THE FREEDOM OF INFORMATION BILL, 2012

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A Bill for

AN ACT of Parliament to provide for the establishment of the Kenya Freedom of Information Commission; to provide for access to information in the possession of public authorities; to provide for proactive publication and dissemination of information; and for connected purposes

ENACTED by the Parliament of Kenya as follows -

PART I—PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Freedom of Information Act, 2012, and shall come into operation on such date as the Minister may, by notice in the Gazette appoint, and different dates may be appointed for different provisions

Interpretation.

2. In this Act unless the context otherwise requires;

"Commission" means the Freedom of Information and Data Protection Commission established by section 4;

"commissioner" means a member of the Commission appointed under section 9;

"edited copy" in relation to a document, means a copy of a document from which exempt information has been deleted;

"exempt information" means information withheld by a public authority in accordance with section 27;

"Committee means the Parliamentary Departmental Committee responsible for information and communications;

"information" includes any documentary material regardless of its physical form or characteristics, and any copy thereof, any record, correspondence, memorandum, book, plan, map, drawing, film, microfiche, diagram, pictorial or graphic work, data, photograph, recording, audio or video-tape, machine readable material and any other information held in electronic form whether on computer disk or tape or in the memory of a computer or other device, anything that contains information, letters, reports, studies, records, minutes, statistics, directives, instructions, circulars, memoranda, practice notes, opinions, decisions in writing whether in form of sound, visual recordings or computerized data, any material recorded or stored by any means including tape, computer, or other device and any

material subsequently derived from information so recorded or stored whether manually, mechanically or electronically and anything that is part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing;

"information officer" means any officer of a public authority designated as such for purposes of this Act who in the first instance is the chief executive of the public authority, and any delegated officer in any other instance;

"Minister" means the Minister for the time being responsible for matters relating to information;

National Security" means security or defence of the State means_

(a) military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities;

(b) intelligence relating to the defence of the State; 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 above;

(d) the identity of a confidential source and any other source of information related to intelligence gathering, the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment.

"personal information" means information about an identifiable individual, including, but not limited to:-

(a) information relating to the race, gender, sex, pregnancy, marital status. national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth 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 personal opinions, views or preferences of the individual, except where they are about another individual or about a person for a grant, an award or a prize to be made to another individual;

(f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual; and

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual;

"public authority" includes –

(a) the National Assembly, including members of Parliament and staff of the National Assembly;

(b) the Judiciary;

Cap 446

(c) all Government ministries, departments or agencies at all levels of Government;

Cap 102

(d) any body which -

Cap 265

(i) is established by virtue of the President's powers or by or under an Act of Parliament or an Order made under an Act of Parliament or which is established in any other way by a Minister of the government or by a government department or public authority;

government department or public authority;

(ii) receives any part of its revenues directly from money provided by Parliament or from a levy authorized by an enactment or fee or charge of any other description so authorized;

(e) any body or authority subject to examination and audit by the Controller and Auditor - General;

(f) a statutory corporation within the meaning of the State Corporations Act;

(g) a commission of inquiry issued under the Commissions of Inquiry Act;

(h) all local authorities established under the Local Government Act;

(i) any body carrying out a statutory or public function, provided that the body is a public authority only to the extent of its statutory or public function; or

(j) any other body or authority designated by the Minister as a public authority for purposes of this Act.

"public officer" has the same meaning as assigned to it under Article 260 of the Constitution;

"public record" includes any writing containg information relating to the conduct of the public's business, including but not limited to court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics;

"service commission" means the Public Service Commission, the Parliamentary Service Commission or the Judicial Service Commission.

Objects of the Act.

3.The objects of this act are_

(a) to give effect to the citizen's right of access to information as provided under Article 35 of the Constitution;

(b) to give effect to the citizen's right of access to information_ held by or on behalf of public authorities, or to which public authorities are entitled by law to have access, including information relating to national security matters, subject only to specific and limited exemptions necessary to prevent identifiable harm to legitimate state interests or to the private and business interests of persons whose information is collected and held by public authorities;

(c) to require public bodies to proactively disclose information that they hold and to provide information on request;

(d) to create a right of access to information held by private bodies if those bodies are public contractors or if such bodies hold information required for the exercise or protection of any right protected by the Constitution and the laws of Kenya;

(e) to bar public authorities from imposing sanctions on employees or members of the public for releasing information of compelling public interest in good faith.

PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE COMMISSION

Establishment of Commission

4. (1)There is established a commission to be known as the Freedom of Information and Data Protection Commission

(2) The Commission is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

(a) Suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing or lending money; and

(d) doing or performing all such other things or actis for the proper performance of its functions under, and for furtherance of the provisions of, this Act which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Commission shall be in Nairobi.

