

ACCESS TO INFORMATION BILL 2019

PART 1 Preliminary

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short Title.
2. Application.
3. Interpretation.
4. Act to have overriding effect (cap).
5. Act to bind The State.

PART II

ACCESS TO INFORMATION OF PUBLIC BODIES

6. Duties to create, keeps, organize and maintain information.
7. Proactive Disclosure.
8. Submission implementation plans, annual reports and publication of information manual.
9. Designation of Information officer.
10. Designation of Deputy Information officers.
11. Rights of access.
12. Request for access.
13. Duty to assist requester.
14. Response to requests.
15. Extension.
16. Transfer of request.

17. Deemed refusal.
18. Deferral of access.
19. Information that cannot be found or does not exist.
20. Form of access.
21. Language of access.
22. Fees.

PART III

EXEMPTION

23. Refusal.
24. Personal information of a third party.
25. Commercial and confidential information of an information holder or a third party.
26. Protection of life health, safety and privacy of and individual.
27. National security and defence.
28. International relations.
29. Economic interest of the State.
30. Law enforcement.
31. Privilege communications and documents.
32. Academic or examination professional or recruitment.
33. Cabinet proceedings.
34. Severance.
35. Public interest overrides.
36. Burden of proof.
37. Notice to third parties.
38. Extent of the exemptions.

PART IV
REVIEW OF DECISIONS

- 39. Rights of review
- 40. Decision on review

PART V
INFORMATION COMMISSION

- 41. Establishment of Commission.
- 42. Composition the Commission.
- 43. Criteria for appointment of commissioners.
- 44. Resignation of a commissioner and termination of office.
- 45. Inquiry before termination of appointment.
- 46. Limitation on outside work.
- 47. Remuneration.
- 48. Independence of the commission.
- 49. Staff of the commission.
- 50. Duties of the executive secretary.
- 51. Power of the executive secretary.
- 52. Engagement of experts.
- 53. Immunity of the commission and staff.

PART VI
POWERS AND DUTIES OF THE INFORMATION
COMMISSION

- 54. Powers and duties.
- 55. Referral powers.

56. General duties of the Commission.
57. Annual report to the National Assembly.
58. Promotion.
59. Research and law reform.
60. Monitoring.
61. Implementation plan.
62. Publication of information manual.
63. Annual reports to the Commission.
64. Proactive disclosure reports to the Commission.
65. Auditing powers of the Commission.
66. Effect non-compliance.

PART VIII

APPEAL TO INFORMATION COMMISSION

67. Appeal to the Commission.
68. Direct appeal.
69. Notice of intention to investigate or hear a matter.
70. Notice to third parties.
71. Rights to make representation.
72. Notices and communication.
73. Orders, decisions and directives.
74. Content of recommendations findings, orders, directions and directives.
75. Third party information released is in public domain.
76. Offences.

PART VIII
FINANCIAL PROVISION

- 77. Funds of the Commission.
- 78. Accounts and audit.
- 79. Annual report.
- 80. Minister to make regulations

A BILL Entitled-

An Act to provide for the right to access public records and information held by public authorities or by persons providing services for them, the procedure for obtaining access to that information and records, and to provide for other related matters.

ENACTED BY the President and the National Assembly
[]

PART 1- PRELIMINARY

Short title

1. This Act may be cited as the Access to Information Act, 2019.

Application

2. This Act shall apply to all public bodies, public authorities, non- state bodies which are owned or controlled by the government, a private organisation or private person who operates with substantial public funds or benefits (directly or indirectly from public funds) or which performs public functions and

services using public funds.

Interpretation 3. In this Act, unless the context otherwise requires-

“Commission” means the Information Commission established in section 41 of this Act;

“Commissioner” means an Information Commissioner;

“head of a public body” means the administrative head of that body;

“information” includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the information holder to whom a request has been made under this Act;

“Information holder” means a public body;

“Information officer” means a person designated as the information officer of a public body in accordance with Section 9 (1) of the Act;

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

“internal review requested” means a request made by a requester or a third party for an internal review of a decision of an information officer;

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

“Minister” means the Minister responsible for the administration of this Act;

“personal Information” means information or An opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion;

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

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

“public body” means anybody:

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

- (d) a local government authority,
- (e) a body corporate or incorporated body established for a public purpose, which is owned, controlled, or financed by the government,
- (f) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purpose of this Act;

“reproduction fee” means the fee payable by a requester to an information holder for access to information,

“request” means an application made under Section 12 of the Act;

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

“sittings of the National Assembly” means days in which the National Assembly is in session;

“third party” means a person other than a public body or the requester; and

“third party information” means personal information or commercial and confidential information of a third party.

Act to have overriding effect (Cap. 17.01 Vol 4) 4. (1) The provisions of this Act shall have effect withstanding anything inconsistent therewith contained in the Official Secret Act, General Orders of the government, regulations and bye-laws of any public body.

- (2) Nothing this Act limits or otherwise restricts any other provision of a written law for a public body to disclose information.
- (3) No information holder or information officer shall be liable for releasing information in good faith and in accordance with this Act.

Act to bind The State 5. This Act shall bind the State.

PART II – ACCESS TO INFORMATION OF PUBLIC BODIES

Duty to create, keep, organize and maintain Information

- 6. (1) Every public body shall create, keep, organize and maintain its information in a manner which facilitates access to information, as provided in this Act.
- (2) For the purpose of subsection (1), every public body shall –
 - a) produce information in respect of all its activities, including those expressly provided for under section 7 of this Act;
 - b) arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification and access;

and

- c) keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.

**Proactive
Disclosure**

7. (1) Every public body shall publish in such manner as maybe prescribe the following information as produce by or in relation to that body within 30 days of the information being generated or received by that body –

- (a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officer of the body in discharging that body’s functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privilege or benefits, or to obligations, penalties or other consequences, penalties or other consequences, to or for which persons may be entitled or liable;
- (b) the name designations and other particulars of the Information Officer of the public body, including his or her contact details and electronic addresses where persons may submit requests for information;

- (c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public body;
- (d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formation or implementation of its policies, or similar documents;
- (e) where meetings of the public body, including its boards, councils, committees or similar other bodies are open to members of the public, the process for direct or indirect engagement and where a meeting is not open to the public, the contents of submissions received, the process for decision making and decisions reached.
- (f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
- (g) all contracts, licences, permits,

authorisations and public –private partnerships granted by the beneficiaries;

(h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body; and

(i) any other information as directed by the Information Commission.

