.

2. Purpose and Scope

The draft Bill begins with an Introduction emphasising openness and the need for government transparency and accountability (section 1(a)). The language used is positive, but the section could be improved by adding a set of principles clearly stating that access to information is a fundamental right and that information held by the government belongs to the public.

A more serious problem with the draft Bill lies in its scope, which is troublingly narrow. As a result of the restrictive way in which the term “public authorities” is defined in section 60, the draft Bill exempts the Majlis, the judiciary and any tribunals established by law from having to comply with its provisions. Such sweeping exclusions are incompatible with the right to information. Section 1(a) of the draft Bill describes access to information as a right. As such, the law should apply to all public bodies. Legitimate confidentiality interests can be protected adequately by specific, harm-based exceptions.

The draft Bill, in its current form, is also ambiguous as to whether and to what degree it applies to private bodies. Although the draft Bill consistently refers to a right to access information held by private and public bodies (see, for example, sections 3(a), 6(a) and the definition of ‘record’ in section 60), it is not clear that this has been well thought-through. As noted above, only South Africa applies the right of access to purely private bodies, and then only in a limited fashion. RTI legislation should treat private bodies that carry out a public function, and all bodies owned, controlled or substantially financed by the State, as public bodies. But serious consideration should be given to whether or not it should extend to purely private bodies and, if so, this should be through a special regime which gives more limited access to the information they hold.

Section 3(b) contains another major problem, stating that the RTI law does not take precedence over other laws that restrict or regulate access to information. This has the potential to completely undermine the effectiveness of the RTI law, since many such

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secrecy laws can be presumed to be incompatible with the basic idea of a right to information, and contain restrictions on access that are excessive and not in line with international standards in this area. For this reason, an effective RTI law should overrule other legislation, to the extent of any conflict, and should serve as a comprehensive statement of the nation's policies on what information can and cannot be accessed.

The draft Bill's definition of "records" is expansive, including any type of information in any format, provided that it is not the property of a third-party. It is also to the draft Bill's credit that requests for information can come from any person, rather than being restricted to Maldivian citizens (section 4(a)).

Recommendations:

- The Introduction should be expanded to include a set of principles spelling out the reasons the right to information is important.
- The definition of "public authority" in section 60 should be expanded to include the Majlis, judicial institutions and tribunals, as well as all bodies that perform a public function or are owned, controlled or financed by public funds.
- Consideration should be given as to whether the right of access should be extended to purely private bodies. If it is, this should be done through special rules relating to such bodies.
- The RTI law should take precedence in case of conflict with other legislation regulating issues of access to information.

3. Procedural Regime

The draft Bill sets out clear and relatively straightforward procedures for making requests for information. According to section 6, individuals seeking information are required to submit a request in writing to the relevant public body. The request must cite the Right to Information Act, and contain the following information: an address where the documents should be sent, enough information to reasonably identify the document, the appropriate fee, information regarding the purpose of the request, and information specifying the right that is to be protected or enforced.

There are several problems with these requirements. It is not appropriate to require applicants to include a fee as part of their initial request. Section 19(b)(i) only allows public bodies to charge fees that are commensurate with the costs of providing the record. Before the application is investigated, this cost cannot be known.

Another problem is the requirement that requestors state a valid purpose. This is incongruous with the idea that accessing information is a right. By definition, rights should not require a justification for their exercise. There is a danger here of creating a “chilling effect” that could discourage individuals from pursuing information if their motives are contrary to government objectives.

This deficiency is exacerbated by section 8(c), which grants public bodies the discretion to ignore requests that are made for “no particular purpose”. This provision is even more problematical than the general requirement to state a purpose, given that where a request for information is denied for other reasons, public bodies are required to notify the requester. This requirement for notification is in line with international standards, and should extend to all refusals, chiefly in order to allow requesters a chance to modify or correct their requests. Furthermore, the very notion of “no particular purpose” belies the fact that the individual is making a request, for no one would make such an effort for no reason.

There should also be no need for requests to specify a right that they are seeking to protect or enforce. As noted, this is anomalous and was likely borrowed from the South African law. We assume that the application of this rule to requests for information from public bodies is a mistake.