Conduct of business of Commission

5. The business and affairs of the Commission shall be conducted in accordance with the First Schedule.

Functions of the Commission

6. (1) The functions of the Commission shall be to –

(a) investigate, on its initiative or upon complaint made by any person or group of persons, the violation of the provisions of this Act;

(b) inspect public authority with a view to assessing and evaluating the collection, processing and dissemination of information to the public and making appropriate recommendations therein;

(c) inform and educate the public as to their rights under this Act by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;

(d) recommend to all public authorities effective

measures to promote access to information;

(e) act as the chief agent of the Government in ensuring that all public authorities comply with its obligations under international treaties and conventions on access to information;

(f) hear and determine complaints and appeals;

(g) approve information dissemination procedures including publication schemes for proactive disclosure of information by all public authorities;

(h) data protection as provided under the law relating to data protection;

(i) perform such other functions as the Commission may consider necessary for the promotion of access to information.

(2) The Commission shall have all the powers necessary for the performance of its functions under this Act.

(3) The decisions of the Commission shall be binding on both levels of government.

(4) The Commission may enter into association with such other bodies or organizations within and outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.

Guiding objects and principles.

7. In the performance of its functions under this Act the Commission shall –

(a) accommodate the diversity of the Kenyan people;

(b) observe the principle of impartiality and gender equity;

(c) protect the sovereignity of the people;

(d) secure the observance by all state organs of democratic values and principles;

(e) promote constitutionalism;

(f) have regard to all applicable international information management and dissemination standards and;

(g) ensure that public authorities provide adequate safeguard for personal information.

Independence of the Commission

8. (1)Except as provided under this Act or any other law, the Commission shall exercise its functions without any political bias or interference and shall be wholly independent and separate from the Government, any political party, nominating authority or any person or body.

(2) The Commission is_

(a) subject only to the Constitution and the law; and

(b) independent and not subject to the direction and control by any person or authority.

Membership of Commission

9. (1) The Commission shall consists of -

(a) a chairperson who shall be appointed by the President in accordance with section 10; and

(b) two commissioners appointed by the President in accordance with Section 10

(2) The commissioners shall, at their first meeting, elect a vice-chairperson from amongst the commissioners appointed under subsection (1) (b)

Qualifications for appointment of chairperson and members.

10. (1) A person shall be qualified for appointment as the chairperson of the Commission if the person-

(*a*) has knowledge and at least fifteen years experience in matters relating to human rights, law, data protection,transparency or public and corporate governance;

(*b*) holds a degree from a university recognized in Kenya; and

(*c*) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Commission if the person-

(*a*) holds a degree from a university recognized in Kenya;

(*b*) has knowledge and at least ten years' experience in matters relating to any of the following fields-

(i) law;

(ii) data protection;

(iii) human rights;

(iv) management; or

(v) transparency or public and corporate governance;

(*c*) has had a distinguished career in their respective fields; and

(*d*)meets the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Commission if such person—

(*a*) is a member of Parliament or a County Assembly;

(*b*) is a member of the governing body of a political party;

(*c*) is a member of a local authority;

(*d*) is an undischarged bankrupt; or

(*e*) has been removed from office for contravening the provisions of the Constitution or any other law.

Procedure for appointment of chairperson and members.

11. (1) The President shall, within fourteen days of the commencement of this Act convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or member of the Commission.

(2) The selection panel convened under subsection (1) shall consist of one person from each of the following bodies representatively—

(*a*) Office of the President;

(*b*) Office of the Prime Minister;

(*c*)Ministry responsible for matters relating to justice;

(*d*) Public Service Commission;

(*e*) the Association of Professional Societies in East Africa; and

(*f*) the National Council for Persons with Disabilities.

(3) The selection panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(4) The selection panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

(5) The selection panel shall, within seven days of receipt of applications under subsection (4), consider the applications, interview and shortlist at least three persons qualified for appointment as chairperson and five persons qualified for appointment as members of the Commission, and shall forward the names of the selected candidates to the President for nomination.

(6) Until after the first general election after the commencement of this Act, the President in consultation with the Prime Minister shall, within seven days of receipt of the names forwarded under subsection (5), nominate one person for appointment as chairperson and two persons for appointment as members of the Commission, and shall forward the names of the persons nominated to the National Assembly.

(7) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (6), consider all the nominations received and approve or reject any nomination.

(8) Where the National Assembly approves the nominees, the Speaker shall, forward the names of the approved persons to the President for appointment.

(9) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

(10) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit fresh nominations.

(11) Where a nominee is rejected by Parliament under subsection (10), the President in consultation with the Prime Minister shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(12) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (11), the provisions of subsections (5) and (6) shall apply.

(13) In short listing, nominating or appointing persons a chairperson and members of the Commission, the selection panel the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle of gender equity, regional and ethnic balance and shall have due regard to the principle of equal opportunities for persons with disabilities.

(14) After the first elections after the commencement of this Act, the member of the selection panel specified under subsection (2) (b) shall be replaced by a representative of the Public Service Commission.

(15) Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the Gazette, extend the period specified in respect of any matter under this section by

a period not exceeding twenty-one days.

Powers of the chairperson.

12. (1) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Commission at which the members shall elect the vice-chairperson of the Commission from amongst the members.