(2) Every public body shall annually publish in such manner as may be prescribed the following information produced by or in relation to that body-

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

(b) information containing interpretations or particulars of Acts or policies administered by the body;

(c) details of its processes and procedures for creating, keeping, organizing and maintaining information;

(d) a list of all the categories of information held by it or under its control;

- (e) a directory of its employees including their powers, duties and titles, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
- (f) the salary band for each public employee and officer, including the system of compensation as provided in its laws, and the procedures followed in its decision-making process, including channels of supervision and accountability;
- (g) detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefits received by each employee and officer;
- (h) a description of the composition, functions and appointment procedures of the boards, councils, committees and other bodies consisting of two or more persons, constituted for the purpose of advice to or managing the public body;
- (i) the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related

estimates, plans, projections and reports, including audit reports;

(j) the annual reports submitted to the Information Commission under section 54 of this Act; and

(k) any other information as directed by the Information Commission.

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

8. (1) Every public body shall annually, within the time-frame stipulated by the Commission, submit to the Commission-

(a) an information publication plan with respect to its proactive disclosure obligations in section 7 of this Act in accordance with section 63 (2) of this Act; and

(b) annual reports on the implementation of this Act in accordance with section 64 of this Act.

(2) Every public body shall publish in the manner as may be prescribed the information manuals detailing the categories of information it proactively discloses in accordance with section 65.

Designation of Information Officer

9. (1) The head of every public body shall, in consultation with the Minister responsible for that

public body, designate a suitable officer of that body as Information Officer for the purposes of this Act.

- (2) The designation of the Information Officer under subsection (1) shall be published in the Gazette.

**Designation of
Deputy information
officers**

10.(1) To enable an information holder to comply with the requirements of this Act, the head of the body shall designate a person or persons as deputy information officer or officers.

- (2) A deputy information officer has all the powers, duties and functions of the Information Officer.

- (3) Each person designated as a deputy information officer of an information holder is subject to the supervision of the Information Officer of that information holder in the performance of the powers, duties and functions of that office under this Act.

**Rights of
access**

11. Subject to this Act, every person has a right to access information from a public body.

Request for access

12. (1) A person who wishes to obtain access to information under this Act may make a request in writing to the Information Officer of the concerned public body:

Provided that no such request shall be made if any other written law provides for accessing such information.

- (2) A request under subsection (1) shall be accompanied by such reproduction fee as may be prescribed.
- (3) On receipt of a request, the Information Officer shall immediately provide a written acknowledgement of the request to the requester.
- (4) Subject to subsections (5) (b) and (c), a requester shall not be required to provide a justification or reason for requesting any information.
- (5) A request under subsection (1) shall –
- (a) provide such details concerning the information requested as are reasonably necessary to enable the Information Officer to identify the information;
- (b) if the requester believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief;

- (c) state the nature of the form in which the requester prefers access; and
- (d) if the request is made on behalf of another person, include an authorization from such person.

Duty to assist requesters

13. (1) Where a person

- (a) wishes to make a request to an information holder; or
- (b) has made a request to an information holder that does not comply with the requirement of this Act,

the Information Officer or a deputy Information Officer shall take all necessary steps to assist the person, free of charge, to make the request in a manner that complies with this Act.

(2) Where a person with a disability wishes to make a request, the Information Officer or a deputy information Officer shall take all necessary step to assist the person to make the request in a manner that meets the needs of the person with disability which complies with the Act.

Response to requests

14. (1) Subject to subsection (2), the Information Officer to whom a request is made under section 11

shall, as soon as reasonably possible, but in any event within 21 days after the request is submitted-

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

(2) Where a request related to information which reasonably appears to be necessary to safeguard the life or liberty of person, the Information Officer shall within 48 hours after the request is submitted-

- (a) determine whether to grant the request;
- (b) notify the requester of the decision in writing; and
- (c) if the request is granted give the requester access to the information.

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

shall state-

- (a) the reproduction fee or transcription fee, if any, payable.
- (b) the form in which access to the information will be given and;
- (c) that the requester may apply for a review of the reproduction or transcription fee payable or the form in which access has been granted in accordance with section 39,

(4) Subject to subsections (6) and (7), where a requester has been given notice that his or her request has been granted, that requester shall-

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

immediately be given access to the information.

(5) For the purposes of this Act, any information provided to a requester by an information holder is presumed to be true and accurate in content and in form and the requester may rely on and use that information on that basis.

- (6) Where an Information Officer grants a request under subsection (2), the requester shall be given access to the information immediately, irrespective of whether any reproduction transcription fee has been paid.
- (7) Where the information requested contains third party information, a requester may not be given access to that information until such time as any right of the third party to appeal the release of the information has expired or any appeal lodged by the third party has been finally determined.
- (8) If the request for information for information is refused, the notice referred to in subsections (1) and (2) shall-
 - (a) state the reasons for the refusal, based on the contents and substance of the request and the information considered by the Information Officer;
 - (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
 - (c) inform the requester that he or she may apply for a review of the decision in accordance with section 39.
- (9) Where an Information Officer considers that a request made under subsection (2) is not

necessary to safeguard the life or liberty of a person, the Information Officer shall within 48 hours after the request is made-

- (a) provide notice of the decision with reasons thereof to the requester;
- (b) inform the requester that, subject to the requester's right to apply for a review of the decision, the Information Officer will make a decision regarding whether to grant access to the requested information within the time period specified in subsection (1); and
- (c) inform the requester that he or she may appeal to the Commission in respect of the decision in accordance with section 67.

Extension of time

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

- (a) the request is for a large amount of information or requires a search through a large amount of an information and meeting the original time limit would unreasonably interfere with the activities of the information holder concerned; or
- (b) consultations are necessary to comply with the request that

cannot be reasonably completed within 21 days.