Section 19 allows public bodies to set their own fees for accessing documents, but stipulates that the amount should be commensurate with the cost of providing the record and should not cause inconvenience to financially disadvantaged requesters. The draft Bill also stipulates that no fee should be charged where the request relates to the applicant’s personal affairs or to public interest information. The Information Commissioner is given the power to set rules regarding fees, including how fees are to be calculated and the maximum permissible fee. However, the law remains vague on what, if any, remedial action is available to the Commissioner if he finds that the charges are excessive. The law should make it explicit that the Commissioner has the power to overrule public bodies in terms of fees.

Section 15 establishes the various ways in which access may be effected, such as inspecting the document, receiving a copy or obtaining a transcript. Although this section is reasonably flexible, it should make clear that requesters may request documents in electronic format. Section 15(c)(iii) restricts access in a particular form if it would violate copyright. This is reasonable, but should be amended to exclude copyright held by a public body, since otherwise this could be widely abused to deny access (indeed, it is inherent in a right to information law that public bodies do not have copyright in the documents they produce). Section 15(d) allows public bodies to raise the applicable fee if information is delivered in a manner different from that requested. While this can be legitimate in some circumstances, such as where information is unavailable in the requested format, it could also be open to abuse. The draft Bill should provide for cost increases to be mitigated in order to avoid unnecessary financial impediments to access to information.

Upon a receiving a request, section 6(d) requires the public body to provide the applicant with a receipt. From that point, the public body has up to 30 days to respond, though this can be extended by a further 30 days at the public body's discretion and without notification to the applicant (section 7). Consideration should be given to shortening this timeframe, to bring it into line with better practice RTI laws, which mandate a response within 15-20 days. In addition, better practice suggests that the public body should be required to provide the applicant with an explanation for any extension. The law's 48-hour turnaround for urgent requests (section 7(b)), and the fact that a failure to comply with the draft Bill's timeframe is deemed to be a refusal of the request (section 7(d)), are both in line with international standards.

Where a request is directed to the wrong office, the draft Bill allows for two different courses of action. Section 8 instructs the office to direct the applicant to the proper public body, while section 9 allows the office to transfer the request directly to that public body (this must be done with notification and within seven days). It is better practice to transfer the request directly, since this saves the applicant from having to resubmit their request. The law is also vague as to when, in the event of a transfer, the 30-day time limit begins to run.

Section 9 also establishes the circumstances under which a public body may transfer a request to another office. Section 9(a)(ii) allows for transfers where another office is better placed to respond to the request. It is appropriate for a public body to consult with another office when responding to a request for information related to the work of that office. However, there is no need to transfer the request to that office, which may cause problems for the requester. Section 9(a)(iii) states that a request may be transferred to another public body where that public body consents to the transfer. There is no need to grant such power to public bodies; as with other requests, public bodies should respond to requests where they hold the information.

Applications to amend personal records are covered under section 16. Such requests will be entertained if the document contains personal information about the applicant, if this information is incorrect, and if the information is or may be used for administrative purposes within that office. This last requirement (section 16(b)) should be deleted, since individuals should be able to amend incorrect records even if it is claimed that the information will not be used by the public body that holds it. That may change over time, or the information may be used by another public body and it is, in any case, inherently problematical for public bodies to continue to hold inaccurate personal information.

Recommendations:

- Requesters should not be required to specify the purpose of their requests, or to identify a right that they need the information to enforce. They should also not be required to pay a fee at the time they lodge the request.

- Public bodies should be required to notify requesters and to provide them with the necessary assistance if, for any reason, their request fails to conform to the conditions set out in the law.
- The law should make it clear that requesters may request information in an electronic format. A copyright held by government should not be a ground for refusing to provide access to information. Section 15(d) should allow for the mitigation of fee increases related to the delivery of documents in a form other than the form originally requested.
- Consideration should be given to shortening the timeframe for processing requests to 15-20 days. Extensions to this timeframe should be permitted only where notification of the reason for the extension is provided to the requester.
- The rules on transfer of requests should be clarified, preferably in favour of requiring public bodies to transfer requests directly to the proper public body. Transfers should not be allowed simply because another body is better able to deal with the request or consents to the transfer.
- Requesters should have the right to correct inaccurate personal information regardless of whether the body that holds the information is likely to use it directly for administrative purposes.