(2) The chairperson shall—

(*a*) preside over all meetings of the Commission;

(*b*) be the spokesperson for the Commission; and

(*c*) supervise and direct the work of the Commission.

(3) If the office of chairperson become vacant or if the chairperson is unable to exercise the powers or perform the functions of his office owing to absence, illness or any other cause, the vice-chairperson shall exercise those powers or perform those functions.

Tenure of office.

13. (1) The chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.

(2) The chairperson and members of the Commission shall serve on a full-time basis.

Vacancy of office of chairperson and members.

14. (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

(*a*) dies;

(*b*) by notice in writing addressed to the President resigns from office;

(c*)* is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall notify every resignation, vacancy o termination in the Gazette within seven days.

Removal of commissioners

15.(1) A member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office only for—

(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;

(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; or

(e) bankruptcy.

(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.

(4) On receiving a petition under clause (3), the President—

(a) may suspend the member or office holder pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with clause (5).

(5) The tribunal shall consist of—

(a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as High Court judges; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.

(7) A person aggrieved by the decision of the tribunal u subsection (6) may appeal before the Court of Appeal.

(8) A person suspended under this Article is entitled to continue t receive one-half of the remuneration and benefits of the office while suspended.

Committees of the Commission.

16. (1) The Commission may, from time to time establish, committees for the better carrying out of its functions.

(2) The Commission may—

(*a*) co-opt into the membership of a committee established under subsection (1), other persons whose knowledge and skills are necessary for the functions of the Commission;

(*b*) hire such experts or consultants as are necessary for the functions of the Commission.

Terms and conditions of service of the commissioners

17. The salaries and allowances payable to, and other terms and conditions of service of the chairperson and members of the Commission shall be determined by the Salaries and Remuneration Commission.

Secretary to the Commission.

18.(1) The appointment of the secretary to the Commission under Article 250 (12) of the Constitution shall be through a competitive recruitment process.

(2) A person shall be qualified for appointment as a secretary to the Commission if the person –

(*a*) is a citizen of Kenya;

(*b*) holds a degree from a university recognized in Kenya;

(*c*) has had at least ten years proven experience at management level;

and

(*d*) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission.

(4) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

Removal of secretary.

19. (1) The secretary may be removed from office by the Commission in accordance with the terms and conditions of service for—

(*a*) inability to perform the functions of the office of secretary arising out of physical or mental incapacity;

(*b*) gross misconduct or misbehavior;

(*c*) incompetence or neglect of duty;

(*d*) violation of the Constitution; or

(*e*) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given—

(*a*) sufficient notice of the allegations made against him or her; and

(*b*) an opportunity to present his or her defence against the allegations.

Oath of office.

20. The chairperson, the commissioners and the Secretary shall each make and subscribe before the Chief Justice the oath of affirmation set out in Second Schedule.

Staff of the Commission

21. The Commission may appoint such officers or servants as are necessary for the proper discharge of the functions of the

Commission under this Act or any other law, upon such terms and conditions of service as the Commission may determine.

Inquiry into complaints

22. (1) A person wishing to lodge a complaint under this Act shall do so orally or in writing addressed to the Secretary or such other person as may be duly authorized by the Commission for that purpose.

(2) A complaint lodged under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.

(3) Upon receipt of a complaint under subsection (1), the Commission may -

(a) call for information or a report regarding such complaint from the public authority or any other body within such reasonable time as may be specified by the Commission:

Provided that –

(i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;

(ii) if on receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by the public authority, the Commission shall, in writing, inform the complainant accordingly and take no further action.

(b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

Commission to have powers of a court

23. (1) In the performance of its functions under this Act, the Commission shall have the powers of a court to –

(a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) question any person in respect of any subject matter under investigation before the Commission;

(c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission

(2) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order –

(a) the release of any information withheld unlawfully;

(b) the payment of compensation; or

(c) any other lawful remedy or redress

(3) A person or authority dissatisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.

(4) An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(5) If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.

(6) A person who –

(a) fails to attend before the Commission in accordance with any summons or order issued under subsection (1)(a); or

(b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any information; or

(c) knowingly gives any false or misleading statement or information to the Commission; or

(d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(7) Public bodies, relevant private bodies, and private bodies are obliged to provide such reports as required by the Act to the Commission.

(8) The Commission shall, in consultation with the public, develop and publicize guidelines detailing the reporting requirements including the manner, means and timeframes that apply to public bodies, relevant private bodies and private bodies.

(9) The Commission has the discretion to request any further information from the public body, relevant private body or private body to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

Powers relating to investigation.

24. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public officer or investigation agency of the Government and where the a public officer is so utilized under this subsection, the Commission shall pay such public officer or agency for the service rendered.

(2) For the purpose of investigating any matter pertaining to an inquiry, a public servant or agency whose services are utilized under subsection (1) may, subject to the direction and control of the Commission—

(a) summon and enforce the attendance of any person for examination;

(b) require the discovery and production of any information; and

(c) subject to the provisions of this Act, requisition any public records or copy thereof from any public servant.