- (2) If any part of the information requested can be considered by the Information Officer within the time period specified under section 14(1), it shall be reviewed and a response provided to the requester in accordance with that section.
- (3) If a period to respond to a request is extended in terms of sub-section (1), the Information Officer shall forthwith after the decision to extend has been taken by him or her, but in any event within 21 days after the request is received, notify the requester in writing of that extension.
- (4) The notice in terms of subsection (3) shall state
 - (a) the period of the extension;
 - (b) adequate reasons for the extension, based on the provisions of this Act; and
 - (c) that the requester may apply for a review of the decision in accordance with section 39.

Transfer of Request

16. (1) Where a request is made to a public body requesting information which the public body does not hold and-
 - (a) which the public body knows or reasonably considers that it is held by another public body; or

- (b) the subject matter of which is more closely connected with the functions of another public body, the body to which such request is made shall transfer the request, or such part of it as may be appropriate, to that other public body.
- (2) A public body that transfers a request in accordance with subsection (1) shall-
 - (a) make the transfer as soon as practicable but in any event within five days from the date of receipt of the request; and
 - (b) immediately notify the requester of the transfer in writing.
- (3) A public body that receives a transferred request shall immediately notify the requester of receipt of the request in writing.
- (4) Where a request is transferred to another public body in accordance with subsection (1), the request is deemed to have been –
 - (a) made to the public body to which it was transferred; and
 - (b) received by that public body on the day the body to which it was originally made received it.

Deemed Refusal

- 17. If an information officer fails to give a decision on a request within the time specified in section 14(1) or, where that time period has been extended in accordance with section 15, within any extended period of time, the information officer is deemed to have refused the

request.

Deferral of access

18. (1) An Information Officer who receives a request for information may defer the provision of access to the information if-
 - (a) the information has been prepared for presentation to National Assembly, but only until the expiration of five sitting days of the National Assembly; or
 - (b) the information constitutes a report or part thereof that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the state, but only until the report has been presented or made available to that body or person or upon the expiration of 35 days from the date of the request whichever is earlier.

- (2) If an Information Officer determines to defer access to information under subsection (1), the Information Officer shall notify the requester in writing-
 - (a) of the decision as soon as possible but not later than 21 days after receiving the request;
 - (b) of the reason for the decision, including the provisions of this Act relied on;
 - (c) of the likely period for which access is to be deferred; and

(d) that the requester may, within 14 days of receiving notice, make written representations to the Information Officer regarding why the information is required before such presentation.

(3) If a requester makes a representation in terms of subsection (2)(d), the Information Officer, after due consideration of those representations, shall as soon as reasonably possible but in any event within five days, grant the request for access if there are reasonable grounds for believing that the requester will suffer substantial prejudice if access to the information is deferred for the likely period referred to in subsection (2) (c).

Information that cannot be found or does not exist

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

the Information Officer shall, as soon as possible but in any event within 21 days of the receipt of the request, notify the requester in writing that the information cannot be found or not exist.

- (2) The notice referred to in subsection (1) must include an affidavit or affirmation,

signed by the Information Officer stating the substantive details of all steps taken to find the information or to determine whether the information exists, including, but not limited to-

- (a) details of all locations for the information and person or persons that conducted those searches;
 - (b) details of any communications with any person that the Information Officer contacted in searching for the information or attempting establish the existence of the information; and
 - (c) any evidence relating to the existence of the information including-
 - (i) any evidence that the information was destroyed; and
 - (ii) the location in which the information was last known to be held.
 - (iii)
- (3) If information is found after notice is given to a requester under subsection (1), the Information Officer shall immediately notify the requester in writing and thereafter as soon as possible

but in any event within 14 days;

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

(4) If access to the information is granted, the notice referred to in subsection (3) must comply with section 14(3) and access must be given in accordance with sections 14(4) and 14(7).

(5) If access to information is refused, the notice referred to in subsection (3) must comply with section 14(8).

Form of access

20. (1) Access to information shall be given to a requester in one or more of following forms-

- (a) a reasonable opportunity to inspect the information;
- (b) a copy of the information;
- (c) in the case of information that is an article or thing from which sounds or

visual images are capable of being reproduced, the making of arrangements for the person to hear, view, record or copy those sounds or visual images;

(d) in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form provision by the information holder of a written transcript;

(e) in the case of information which is held on a computer, or in electronic or machine readable form and from which the information holder concerned is capable of producing a printed copy of the information or part of it, by supplying such a copy; or

(f) In the case of information available or capable of being made in computer readable form, by supplying a copy in that form.

(2) Subject to subsection (4), where the requester has requested access to information in a particular form,

access shall be given in that form.

- (3) A requester may amend his or her preferred form of access on receipt of notice of the reproduction fee or transcription fees payable if access is granted in the form initially requested.
- (4) If giving access to information in the form requested by the requester is likely to-
 - (a) unreasonably interfere with the operations of the information holder;
 - (b) be detrimental to the preservation of the information; or
 - (c) having regard to the physical nature of the information, render access in the requested form inappropriate, access in that form may be refused if access is given in another form authorised under this Act.
- (5) Where a person requests access to information in a particular form and for a reason specified in subsection (4) access in that form is refused but access is given

another form, the reproduction fee charged may not exceed what would have been charged if that requester had been given access in the form requested.

- (6) If a requester with a disability is prevented by that disability from reading, viewing or listening to the information concerned in the form in which it is held by the information holder, the Information Officer shall, if that requester so requests, take reasonable steps to information available in a form in which it is capable of being read, viewed or heard by the requester.

language of access

21. The information shall be provided to the requester in the language it is kept.

Fees

22. (1) A requester is not required to pay any fee-
- (a) in relation to time spent by an information holder searching for the information requested; or
 - (b) in relation to time spent by the information holder examining the information to determine whether it contains exempt

information or deleting exempt information from a document.

- (2) An information holder may charge the requester a reproduction fee may be prescribed.
- (3) Where a request is made that a written transcription be produced of any information provided to the requester, the information holder may recover the costs of such transcription at such rate as may be prescribed from the requester.