4. Duty to Publish

A proactive approach to publication is vital for an effective RTI regime, since it ensures that all citizens have access to at least a minimum platform of information and it also saves the Information Officer the time and energy of having to respond to individual requests. Section 36 dictates that Information Officers must proactively publish certain documents annually, including: the responsibilities, rights, budget details and framework for their office; detail on services provided; details of the proper procedure for complaints and a record of any complaints lodged; an explanation of the procedure for maintaining records; details of the information held by the office and the proper procedure for making requests; the responsibilities and powers of the office and any rules for implementing them; a “big-picture” overview of the office’s function; and the procedure by which the public can criticise or otherwise influence how the office carries out its functions. Although this is a reasonably comprehensive list, the interests of transparency would be better served if the Information Officer were required to publish more budget information relating to the public body as a whole, rather than merely for his office.

The Information Commissioner is tasked with advising public bodies on publishing information, but this advice is only to be provided upon request. In order to act as an effective overseer, the Information Commissioner should be given the power to take proactive action against public bodies whose publication policies fail to match the rules set out in the Right to Information Act, or those set by the Information Commissioner.

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Recommendations:

- The proactive publication requirements should be extended to include the publication of detailed budgetary data relating to the activities of public bodies.
- The Information Commissioner should be given the power to take proactive action against public bodies which fail to meet the proactive publication rules set out in the RTI law.

5. Exceptions

The part of the draft Bill entitled “Exempt Circumstances” lists the grounds which justify a refusal to provide access to information. The entire part is governed by a public interest override (section 20) that states that information should be released if the overall public interest in granting access outweighs the interest protected by refusing access. The draft Bill also expressly prohibits public bodies from refusing to disclose information based on the fact that it might embarrass or undermine public confidence in the government. Section 21 provides that where only part of a requested record falls within the scope of an exception, the remainder of the record should be released. These provisions are in line with international standards.

A problem with the regime of exceptions as a whole is that, in the case of exempt documents, public bodies do not even have to confirm whether or not they hold the document. This is excessive and this power should be restricted to those instances where such a confirmation would, of itself, harm a protected interest. This change would also make the system more efficient, since it would save requesters from launching appeals in pursuit of non-existent records.

Section 22, which exempts information received in confidence, contains several provisions that are overbroad. Section 22(c), designed to protect future communications with public bodies, should be limited to information that is useful to the government. Sections 22(d)(v) and 22(d)(vi) are designed to protect the dignity of minors and victims of sexual abuse. While the sentiment behind these provisions is understandable, they are unnecessary because minors and victims of abuse are already protected by the privacy exceptions in section 23. Several sections – including sections 22(d)(ii), 25(c), 25(e) and 30(c) – provide different forms of protection for commercial interests. The protection for this interest found in section 25(b) is in line with international standards, and the further protection in these other sections is, as a result, unnecessary (see below).

Section 24 establishes an exception for information that is protected under legal professional privilege, including legal advice given by the Attorney General. While this

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type of exception is not uncommon, it is increasingly accepted that government lawyers should not be subject to the same rules of privilege as those in private practice. A government's duty is to focus on the public interest rather than its own 'private' interests, and this means that it does not require the same degree of privacy as an individual or private corporation. Rather than a blanket exception, legal professional privilege for government lawyers should be limited to cases where disclosure would bring actual harm, for example in relation to legal advice pertaining to pending litigation. Similarly, section 24(c), protecting parliamentary investigations, is unnecessary since the public interest is better served if parliamentary investigations are released.

Section 24(d) protects information relating to government grants and loans received by individuals. This is unnecessary, since personal information is already protected by section 23, and business and trade secrets are protected by section 25. Beyond mere redundancy, an exception for information relating to loans and grants risks fostering corruption, as this is an area where strong public scrutiny is necessary.

Sections 25(c) substantially extends protection to third party information by allowing information to be withheld whenever there is "room for either party to expect non disclosure", even though no confidentiality agreement exists. This is highly discretionary and would effectively allow public bodies to claim confidentiality over any information exchanged with third parties. It is also unnecessary. Section 25(e) is similarly unnecessary, governing information exchanged between private parties which would harm the personal or commercial interests of either party. Once again, these interests, insofar as they are legitimate, have already been protected.

Section 26(b) purports to render secret any information which has not been provided by (or is not owned by) the requester. This would completely undermine the whole scheme provided for in the draft Bill and is presumably an oversight.