(3) The provisions of section 23 shall apply in relation to any statement made by a person before any public officer or agency whose services are utilized under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The public officer or agency whose services are utilized under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf;

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry, including the examination of any person or persons who conducts or assists in the investigation, as it deems fit.

The common seal of the Commission

25. (1) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

(2) The Common seal of the Commission shall, when affixed to a document and duly authenticated be judicially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Commission shall be authenticated by the signature of the chairperson of the Commission and the Secretary:

Provided that the Commission shall, in the absence of either the chairperson or the Secretary, in any particular matter, nominate one commissioner to authenticate the seal of the Commission on behalf of either the chairperson or the Secretary.

PART III – RIGHT TO INFORMATION

Right to information

26. (1) Every citizen has a legally enforceable right to access information held by, or under the control of, a public authority, in accordance with this Act.

(2) Subject to this Act, every citizen has the right to access information held by, or under the control of a private body where that information is necessary for the enforcement or protection of any right.

(3) Subject to this Act, a person's right to access information is not affected by -

(a) any reason the person gives for seeking access as the right to access of information is independent of a person's interest; or

(b) the public authority's belief as to what are his reasons for seeking access

(4) A person has the right to access information of a public body or private body expeditiously and inexpensively;

(5) A person has a right of access to information generated, received and or held by public bodies, subject only to such limitations as are necessary for public interest;

(6) this Act shall be interpreted and applied on the basis of a duty to disclose. Non disclosure shall be permitted only in exceptionally justifiable circumstances;

(7) A public body or private body shall accede to the authority of the Commission in all matters relating to access to information;

(8) any refusal to disclose information shall be subject to appeal;

(9) A public body or private body shall proactively publish information;

(10) A person shall not be subject to any sanction for releasing information under this Act in good faith.

(11) This Act applies to the exclusion of any law that prohibits the disclosure of information of a public body or a private body.

(12) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a public body, relevant private body or a private body to disclose information.

(13) The right of access to information includes_

(a) both a right to request and receive information; and

(b) an obligation on the part of public bodies and officials to disseminate essential information that the public is entitled to know including their core functions and key activities;

(14) The right of access to information applies to private entities that_

(a) receive public resources and benefits, engage in public functions;or

(b) provide public services, particularly in respect of information relating to the public resources, benefits, functions or services;

Exempt information.

27. (1) Notwithstanding section 26(1) information, hereinafter referred to as "exempt information", may be withheld by a public authority where the public authority concerned is satisfied that disclosure of such information is reasonably like to –

(a) cause serious prejudice to the national security of Kenya;

(b) impede the due process of law or endanger the safety of life of any person or the safety of a rare or endangered species;

(c) involve the unwarranted invasion of the privacy of an individual other than the applicant or the person on whose behalf an application on has with proper authority been made;

(d) cause serious prejudice to the legitimate commercial or financial interests of that authority or third party from whom information was obtained;

(e) cause serious prejudice to the ability of the Government to manage the economy of Kenya.

(f) significantly undermine a public authority's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration; or

(g) damage a public authority's position in any actual or contemplated legal proceedings by revealing the legal advice which it received in anticipation of or connection with such proceedings.

(2) Notwithstatnding the generalty of subsection (1) (a), information relating to national security includes –

(a) military plans ,weapon systems or operations;

(b) foreign government information;;

(c) intelligence activities,sources, methods or cryptology;

(d) foreign relations or foreign activities;

(e) scientific,technology or economic matters relating to national

security;

(f) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security.

(3) Subsections (1) (d) and (e) shall not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

(4) Notwithstanding anything contained in subsection (1), a public authority shall disclose information where the public interest in disclosure outweighs the harm to protected interests.

(5) For the purposes of subsection (4), in considering the public interest, particular regard shall be had to the need to –

(a) promote accountability of public authorities to the public;

(b) ensure that the expenditure of public funds is subject to effective oversight;

(c) promote informed debate on issues of public interest relevant to this Act

(d) keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and

(e) ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.

(6) Unless the contrary is proved by the public authority, information is presumed not to be exempt if the information is more than thirty years old.

Proactive disclosure

28. **(1)** A public authority shall –

(a) as soon as practicable after the commencement of this Act but not later than twelve months after the commencement thereof,

and in a form approved by the Commission, publish –

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) any guidance used by it in the relation to its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and

(vi) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate, the location of any indexes to be consulted by any person;

(b) during the year commencing on first January next following the publication, in respect of the statement under paragraph (a), that is, the first statement published under that paragraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that paragraph;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect the public; and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles;

(d) provide to any person the reasons for any decision taken by it

in relation to that person;

(e) unless there are good reasons to the contrary, allow members of the public to attend its meetings at which decisions affecting them are made and shall give adequate notice of such meetings;

(f) upon signing, public authorities shall publish all contacts entered into include –

(i) the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;

(ii) the contract sum;

(iii) the name of the provider, contractor or individual to whom the contract has been granted and

(iv) the periods within which the contract shall be completed.

(2) Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.