PART III – EXEMPTIONS

Refusal

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

Personal Information of a third party

- 24. (1) Subject to subsection (2), the Information Officer may refuse a request for information if its release would involve the unreasonable disclosure of personal information about a natural third party, including a deceased individual.
- (2) A request shall not be refused in terms of subsection (1) where-
 - (a) the third party does not make a representation under section 70(3)

stating why access to the information should not be granted;

- (b) the third party consents to the disclosure;
- (c) the third party has been deceased for more than 10 years;
- (d) the information is in the public domain;
- (e) the information relates to the physical or mental well-being of an individual who is under the care of the requester and who is-
 - (i) under the age of 18 years; or
 - (ii) in capable understanding the nature of the request and giving access would be in the individual's interests;
- (f) the information is about a deceased individual and the requester is-
 - i. the individual's next of kin or legal representative;
 - ii. making the request with the written consent of the individual's next of kin or legal representative;
 - iii. the executor of the deceased's estate; or
 - iv. the trustee of a trust which can

benefit from the deceased individual's estate;

- (g) the information relates to the position or functions of an individual who is or was an official of the information holder or any other public body;
- (h) the information was given to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it was given, that the information belongs to a class of information that would or might be made available to the public.

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

25. (1) Subject to subsection (2), an information officer may refuse a request for information if,

- (a) it contains trade secrets of the information holder or third party;
or
- (b) it contains information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or third party.
- (c) allowing access would harm the patents and copyrights of the information holder or third

party.

(2) A request may not be refused in terms of subsection (1) where-

- (a) the disclosure of the information would facilitate accountability and transparency of decisions taken by the information holder;
- (b) the information relates to the expenditure of public funds;
- (c) the disclosure of the information would reveal misconduct or deception;
- (d) the third party consents to the disclosure; or
- (e) the information is in the public domain.

**Protection of life
health, safety
and privacy of
an individual**

26. The Information Officer may refuse a request where the release of the information is likely to endanger the life, health, safety or privacy of an individual.

**National
security
and defence**

27. (1) The Information Officer may refuse to grant access to information where to do so would cause substantial prejudice to the security or defence of the state.

(2) For the purpose of this section,

security or defence of the state
means-

- (a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities;
- (b) intelligence relating to
 - (i) the defence of the state; or
 - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);
- (d) the identity of a confidential source; or
- (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons.

(3) For the purpose of this section,

subversive or hostile activities
means-

- (a) an attack against the state by a foreign element;
- (b) acts of sabotage or terrorism aimed at the people of the state or a strategic asset of the state, whether inside or outside the state; or
- (c) a foreign or hostile intelligence operation.

International relations

28. (1) The information Officer may refuse to grant access to information
- (a) supplied by or on behalf of the state to another state or an international organisation in terms of an international agreement with that state or organisation which requires the information to be held in confidence;
 - (b) required to be held in confidence by international law;
 - (c) on the positions adopted or to be adopted by the state, another state or an international organisation for the purpose of present or future international negotiations; or
 - (d) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of

the country,

if the release of the information would cause substantial prejudice to the international relations of the state.

**Economic
interest
of the state**

29. An information officer may refuse to grant access to information which relates to the determination of
- (a) currency or exchange rates;
 - (b) interest rates; or
 - (c) taxes, including duties of customs or excise

if to do so would cause substantial harm to the economic interests of the state or the ability of the state to manage the economy.

**Law
Enforcement**

30. The Information Officer may refuse to grant access to information, if such access would cause prejudice to-
- (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - (c) the administration of justice;
 - (d) the assessment or collection of any tax or duty; or
 - (e) the security and life of an informant relating to a crime or investigation.

**Privilege
communications
and documents**

31. The Information Officer may refuse to grant access to information if it-

- (a) consist of confidential communication between a medical practitioner and his or her patient.
- (b) consists of confidential communication between a lawyer and his or her client;
- (c) consists of confidential communication between a journalist and his or her source; or
- (d) would otherwise be privileged from production in legal proceedings,

unless the patient, client, source or person, as the case may be, entitled to the privilege consents to the release or has waived the privilege.

**Academic or
examination
professional
or recruitment
processes**

32. (1) An information officer may refuse a request for information relating to an academic or professional examination or recruitment or selection process prior to the completion of that examination or recruitment or selection process if the release of the information is likely to jeopardise the integrity of that examination or recruitment or selection process.

(2) Information referred to under subsection (1) shall be released on request after the academic or professional examination or recruitment or selection process has been completed.

**Cabinet
Proceedings**

33. (1) An Information Officer may refuse a request for information relating to a

submitted to the Cabinet for consideration and minutes and decisions of the Cabinet unless the Cabinet Secretary authorises such release.

Severance

- 34 (1) Where a portion of a record or document containing requested information is exempt from release under this Part, the exempt portion of the information must be severed or redacted from the record or document and access to the remainder of the information must be granted to the requester.
- (2) Where an information officer severs or redacts any portion of a record or document, the information officer must indicate the length or amount of information severed or redacted in the response to the requester.

**Public
interest
override**

- 35.(1) Notwithstanding any of the exemptions in this Part, an information holder may only refuse a requester access to information if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably outweighs the public interest in the release of the information.
- (2)The information officer shall consider whether subsection (1) applies in relation to any information requested before refusing access on the basis of an exemption stated in this Part.

- (3) The exceptions in this PART of the Act do not apply in case of serious violations of human rights or crimes against humanity.

Burden of proof

36. An information officer that refuses to grant access to information requested has the burden of proving that-
- (a) such information is exempt from disclosure under this Act; and
 - (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest in the release of the information.

Notice to third parties

37. (1) If an Information Officer is considering a request for access to personal information of a natural third party or commercial or confidential information of a third party, the Information Officer shall take reasonable steps to inform the third party to whom or which the information relates or where the third party is deceased, the next of kin or legal representative of the third party, in writing of the request as soon as reasonably possible, but in any event within eight days after the request is received.
- (2) Subject to subsection (7), when informing the third party under subsection (1), the Information Officer shall include in the notice-
- (a) the nature of the request and the content of the information;