Although the provisions in favour of third parties in the draft Bill are in many instances, as noted above, overbroad, at the same time, the draft fails to establish a system for consulting with third parties regarding the release of information provided by them. While third parties should not have a veto over the release of information, at the same time, they may point to genuine reasons why the information should not be released. The most practical way to achieve this is for the public body holding the information to contact the third party and inform them of the request, and asking them whether they object to the release of the information. This would also allow for the disclosure of consent-based information (such as personal information) while maintaining procedural protections for the interests of third parties.

The exceptions in sections 24, 27, 28, 30 and 32 are subject to "sunset clauses," whereby the exception no longer applies after a period of 30 years. While the inclusion of sunset clauses is a positive step, the period of 30 years is too long. This is particularly important in the case of section 32, which deals with Cabinet records. In most cases, these should only remain confidential until the matter under discussion has been settled and a decision

has been made. For more sensitive Cabinet records, a period of five, or at most ten, years is sufficient.

Section 27(a)(iii), which exempts information that is made confidential under other legislation, is unnecessary since section 3(b) already states that the draft Bill does not apply to any other law which restricts access to information. But both of these provisions should be deleted, since, as noted above, the RTI law should overrule conflicting legislation.

The provisions in sections 27(a)(viii)-(x), relating to law enforcement and related issues, are unnecessary since the provisions at the beginning of this section already provide adequate protection for these interests. Similarly, section 29(b) is unnecessary as it repeats section 29(a).

Section 31(a)(i), protecting the formulation of government policy, is also overly broad and could easily be abused. It should only apply to cases where disclosure of the information would inhibit the free and frank disclosure of advice.

It is not clear why section 31(a)(iii) has been included in the draft Bill. This exception applies to any information which would hinder the government's policy of freedom of expression. Access to information is a fundamental part of free expression. It is difficult to understand how the disclosure of any document or record could undermine a policy of free expression.

Sections 32(a)(i) and (ii), referring to documents prepared for or submitted to Cabinet, are both unnecessary since section 31 already protects legitimate internal deliberative interests. Sections 32(a)(ii) and (iii), in particular, are too broad, applying to anything submitted to Cabinet, rather than just documents prepared for submission to Cabinet. Any document at all could be brought within the scope of this exception simply by providing it to Cabinet.

Although not an exception per se, section 14(a) allows a public body to defer granting access to a document if the document will eventually be published. A problem with this provision is that it is not accompanied by any timeline, so that documents intended to be published far in the future would be covered. A clear timeline for intended publication, for example of 90 days or less, should be added to this exception.

Recommendations:

- Public bodies should only be allowed to refuse to confirm whether or not they hold a document where this would, of itself, engage an exception.
- Sections 22(c), 22(d)(ii), 22(d)(v), 22(d)(vi), 24(c), 24(d), 25(c), 25(e), 26(b), 27(a)(iii), 27(a)(viii), 27(a)(ix), 27(a)(x), 29(b), 30(c), 31(a)(i), 31(a)(iii), 32(a)(i) and 32(a)(ii) should, for the reasons outlined above, be deleted.

- The legal privilege provisions of section 24 should be curtailed in relation to public bodies so that they only apply to advice regarding pending litigation.
- The timelines for the sunset clauses should be shortened.
- A mechanism for contacting third parties in relation to information provided by them or which concerns them should be created.
- Section 32(a)(iii) should either be deleted or at least limited to documents prepared for submission to Cabinet.
- Section 14(a) should apply only to documents that will be published in the next 90 days or less.

6. Institutional Arrangements

Section 35 requires all public bodies to appoint information officers, who are responsible for ensuring compliance with the RTI law. The duties of these officers include assisting members of the public with requests, responding to requests, and formulating policy on access to information.

The RTI regime as a whole is overseen by the office of the Information Commissioner, which is created by the law. Sections 41 and 42 govern the appointment and powers of the Commissioner. The Commissioner is appointed by the President but, in order to safeguard independence, he or she must be selected through an “open and transparent” application process. The position cannot be filled by a person who is a member or employee of any political party, a government employee, or a person who has been convicted of theft or criminal breach of trust or misappropriation during the past five years. These restrictions should be strengthened to include anyone who has been an office bearer or employee of a political party within the past five years.