(3) At a minimum, the material referred to in subsection (1) shall be made available -

(a) for inspection by any person without charge;

(b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of copying and supplying them may be made, and

(c) on the Internet, provided that the materials are held by the authority in electronic form.

PART IV – ACCESS TO INFORMATION

Application for access

29. (1) An application to access information shall be made in English or Kiswahili by email, fax, post, telephone or by any other

medium, an the applicant shall provide –

(a) contains details; and

(b) sufficient particulars for the public officers or any other official to understand what information is being requested.

(2) A public officer who receives an oral application shall, subject to section 25, reduce the application to writing, including the officer's name and designation, and shall give a copy thereof to the applicant.

(3) Notwithstanding subsection (1), an application may, if the applicant is unable to communicate in English or Kiswahili, be made in any other local language in use in Kenya, and in such event the public officer to whom the application is made shall arrange for a translation of the application to English or Kiswahili.

(4) Where an application to access information does not comply with subsection (1), the public officer who receives the application shall, subject to section 30, render such reasonable assistance, free of charge, as may be necessary to enable the application to comply with that subsection.

(5) An application referred to in subsection (4) shall not be deemed to have been rejected while assistance is being rendered.

(6) A public authority may not inquire into a person's identity on account of an application to access any information, or inquire as to the purpose of the person's application.

(7) A public authority may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.

(8) A public authority which receives an application to access information shall provide the applicant with a receipt documenting the application.

Processing of application.

30. (1) Subject to section 31, a public officer shall make a decision on an application as soon as possible, but in any event, within fifteen

working days of receipt of the application;

Provided that where the information sought concerns the life or liberty of a person, the information shall be provided within forty-eight hours of receipt of the application:

Provided further that where an application is especially complex or relates to a large volume of information, the public officer may request the Commissioner for an extension of time of no more than fifteen working days.

(2) The public officer may seek the assistance of any other public officer as the officer considers necessary for the proper discharge of the officer's duties and such other officer shall render the required assistance.

Transfer of applications.

31. (1) A public information officer may, not later than five days from the date of receipt of an application, transfer the application, or any relevant part of it, to another public authority, if the information requested is held by that other public authority.

(2) Where an application is transferred under subsection (1), a public information officer shall inform the applicant immediately but in any event no later than five days from the date of receipt of the application, about such transfer.

(3) A public authority to which an application is referred by a public information officer under subsection (1) shall make a decision on the application within fifteen days from the date that the application was first made, failing which the request shall be deemed to have been rejected.

Providing access to information.

32. (1) Where a decision is taken to provide the information applied for, a public officer shall send the applicant a written notice within fifteen working days of receipt of the application, advising –

(a) that the application has been granted;

(b) that the application has been granted from the provision of an edited copy

(c) the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the

amount of the fee;

(d) the method of payment of such fees;

(e) the proposed process of accessing the information once the payment is made; and

(f) that an appeal may be made to the Commission in respect of the amount of fees required or the form of access proposed to be provided.

(2) Subject to section 32, upon receipt of the requisite fee, a public officer shall provide the information to the applicant or permit the relevant inspection immediately but in any event no later than two working days from the date of receipt of such payment.

(3) Any information which may be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection; to any person who desires to have access to it; and in such a manner as it can be read, listened to, or otherwise comprehended, in the form in which it is held unless the applicant requests that it be made available in another form and it is practicable to do so, and such information may also be copied, reproduced, or used for conversion to a sound transmission.

(4) Where information is to be provided under this section, and the applicant requests that access be given in either English or Kiswahili, the information shall be given to the applicant in that language –

(a) forthwith, if the information already exists in that language; or

(b) within a reasonable time if the information does not exist in the language in which access has been applied for.

Rejection of application

33. (1)A public body or private body may refuse to grant access to information if the information is exemptd from disclosure in this Act.

(2)Where an application is fully or partially rejected on the basis that the information requested is exempt information, the public officer concerned shall send the applicant a written notice within fifteen working days of receipt of the application, specifying-

(a) the name and designation of the person making the decision;

(b) the reasons for the decision, including the relevant provisions of the Act relied upon, findings on any material questions of fact and the material on which those findings were based;

(c) the applicant's rights with respect to review of the decision, including the particulars of the Commission, time limits and the procedure.

(3) Where any information applied for has not been provided within the specified period under this Act, the application therefor shall be deemed to have been refused.

Fees

34. (1) No fee may be levied in relation to the submission of an application.

(2) A public authority from which an application for information has been made shall not levy any fee on an applicant for the provision of the information other than a reasonable fee for access, which shall not exceed the actual costs of making any copies of such information and if applicable, supplying them to the applicant.

(3) Any fees imposed should not be so high as to defeat the objectives of this Act.

(4) A public information officer may waive any fee where payment of the fee may cause financial hardship to the applicant or where the disclosure of the information is in the public interest.

(5) Notwithstanding anything in this section, the person making an application for information shall be provided with the information free

of charge where a public authority fails to comply with the time limits in this Part.

(6) The fee regime for all public authorities shall be prescribed in Regulations made by the Minister.