- (b) that the third party may consent to the release of the information or make a representation as to why access to the information should not be granted in accordance with subsection (3);
 - (c) that if the third party does not make a representation as to why access to the information should not be granted, access will be given;
 - (d) that the information officer may give access even if the third party makes a representation under subsection (3); and
 - (e) that if the information officer determines to release the information, the third party may lodge an appeal under section 39.
- (3). Subject to subsection (10), within 10 days of being informed of a request under subsection (1), a third party may-
- (a) inform the Information Officer in writing that he or she consents to the release of the information to the requester; or
 - (b) make a representation to the Information Officer in writing stating why the request for access to the information should not be granted.
- (4) Where a third party does not provide a response under subsection (3) within 10 days of receipt of the intimation or cannot be located after reasonable steps have been taken to do so, the information officer may assume that the third party does not object to the information being

granted to the requester

- (5) On determining whether to grant the requester access to the personal or commercial or confidential information of the third party, the Information Officer shall notify the third party in writing of the decision as soon as possible, but in any event within three days after the decision.
- (6) If the Information Officer has granted the request for access in circumstances where the third party objected to the granting of access, the notice referred to in subsection (5) shall state-
 - (a) the reasons for granting the request;
 - (b) that the third party may apply for a review of the decision under section 40 within 10 days of receipt of the notice; and
 - (c) that the requester will be granted access to the information unless an appeal is lodged within the 10-day period.
- (7) If the Information Officer is considering a request which the Information Officer shall respond to within 48 hours under section 14(2) and that information contains personal information of a natural third party or commercial or confidential information of a third party, the Information Officer shall take reasonable steps to inform the third party to whom or which the record relates, in writing of-
 - (a) the nature of the request and the content of the information;

- (b) the name of the requester; and
 - (c) whether the Information Officer released the information to the requester; and
- (8) Where the Information Officer shall respond to a request within 48 hours under section 14(2), a third party shall not have the right to make a representation to the Information Officer stating why the request should not be granted.

Extent of the exemptions 38. The exemptions in this Part are not exhaustive any, may from time to time be expanded by the Minister.

PART IV-REVIEW OF DECISIONS

Rights of review 39. (1) The head of the information holder may, on application, review a decision taken by the Information Officer under this Act.

(2) A requester may apply for a review of any decision of an Information Officer.

(3) A third party may apply for a review of a decision of an Information Officer to grant access to information containing its third party information.

- (4) An application for review under subsection (2) shall be filed with the Information Officer to the public body within 60 days of the receipt of the relevant decision of an Information Officer.
- (5) An application for review under subsection (3) shall be filed with the Information Officer of the relevant body within 10 days of the receipt of a decision of an Information Officer.
- (6) An application for review shall identify the request and decision of the Information Officer which is the subject of the review.
- (7) If an application under subsection (1) is lodged after the expiry of 60 days, the Information Officer may, upon good cause shown and with the approval of the head of the information holder, allow the late lodging of the application.
- (8) As soon as possible, but in any event within five days after receipt of a review application, the Information Officer shall submit to the head of the information holder-
 - (a) the review application,
 - (b) the Information Officer's reasons for the decision; and
 - (c) the information that is the subject of the review, and notify the requester and, where relevant, the third party in writing that the documents have been so submitted.

Decision on review 40. (1) The head of the information holder to whom a review application is submitted in accordance with section 39 shall as soon as reasonably possible, but in any event within 15 days after the review application is received by the Information Officer-

- (a) make a decision
- (b) notify the requester or the third party, as the case may be, of that decision in writing.

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

- (a) the reproduction fee or transcription fee, if any payable;
- (b) the form in which access will be given; and
- (c) that the requester may appeal to the Commission under section 68 against the decision in respect of the reproduction fee, or transcription fee payable or the form of access and the process for lodging that appeal.

(3) Subject to subsection (4), where a requester has been given notice under subsection (2), that requester shall-

- (a) if a reproduction fee or transcription fee is payable upon payment of that fee; or
- (b) if no reproduction fee or transcription fee is payable, immediately, be given access to the information.

- (4) Where the head of the information holder has determined to release information containing third party information, the requester may not be granted access to that information until such time as any right of the third party to appeal against the decision under section 67 has expired or any appeal lodged by the third party has been finally determined.
- (5) If the head of the information holder determines not to grant access to the information, the notice to the requester referred to in subsection (1) shall-
- (a) state reasons for the refusal, based on the contents and substance of the request and the information considered by the head of the information holder;
 - (b) contain a reference to specific provisions of this Act upon which the refusal is based ; and
 - (c) inform the requester that he or she may appeal to the Commission against the decision in accordance with section 58, and the process of lodging that appeal-
- (6) Where a third party has lodged an application for review, the notice referred to in subsection (1) shall state –
- (a) reasons for the decision; and
 - (b) that the third part may appeal to the Information Commission under section 67 against the

decision, and the process for lodging that appeal.

- (7) If the head of the information holder fails to give a decision on a review application within the time specified in subsection (1), the head of the information holder is deemed to have affirmed the original decision of the Information Officer and the requester may appeal to the Commission under Section 67.

PART V- INFORMATION COMMISSION

Establishment of the Information Commission 41. (1) There is hereby established a body to be known as the Information Commission.

(2) The Commission shall be a body corporate having perpetual succession, capable of acquiring, holding and disposing of property, being sued in its corporate name and subject to this Act of performing all functions as bodies corporate may by law perform.

(3) The Commission shall have a common seal the use of which shall be authenticated by the signatures of the Chairperson and any other member of the Commission generally or specifically authorized by the Commission for that purpose.

- (4) Every document purporting to be an instrument executed or issued by or on behalf of the Commission and to be sealed with the common seal of the Commission in the manner stated in subsection (1) shall be deemed to be so executed or issued without further proof unless the contrary is proved.
- (5) In appropriate cases the seal may be affixed to documents outside The Gambia.

**Composition
of the
Commission**

- 42. (1) The Commission shall consist of five Information Commissioners one of whom shall be the Chairperson.
- (2) Members of the Commission shall be appointed by the President on the recommendation of the Minister and with the approval of the National Assembly.
- (3) The Commissioners shall hold office for a term of five years and shall be eligible for re-appointment to a further term of five years only.

**Criteria
for appointment
of commissioners**

- 43. (1) Information Commissioners shall:
 - (a) be fit and proper persons;
 - (b) have requisite academic qualifications and working experience;

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

**Resignation
of a Commissioner
and termination
of office**

44. (1) A Commissioner may resign upon giving a month's written notice to the President.