Section 41(c) states that the Information Commissioner shall serve a term of five years and is eligible for reappointment. However, the President has the power to dismiss the Commissioner if the President feels that he or she is incompetent and unable to carry out his or her duties in an effective manner. The vagueness of this provision dilutes the tenure of the Commissioner and could compromise his or her independence. Safeguards against abuse should be added to this provision, for example by requiring the consent of the Supreme Court or some other independent body to dismiss the Commissioner.

The rules regarding funding for the office of the Commissioner are not very clear. Section 44 provides that the Commissioner shall consult with the Ministry of Finance and Treasury for funding for staff. Ideally, the budget for the office of the Information Commissioner should be approved by the Majlis. In order to ensure that the office is protected against political manipulation, the Act should also guarantee a measure of funding.

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The office of the Information Commissioner should also be granted greater powers than in the draft Bill. Although the Commissioner is tasked generally with monitoring compliance with the Right to Information Act (section 45), the office lacks solid powers of enforcement, outside of cases in which a complaint is filed. The Commissioner should be invested with proactive powers of enforcement, including the ability to fine public bodies found to be in non-compliance with the Right to Information Act.

Recommendations:

- The restrictions on who is eligible to be Information Commissioner should be tightened.
- The power of the President to dismiss the Information Commissioner should be subject to certain controls, such as a requirement of permission of the Supreme Court or some other independent body.
- The Majlis should approve the Information Commissioner's budget and some sort of guarantee of stability in relation to the budget should be added to the law.
- The Information Commissioner should have general binding powers to enforce the law, including to fine public bodies for non-compliance.

7. Appeals

If an application is refused and the requester wishes to appeal the decision, he or she must first approach the relevant public body and submit a complaint to the Information Officer (section 35(b)(ii)). It is a good idea to allow for an internal mechanism to solve complaints, since this will help lighten the workload of the Commissioner and also provide another mechanism for resolving disputes. However, given that the Information Officer is responsible for the initial decision regarding a request, it does not make sense to force applicants to go back to the same office to lodge a complaint. Instead, these initial appeals should be directed to the head of the public body, or some other senior figure. The Act also fails to specify a timeframe within which the public body must process complaints. This is a major procedural flaw, which could allow the public body to sit on complaints indefinitely, denying requesters the possibility of a timely appeal. The law should be changed to provide clear timelines for internal complaints. This timeline should be significantly shorter than the schedule for responding to requests, and the failure to abide by the time limit should be deemed a refusal of the complaint.

Pursuant to section 48, a requester may also lodge an appeal with the Information Commissioner. Upon receipt of an appeal, the Commissioner has 30 days to render a decision (section 49(a)). In accordance with international standards, the burden of proof is on the public body to demonstrate that they have acted in compliance with the law. The

Commissioner's powers at this stage include dismissing the appeal, upholding the appeal and ordering compliance, enforcing a fine, replacing the Information Officer, and amending the policies of any public body other than the police or defence forces. It is difficult to understand why the police and defence forces are exempt from having their policies amended.

A major problem with the appeals process is that, according to section 51(b), the Information Commissioner does not have the power to review documents that are exempt under the Act. This seriously undermines the Commissioner's role since without viewing the documents it is impossible to know whether they have been properly classified as exempt. If the appeals process is to be credible, the Information Commissioner must have the power to access any information for the purpose of determining whether it should be disclosed.

Once the Commissioner has issued a ruling, the parties must either comply with the decision or launch a judicial appeal within 45 days. In the case of non-compliance, the Commissioner may forward the matter to the Prosecutor General for enforcement (section 53).

If either party is unsatisfied with the Information Commissioner's ruling, they may appeal the decision in a court of law. In these cases, the burden of proof lies with the party bringing the appeal. This is not in accordance with international standards, pursuant to which the burden of proof should always lie with the public body seeking to limit the right to information. Furthermore, although judicial involvement can improve the quality of the appeals process, there is a risk that public bodies could use this as a strategy to delay the release of information. As such, judicial appeals should be limited to cases where a request has been refused.