Correction of information.

35. (1) At the request of the applicant a public authority shall, at its own expense correct any personal information held by it relating to the applicant which is inaccurate, incomplete or irrelevant.

(2) A request under this section shall be made in writing to the public authority responsible for the maintenance of the record system containing the inaccurate, incomplete or irrelevant information and shall –

(a) state that it is a request to amend certain personal information relating to the applicant;

(b) specify the personal information that is to be amended indicating how such information is inaccurate, incomplete or irrelevant, and how it is adverse to the applicant's interests; and

(c) specify the remedy sought by the applicant.

PART V – INTERNAL REVIEW OF DECISIONS

Review of decisions.

36. (1) Subject to subsection (2), where a decision has been made in relation to a request to a public authority, being –

(a) a decision refusing to grant access to information in accordance with an application;

(b)a decision granting access to information but not granting access to all information to which the application relates;

(c)a decision purporting to grant, in accordance with an application relates, but not actually granting that access;

(d) a decision to defer the provision of access to information;

(e) a decision relating to imposition of a charge or the amount of a charge;

(f) a decision relating to remission of an application fee;

(g) a decision to grant access to information only to a qualified person;

(h) a decision refusing to amend a record of personal information in accordance with an application made under section 35; or

(i) a decision refusing to annotate a record of personal information in accordance with an application made under section 35,

the applicant may, by application in writing to the public authority, request a review of the decision

(2) An application under subsection (1) shall be made within thirty day, or such further period as the public authority allows, after the day on which the decision is notified to the applicant.

Application for review.

37. An application for internal review shall –

a) be made in a prescribed form within thirty days after the notice is given to the applicant, or, if notice to the applicant is not required, after the decision is taken;

b) be delivered or sent to the information officer of the public authority concerned on his address, fax number or electronic e-mail address;

c) identify the subject of review and give reasons for the review, and may include any other information known to the applicant.

Notice to interested party

38. If a public authority is considering an internal review against the refusal of an application to access information as contemplated in section 36, the public authority shall inform the third party to whom or which the information relates, unless the necessary steps to locate the third party have been unsuccessful.

Decisions on review.

39. (1) The relevant public authority shall, immediately after a decision on internal review has been made, give notice of the decision to the applicant and every third party involved.

(2) The notice shall state -
(a) adequate reasons for the decision including the provisions of this Act relied upon;

(b)that the applicant, third party, or requester, as the case may be, may lodge an appeal with the Commission against the outcome of the internal review within thirty days of such outcome.

PART VI - FINANCIAL PROVISION

Funds of the Commission

40. (1) The funds of the Commission shall on an annual basis be appropriated by Parliament for that purpose.

(2) The Commission may receive grants and donations from any other source provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.

Financial year.

41. The financial year of the Commission shall be a period of twelve months ending on the thirtieth June in each year.

Annual estimates

42. (1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial and in particular shall provide-

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the Commissioners;

(b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits payable to the members of staff of the Commission;

(c) the maintenance of the buildings and grounds of the Commission;

(d) the maintenance, repair and replacement of the equipment and other property of the Commission;

(3) The annual estimates shall be submitted to the Minister for approval before the commencement of the financial year to which they relate, and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (3).

(5)The Minister shall make a decision without delay and w approval is denied the Minister shall provide reasons in writing for denial.

(6) The Minister shall, in determining whether to appr disapprove the annual estimates, consider only the feasibility of the financial proposals and not the appropriateness of the purpose to which the funds are proposed to be applied.

Accounts and audit.

43. (1) The Commission shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General or to an auditor appointed under subsection (3), its accounts in respect of that year together with –

(a) a statement of income and expenditure during that financial year; and

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(b) a statement of the assets and liabilities of the Commission on the last day of the financial year.

(3) The accounts of the Commission shall be audited and reported upon by the Controller and Auditor-General, or by an auditor appointed by the Commission with the written approval of the Controller and Auditor- General in accordance with the

provisions of the Public Audit Act, 2003.

(4) Notwithstanding subsection (3, the Commission's accounts may be audited by other persons as the Commission may from time to time authorize.

Bank Account

44. (1) The Commission may open and maintain such bank accounts as may be necessary for the performance of its functions.

PART VII – MISCELLANEOUS

Annual reports

45. (1) The Commission shall submit an annual report to the National Assembly through the Minister, and may at any time submit special reports to the Minister on any matter relating to any of its functions.

(2) The annual report submitted by the Commission under subsection (1) shall include an overall assessment by the Commission of the performance of the Government with regard to access to information during the period under review.

(3)The Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary.

(4)The Minister shall be required, in every year, to report to Parliament the steps which the Government has taken in implementing recommendations made in the Commission's reports.

Reports by public authorities.