- (2) The office of a Commissioner shall become vacant if he or she,
- (a) is absent from three meetings of the Commission without permission from the Chairperson and in the case of the Chairperson if he or she is absent from three meetings without the permission of the Minister,
 - (b) is declared insolvent or adjudged bankrupt,

- (c) is convicted of a serious crime,
- (d) is declared to be of unsound mind or physically incapable of carrying out the functions and duties of a Commissioner,
- (e) is found to be incompetent,
- (f) dies; or
- (g) commits gross misconduct.

(3) Where a vacancy arises, the person appointed to fill such vacancy shall hold office for the remainder of the term for which his or her predecessor in office would have held office if such vacancy had not occurred.

Inquiry before termination of appointment

45. (1) The President shall only remove a Commissioner from office after an independent inquiry is conducted into the allegation leveled against the Commissioner and the report of the independent inquiry confirms the allegation.
- (2) A decision to terminate the appointment shall be approved by the National Assembly before the Commissioner can be terminated.

Limitation on outside work

46. A Commissioner shall not hold, any other job, occupy or engage in any trade or profession for financial gain, or any political activity.

Remuneration 47. The salary of Commissioners shall be approved by the National Assembly.

Independence of the Commission 48. (1) The Commission shall be independent and autonomous and shall be accountable only to the National Assembly for the execution of its mandate, operations and performance.

(2) Subject to subsection (1), the Commission shall not in the performance of its functions under this Act be subject to the directions or control of any other person or authority.

Staff of the Commission 49. (1) The Commission shall be assisted by a secretariat consisting of the Executive Secretary and such other administrative and technical staff as may be required for the efficient performance of its functions under this Act.

(2) The Executive Secretary and other staff of the Commission shall be appointed by the Commission on such terms and conditions as the Commission may determine.

Duties of the Executive Secretary 50. (1) Subject to the direction and general control of the Commission, the Executive Secretary,

(a) shall be responsible for carrying out of the policy decisions of the Commission, the-day-today administration and management of the affairs of the Commission and the control of the other staff of the Commission;

(b) may sign documents on behalf of the Commission; and

- (c) perform such other duties as may be assigned by the Commission.
- (2) The Executive Secretary shall unless otherwise directed in writing, attend all meetings of the Commission.

Power of the Executive Secretary

51. The Executive Secretary shall formulate rules and procedures providing for-
- (a) the control, direction and administration of the Commission;
 - (b) the discipline, training, classification and promotion of other staff of the Commission;
 - (c) the terms and conditions of service; and
 - (d) such other matters as the Executive Secretary may consider necessary or expedient for preventing the abuse of power or neglect of duty by staff of the Commission.

Engagement of Experts

52. (1) The Commission may, whenever it deems appropriate convene a panel of experts for the purpose of exercising any power, duty or function under this Act.
- (2) Any panel of experts convened shall include representatives from appropriate civil society and other interest groups.

Immunity of the Commission and staff

53. (1) No criminal or civil proceedings shall be brought against the Commission or against any person

acting on its behalf, or under the direction of the Commission, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commission under this Act.

- (2) A staff who discloses wrongdoing within the Commission may not be subject to any punishment in the course of their employment by reason of the disclosure.

PART VI- POWERS AND DUTIES OF THE COMMISSION

Powers and duties

54. (1) The Commission shall have the power to determine the nature, process and undertaking necessary to discharge its mandate in terms of this Act, including all work necessary for the promotion, monitoring and protection of the right to access information.
- (2) The Commission shall at its own discretion and power,
- (a) resolve a matter through negotiation, conciliation, or mediation as it deems such recourse appropriate;
 - (b) determine the need for, form of and type of investigation required for the determination of any matter;
 - (c) make any determination it considers just and equitable including issuing recommendation, imposing such fines or penalties in matters before it as it

considers appropriate;

- (d) dismiss a matter it considers manifestly vexatious; and
- (e) authorise or undertake any action it deems necessary or appropriate for the execution of its mandate under this Act;

(3) The Commission may-

- (a) determine and issue general directions for the hearing of a matter including notification of parties;
- (b) issue specific directions where issues of sensitivity to the state are concerned;
- (c) issue specific directions in matters concerning confidential information or minor circumstances which it deems appropriate;
- (d) decide on all matters relating to the need for, form of, issuing and service of notices and communication; and
- (e) decide on issues of representation where necessary.

(4) The Commission has the power to-

- (a) issue written orders obliging the production of information;
- (b) examine, reproduce, take extracts from or hold information for as

long as is necessary;

- (c) require the production of information to which access has been refused on the basis of an exemption under PART III, for the purpose of deciding whether it is an exempt document;
- (d) limit access to information to parties in terms of this Act;
- (e) take any such action or issue and serve notices as may be appropriate for the resolution of any matter before it.

Referral Powers

55. (1) The Commission has the power to make direct referrals to the High Court or the Supreme Court on questions of law or such other matters it considers appropriate.

(2) The Commission may where it deems necessary bring actions in its name before the High Court or Supreme Court or join any proceedings in these Courts which relate to the implementation of the mandate of the Commission.

General duties of the Commission

56. (1) The Commission has a duty to-

- (a) conduct matters with a little technicality or formality and as expeditiously as possible;
- (b) consider the needs of persons who wish to make protected disclosures, minors, and other vulnerable groups;

- (c) hold hearings in public unless it is inappropriate to do so; and
- (d) publish quarterly its findings, recommendations, orders, decisions and directives.

(2) The Commission shall prepare a guide to this Act in plain language to assist users in requesting information.

Annual Report to the National Assembly

57. The Commission shall prepare and send to the National Assembly at the end of each year an annual report which shall include complaints about offences noted during investigation under this Act and findings of any audit undertaken by the Commission.

Promotion

58. (1) The Commission has the mandate to promote awareness, educate and popularise the right of access to information.

(2) In promoting the right of access to information the Commission shall

- (a) assess all implementation plans required in terms of section 61 to ensure information holders have clear obligations and processes which support awareness raising and education interventions at community level including disadvantaged groups;
- (b) consult and collaborate with civil society organisations and interest groups;

- (c) provide recommendations and guidelines to information holders for internal training of personnel, and provide training on request, if resources are available;
- (d) monitor internal training of staff within public bodies and relevant private bodies and issue notices for mandatory training where necessary;
- (e) assist both requesters and information holders on matters of interpretation of the Act;
- (f) develop such material as it deems necessary to advance promotion of access to information; and
- (g) make public and widely disseminate the annual report of the Commission.