Recommendations:

- Complaints should be lodged with a senior official in the relevant public body, rather than the Information Officer.
- Public bodies should be given a strict time limit for responding to requests, and a failure to respond within this timeframe should be deemed a refusal.
- The power of the Information Commissioner to amend the policies of a public body should extend to the police and defence forces.
- The Information Commissioner should have the power to examine any document, including documents claimed to be exempt from disclosure under the Act.
- In case of a judicial appeal, the burden of proof should remain on the public body seeking to deny access to information.
- Judicial appeals should be available only where requests for information have been refused (i.e. at the behest of the requester but not the public body).

8. Sanctions and Protections

Section 47 grants the Information Commissioner's office immunity from any civil or criminal liability based on actions taken in fulfilling the Act. Section 54 provides immunity from liability for any official who provides access to records in the good faith belief that they are acting in accordance with the Act, or takes any other action in good faith in order to fulfil their responsibilities under the Act. These protections are in line with international standards.

Section 54(a) also provides a measure of protection for whistleblowers. While this is a welcome addition, its protections are limited to those who disclose information relating to a breach of law, or information related to the health and safety of a person. This should be expanded to include whistleblowers who expose government malfeasance, incompetence or corruption. The protection should also be expanded beyond criminal and civil liability to shield whistleblowers from other negative consequences, including facing professional discipline or the loss of their job.

Section 56 makes it a crime to obstruct access to a record in breach of the RTI law, to obstruct any public body in fulfilling their obligations under the law, or to destroy records without the permission of the Information Commissioner. While this last provision is clearly motivated by a desire to prevent unwarranted destruction of documents, at the same time it is problematic, since the Commissioner will not have the resources to review every document that public bodies wish to destroy. A more practical solution is for the Commissioner to set clear guidelines on record management, including destruction. The Commissioner could also provide advice upon request where a public body was not sure whether a particular record should be destroyed.

Fines of up to Rufiyaa (RF) 5,000 (approximately USD400) may be imposed by a judge for breach of these rules. It would be useful to also grant the Information Commissioner the power to impose such fines, since there will likely be few appeals to the courts on such issues.

Recommendations:

- The protection for whistleblowers should be expanded to cover incompetence and wrongdoing by officials.
- The Information Commissioner should not be required to approve all requests to destroy documents. Instead, the Information Commissioner should be given the power to set guidelines on record management.
- The powers of the Information Commissioner should be expanded to include the power to impose fines for non-compliance with the RTI law.

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9. Promotional Measures

Pursuant to section 45, the Information Commissioner has a general promotional role regarding the right to information, including to monitor implementation, identify steps to improve it, support training of officials, report breaches of the law and undertake public educational efforts. It is useful to have a central body with general responsibility for promoting implementation of the law.

Section 40 requires every Information Officer to submit an annual report to the Information Commissioner containing the number of requests made and responded to, the number of requests refused, the sections of the Act which were relied upon most frequently to justify these refusals, the number of times fees were charged, the total value of fees paid, initiatives taken by the office to fulfil their responsibility to provide access to information, actions regarding the maintenance of records, and actions regarding the training of employees. Rather than merely sending their reports to the Information Commissioner, these reports should also be made public.

Pursuant to section 46, the Information Commissioner is required to submit a general report on the actions of his office every year, and may submit more general reports as he or she sees fit. It would be preferable if the report by the Commissioner were required to be more comprehensive, containing information about the functioning of the system as a whole, drawn from the reports from individual public bodies' section 40 reports.

The Commissioner has a duty to train his or her own staff (section 39), as well as to order other public bodies to train their own employees (section 50(d)). Furthermore, the Minister may adopt regulations on training (section 57(b)). It might also be useful to impose a primary obligation on public bodies regarding training of their own employees.

Section 38(c) requires public bodies to maintain their records, and also tasks the Information Commissioner with publishing general guidelines regarding the responsibilities of public bodies to maintain and store information. This is useful but it might be preferable to give the Information Commissioner the power to set binding rules with regard to the maintenance and preservation of records, given how important this is and given the degree of resistance that might be expected in this area.

Recommendations:

- The reports by public bodies on the steps they have taken to implement the right to information law should be made public.
- The Information Commissioner should be required to include within his or her annual report overall information on implementation of the law, based on the

- reports from each public body.
- The law should place a primary obligation on public bodies to train their staff on implementing the right to information law.
- The Information Commissioner should have the power to set binding standards for all public bodies regarding record management.