46. (1) On or before the first day of February of each year, every public authority shall submit to the Commission a report covering the proceeding year, which shall include -

(a) the number of requests for information received by the authority and the number of requests processed;

(b) the number of determinations made by the authority not to comply with the requests for information under section 27, and the reasons for each such determination;

(c) the number of applications for review made by persons under section 36, the result of such applications, and the reason for the action upon each application that results in a denial of information;

(d) the average number of days taken by the authority to process different types of requests;

(e) the total amount of fees collected by the public authority while processing requests;

(f) the number of full-time staff of the public authority devoted to processing requests for information ant the total amount expended by the authority for processing such requests.

Protection of person making disclosure.

47. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is one which is in the public interest.

(2)For purposes of subsection (1), a disclosure which is made to the police or to an appropriate public authority shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) and (2),where the person has reasonable belief in the veracity of the information.

(4) Dislosure of information under subsection (1) and (2) includes information on_

(a) violations of the law,including human rights violations;

(b) mismanagement of funds;

(c) conflict of interest;

(d) corruption;

(e) abuse of public office; and

(f) dangers o public health, safety and the environment

(4)For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

(5) Any term of any settlement arising from a claim under this section, insofar as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(6) In any proceedings for an offence for contravention of any

statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that, in the circumstances, the disclosure was in the public interest, and where the offence is alleged to have been committed by a public officer or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, that the defendant had, before making the disclosure, complied with the provisions of subsection (3).

Management of records.

48. (1) In this section-

(a) "records" means a document or other source of information compiled,recorded or stored in written form or film by electronic process or in any other manner;

(b) records shall be accurate,authentic,have integrity and useable.

(2)Every public authority shall keep and maintain its records in a manner which facilitates the right of access to information as provided for in this Act.

(3) At a minimum, to qualify to have complied with the duty to keep and maintain records under subsection (1), every public authority shall –

(a) create and preserve such records as are necessary to document adequately its policies, decisions, procedures, transactions and other activities it undertakes pertinent to the implementation of its mandate;

(b) ensure that records in its custody, including those held in electronic form, are maintained in good order and condition; and

(c) within no more than three years from the date that this Act begins to apply to it, computerize its records and information management systems in order to facilitate more efficient access to information.

Electronic records.

49. Every public authority or private body shall operate and maintain digital records.

Offence of alteration, defacement, blocking, erasure etc

50. (1) Where an application to access information has been made to a public authority under section 29 of this Act and the applicant would have been entitled, subject to payment of any fee, to provision of any information in accordance with that section, any person to whom this section applies commits of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information provision of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

Defamatory matter in information released.

51. Where any information provided by a public authority to an applicant under section 29 was supplied to the public authority by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

Regulations.

52. (1) The Minister may, by regulations, and upon consultations with the Commission, prescribe anything which may be prescribed under this Act including –

(a) the designation of any private body or authority or class of bodies or authorities, to be a public authority or public authorities for the purposes of this Act;

(b) the manner in which applications under this Act are to be made;

(c) the form in which information requested under this Act is to be supplied;

(d) the making of applications for personal information by representatives of the individual to whom the information relates;

(e) the measures which public authorities shall take in order to assist persons in exercising their rights under this Act;

(f) the measures which public authorities shall take to ensure that adequate records are created and maintained by public authorities;

(g) the procedures that should be followed by a complainant in asking authority to review any decision or failure to act before a complaint may be made to the Commission;

(h) a public authority to consult with a third party before

giving access to information obtained by it from that party;

(i) procedures requiring a public authority to ensure that personal information is accurate;

(j) compensation to be sought by an individual who has suffered damage as a result of the holding of inaccurate information about the individual's personal affairs by a public authority;

(k) the records that public authorities shall be required to keep.

(2) The Minister may, upon consultation with the Commission, make regulations generally for the better carrying into effect the provisions of this Act.

Consequential amendments.

53. The written laws identified in the Third Schedule are amended in the manner identified therein.

FIRST SCHEDULE (S.4)

PROVISIONS AS TO THE CONDUCT OF AFFAIRS AND BUSINESS OF THE COMMISSION

Tenure of office

1. Unless the appointment of the chairperson or commissioner is termed earlier under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for appointment for a further and final term of five years:

Provided that in the case of the initial commissioners, the commissioners shall, at the first meeting of the Commission, elect from amongst their number –

(a) four commissioners whose terms of office shall expire at the end of three years; and

(b) four other commissioners whose term shall expire at the end of five years from the date of appointment.

Vacancy

2. The office of a person appointed as a chairperson or commissioner shall become vacant if the person –

(a) dies;

(b) resigns from office by writing under his hand addressed to the President through the Minister;

(c) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine;

(d) is unable to discharge the function of his office by reason of physical or mental infirmity as certified by two registered medical practitioners

(e) is absent from three consecutive meetings of the Commission without good cause; or

(f) if declared bankrupt by a court of competent jurisdiction.

Meetings

3. The Commission shall meet at such times and places as the

Commission shall deem appropriate but shall meet at least once in every month.

(2) Subject to this Act the Commission may regulate its own procedure and formulate its own rules.

(3) The quorum for any meeting of the Commission shall be five commissioner.

(4) All orders and decisions of the Commission shall be authenticated by the chairperson or any other commissioner authorized in writing by the chairperson in that behalf.