**Research and
Law reform**

59. (1) The oversight mechanism shall take such measures as are necessary to ensure that all proposed or emerging legislation of any status, regulations and practices are aligned to this Act.
- (2) The oversight mechanism shall, in regard to its obligations to its obligations under subsection (1), submit recommendations for reform on proposed or emerging legislation to the relevant authorities.

- (3) The Commission may undertake or commission any research it deems necessary or appropriate for the attainment of the objectives of this Act.
- (4) Reports of recommendations for reform and any research undertaken by the Commission shall be presented to National Assembly in the annual report of the Commission.

Monitoring 60. (1) Information holders are obliged to provide such reports as are required by this Act to the Commission.

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

(3) The Commission has the discretion to request any further information from information holders to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

Implementation plan 61. (1) Every public body and relevant private body shall submit an implementation plan to the Commission within 18 months of the

commencement of this Act, or within 6 months of the establishment of the body, whichever is the earlier, detailing

- (a) its operational plan to implement its obligations under this Act; and
- (b) an information publication plan in respect of its proactive disclosure responsibilities in section 7.

(2) The plan referred to in subsection (1) shall include

- (a) budgetary projections for implementation against available resources for implementation;
- (b) staff estimates per capita and identification of said staff;
- (c) processes, mechanisms and policies to facilitate and enhance implementation of this Act, including measures to secure optimal responsiveness to requests for information and record management;
- (d) mechanisms it will use to monitor and track applications, notifications and responses;
- (e) steps to secure continued capacity building and compulsory training plans for staff;
- (f) plans for public consultations, community outreach, information sharing and

awareness raising;

- (g) plans for, and frequency of self-initiated implementation audits; and;
 - (h) for the purpose of subsection(1)(b)
 - (i) policies and plans for the purposes of realising its proactive disclosure obligations, including information classification processes; and
 - (ii) measures to ensure frequent and accurate proactive disclosure of information.
- (3) The Commission may call for further plans or amended plans at its discretion.
- (4) The oversight mechanism may issue binding directives on specific plans for enhanced implementation.
- (5) The oversight mechanism may require the plan produced in terms of subsection (1) to be reviewed within such time frames and at such frequencies as it deems necessary.

Publication of Information Manual 62. (1) As soon as possible but in any event within two years of commencement of this Act, or within 6 months of the establishment of the body, whichever is the earlier, all information holders must prepare information manuals to be widely disseminated, including in

the official Gazette, and submitted to the Commission.

- (2) The manual referred to in subsection (1) must include the categories of information that the information holder will proactively disclose and those which will be made available only through the formal request process.
- (3) With regard to proactively disclosed information, the Commission must from time to time determine
 - (a) measures to be undertaken to ensure accessibility of information;
 - (b) accessibility guarantees in terms of medium, format and language;
 - (c) measures to ensure accuracy of information; and
 - (d) additional categories of information not listed in section 7 that must be proactively disclosed.
- (4) With regard to all other information, the Commission must determine –
 - (a) measures to be adopted to ensure periodic and frequent updating of all categories of information held by the information holder;
 - (b) measures to be undertaken to ensure accessibility of information;

- (c) accessibility guarantees in terms of medium, format and language; and
 - (d) measures to ensure accuracy of information.
- (5) The information manual must, together with the information required in subsection (2), include the following information about the information holder
- (a) a description of the structure and its functions, powers and duties;
 - (b) physical and electronic contact details of the information officer and any deputy information officers;
 - (c) the plain language guidelines developed by the Commission,
 - (d) a description of any arrangement or provision for a person to make recommendations or to otherwise participate in the formulation of policy or the exercise of powers or performance of duties by the information holder;
 - (e) a description of remedies available in respect of an act or omission by the information holder; and
 - (f) the manner of payment of reproduction fees, translation fees and transcription fees.
- (6) An information holder must
- (a) update and publish its information manual whenever material changes to the information therein occur, but at least every 2 years; and

(b) submit the updated information manual to the Commission.

Annual reports to the Commission

63. (1) The Information Officer of each public body and relevant private body must annually, but no later than the end of the first quarter, submit to the Commission a report stating in relation to the body in respect of the preceding year:
- (a) the number of requests for access received;
 - (b) the number of requests for personal information received;
 - (c) the number of requests for access granted in full;
 - (d) the number of requests for access granted in terms of the public interest override in section 35;
 - (e) the number of requests for access refused-
 - (i) in full; and
 - (ii) in part;
 - (f) the number of times each provision of Part III was relied on to refuse access in full or part;
 - (g) the number of cases in which the periods stipulated in this Act were extended,
 - (h) the number of internal appeals lodged with the relevant

authority;

- (i) the number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 17;
- (j) the number of cases in which, as a result of an internal appeal, access was given to information;
- (k) the number of appeals referred to the Commission and the outcome of those appeals;
- (l) the number of appeals referred to an appropriate court and the outcome of those appeals;
- (m) a description of the steps or efforts taken by the head of the body to encourage all officers of that body to comply with the provisions of this Act;
- (n) any facts which indicate an effort by the body to administer and implement the spirit and intention of the Act according to its submitted plan;

- (o) particulars of any penalties issued against any person under this Act;
 - (p) particulars of any disciplinary action taken against any person under this Act;
 - (q) particulars of any difficulties encountered in the implementation of this Act in terms of the operations of the body, including issues of staffing and costs; and
 - (r) recommendations for reform, or amendment of this Act, other laws, regulations or practice relevant to the optimal realisation of the objectives of this Act.
- (2) The Commission may impose penalties on public bodies and relevant private bodies that do not comply with the annual reporting obligation.
- (3) All public bodies shall incorporate the report submitted to the Commission under this Act into their annual reports to the National Assembly.

Proactive disclosure reports to the Commission 64. The Information Officer of each public body shall annually, but no later than the end of the first quarter, submit to the Commission a report stating the categories of information that have been proactively disclosed by the public body, including documents referred to in section 8, and the place where the

public can access that information.