Minutes

4. The Commission shall cause minutes of all proceedings of its meetings to be entered in books kept for that purpose.

Majority decision

5. The decisions of the Commission shall be that of the majority and shall be signed by the members thereof agreeing thereto.

OATH/AFFIRMATION OF THE OFFICE OF A COMMISSIONER/SECRETARY

I …… having been appointed (a commissioner/the Secretary to) the Kenya Freedom of Information Commission under the Freedom of Information Act 2008, do solemnly (swear/ declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said……...

before me this …… Day of……

…….
Chief Justice.

SECOND SCHEDULE (s.46)

CONSEQUENTIAL AMENDMENTS

Records Disposal Act

Cap 14

1. (1) This paragraph amends the Records Disposal Act.

(2) Section 2 of the Act is amended by deleting the words "Chief Archivist" wherever they appear and substituting therefor the expression "Kenya Archives and Documentation Service and the Kenya Freedom of Information Commission".

Public Archives and Documentation Service Act

Cap. 19

2. (1) This paragraph amends the Public Archives and Documentation Service Act.

(2) Section 5A of the Act is amended by inserting th following new proviso immediately after the word "public" appearing in the last line of subsection (1)

"Provided that the restriction from circulation shall only relate to exempt information provided for in section 21 of the Freedom of Information Act 2008."

(3) The Act is amended in section 6 by deleting subsections (2) and (3).

(4) Section 7 of the Act is amended by inserting th expression "in consultation with the Kenya Freedom of

MEMORANDUM OF OBJECTS AND REASONS

The Ministry of Information and Communications has formulated the Bill herein with a view to enhancing access to information held by Government Ministries and other public authorities. The Bill recognizes access to information as a right bestowed on the Kenyan people, and seeks to promote proactive publication, dissemination and access to information by the Kenyan public in the furtherance of this right. It also spells out the mechanisms for ensuring public access to information, as well as the factors that may hinder the right to this access. The Bill is borne of the realization that access to information held by the Government and public institutions is crucial for the promotion of democracy and good governance.

Part I of the Bill contains preliminary provisions.

Part II contains provisions on the establishment, powers and function of the Kenya Freedom of Information Commission, which shall enjoy the status of a body corporate with all the attributes pertaining thereto. Membership of the Commission is provided for in **clause 9. Clause 6** thereof lays down the functions of the Commission while the objects and principles guiding the Commission in the discharge of its functions are set out in **clause 7. Clause 8** confers the Commission with independence from the Government and other entities, and requires the Commission to carry out its mandate without any political bias or interference. **Clause 10** lays down the elaborate procedures for appointment of commissioners while **clause 18** provides for the appointment of Secretary to the Commission.

Part III contains provisions on the right of access to information. **Clause 26** accords every person the right to access information in the domain of a public authority while **clause 27** contains provisions on information which is exempted from disclosure to the public. **Clause 28** obliges a public authority to publish in the public interest information in its possession (proactive disclosure).

Part IV contains provisions on access to information. **Clauses 29 and 30** details the manner in which an application for information is to be made and the manner in which such an application is to be processed. **Clause 31** provides for the transfer of an application for information from one public authority to another when it becomes apparent that the information applied for is not in the domain of the public authority to which the application is initially made but is in the possession of another authority.

Clause 33 provides for rejection of an application for information. **Clause 34** provides that no fee will be levied in respect of information applied for as a general rule, but a public authority is allowed to levy some fee to cater for incidental cost of availing the information applied for, for example, cost of making and supplying copies to an applicant. Under **clause 35,** it is provided that a person can make an application to a

public authority to correct inaccurate personal information in its possession regarding such person .

Part V contains provisions on internal review of decisions made by a public authority with **clause 36** thereof providing for instances in which an application for such review can be made. The manner of making such application is laid down in **clause 37** and communication of a decision thereon is to be made in the manner detailed in **clause 39**

Part VI contains financial provisions with **clause 40** thereof setting out the sources of funds of the Commission. **Clause 42** provides for the preparation of the annual estimates of the Commission and the details to be contained in the estimates while **clause 43** provides for the auditing of the accounts of the Commission by the Controller and Auditor General or an auditor appointed thereunder.

Part VII contains miscellaneous provisions and **clause 45** thereof imposes an obligation on the Commission to prepare annual reports on its functions for the laying before the National Assembly. Similarly, public authorities are obliged, under **clause 46** to prepare and submit to the Commission reports on various aspects of access to information. **Clause 47** accords protection to a person making disclosure of information in the public interest while **clause 48** obliges public authorities to keep their records in a manner that facilities the right of access to information. **Clause 50** provides for various offences and penalties while **clause 52** empowers the Minister to make regulation, in consultation with the Commission, for the better carrying into effect the provisions of the Bill once enacted into law.

The enactment of this Bill will occasion additional expenditure of public funds to be provided through the estimates.

Dated the……. ……., 2012.

SAMUEL POGISHO,
Minister for Information and Communications