**Auditing
powers of
the Commission**

65. (1) The Commission must audit compliance by an information holder with this Act.
- (2) The powers of the Commission to conduct an audit under subsection (1) include the power to
- (a) conduct inspections;
 - (b) undertake any investigation it deems appropriate in furtherance of the audit;
 - (c) engage with staff of the body;
 - (d) request copies of any information;
 - (e) access any information it deems necessary to undertake the audit; and
 - (f) penalise non-compliance.
- (3) The obligations of the Commission in this regard include the duty to
- (a) notify the information holder of the audit;
 - (b) issue time-bound recommendations to the information holder;
 - (c) monitor implementation of its recommendations; and
 - (d) investigate reasons for non-compliance, if

- Effect of non-compliance** 66. (1) In the event of non-compliance by an information holder with any of the obligations under this Part, the Commission may issue a notice specifying a timeframe for compliance with the obligation and any further directives as the Commission considers necessary or appropriate.
- (2) If the information holder fails to comply with a notice issued by the Commission under subsection (1), the Commission may impose such a fine as it considers necessary or appropriate.

PART VIII – APPEAL TO THE INFORMATION COMMISSION

- Appeal to the Commission** 67. A requester or a third party may appeal against the decision of the head of the Information holder in writing to the Commission.
- Direct appeal** 68. (1) A requester who requests access to information reasonably believed to be necessary to safeguard the life or liberty of a person and is
- (a) refused access to the record within 48 hours of the request; or
 - (b) receives no notice of the decision of the Information Officer within 48 hours of the request,

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

- (2) Where the oversight mechanism receives an application under subsection (1), the oversight mechanism may, upon assessment of the facts determine the matter summarily or undertake further investigation, if necessary, before such determination.
- (3) Any staff member of an information holder, who wishes to report wrongdoing under this Act, may contact the Commission without exhausting any applicable internal procedures.

Notice of intention to investigate or hear a matter

69. The Commission shall notify the head of the information holder concerned of the intention to carry out investigation or hearing and on the substance of the application, as is appropriate, before commencing an investigation or hearing under this Act.

Notice to third parties

70. (1) The head of an information holder must, immediately on receipt of a notice of a hearing or investigation from the oversight mechanism, inform the oversight mechanism of all third parties to whom the information relates.
- (2) Subject to subsection (3), the Commission shall issue such directions as are necessary to ensure, to the extent reasonably possible, that third parties in matters before it are notified of hearings or investigations.

- (3) The Commission has the discretion to dispense with notification to third parties where it considers it necessary.

**Right to
make
representa-
tion**

- 71. (1) In any matter before the Commission, a reasonable opportunity to make representations shall be given to
 - (a) the person who made the application, and the requester, if he or she did not make the application;
 - (b) the head of the information holder concerned; and
 - (c) a third party if the information requested contains third party information and the third party can reasonably be located.

- (2) The right to be present during a hearing must be upheld except when, in the view of the Commission, the circumstances dictate the holding of a hearing in camera.
- (3) With respect to any matter before it, the Commission has the power to:
 - (a) summon witnesses, heads of organs of state or any person where necessary;
 - (b) summon expert witnesses where appropriate;
 - (c) allow interested parties on application to join proceedings;
 - (d) provide assistance to applicants where appropriate;
 - (e) allow relevant persons to participate in hearings through any medium they chose;
 - (f) compel any witness or evidence it considers necessary for the resolution of a matter; and
 - (g) administer oaths and receive any such evidence it deems necessary under oath or on affidavit.

Notices and Communication

72. (1) The Commission must serve notice of the finding of an investigation, audit, summary finding, application or decision on an hearing or of a referral to an appropriate court, including any rights of appeal, on all relevant parties.
- (2) Where in the view of the Commission, service of the notice

of the finding will cause prejudice due to the sensitive nature of exempt information, such finding must be amended in a manner considered appropriate by the Commission.

- (3) The Commission may in appropriate circumstances decide to dispense with notification and or communication where it may
- (a) prejudice the conduct of an investigation of a breach or possible breach of the law;
 - (b) prejudice the enforcement or administration of the law;
 - (c) endanger the life or physical safety of a person;
 - (d) cause substantial unjustifiable prejudice to the commercial interests of a private business or private individual; or
 - (e) impair relations between states.

**Orders,
decisions
and
directives**

73,(1) The Commission may issue binding orders or recommendations on any matter before it, including

- (a) affirming the decision of the information holder;
- (b) varying the type of access originally granted or requested;
- (c) setting aside the decision of the information holder

and making a ruling;

- (d) requiring the information holder to take such steps as may be necessary to secure compliance with its obligations under the Act;
- (e) imposition of a fine not exceeding D10,000 in cases of a failure by an information holder to comply with an obligation under the Act;
- (f) mandating negotiation, conciliation, and arbitration; and
- (g) imposing a contempt order, a cost order, or a summary order or any other order it considers just and equitable.

(2) The Commission may issue such directives it deems necessary to enforce its decisions.

Content of recommendations findings, orders, decisions and directives

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

Third party information released is in public domain

75. (1) Subject to subsection (2) a third party information which a requester is granted access shall thereafter be an information in the public domain.

(2) Where a requester is granted access to his or her personal information or personal information of his or her next of kin or someone for whom he or she is the legal personal representative, that information will not be in the public domain by reason of that grant of access.

Offences

76. (1) A person who with intent to deny a right of access to information under this Act

(a) destroys, damages or alters information;

(b) conceals information;

(c) falsifies information or makes a false record;

(d) obstructs the performance by an information holder of a duty under this Act;

(e) interferes or obstructs the work of the Commission; or

(f) directs, proposes, counsels or causes any person in any manner to do any of the above,

commits a criminal offence and is liable on conviction to a fine of D100,000 or imprisonment or both.

PART VIII- FINANCIAL PROVISIONS

Funds of the Commission

76. The funds of the Commission shall consist of-
- (a) such moneys as may be appropriated by the National Assembly pursuant to an appropriation Act for the purposes of the Commission;
 - (b) any monies received by the Commission by way of donations, gifts or grants, from any legal sources, whether domestic or foreign, and
 - (c) any proceeds from sale, lease or transfer of movable or immovable property of the Commission.

Accounts and Audit

77. (1) The financial year of the Commission shall be the calendar year.
- (2) The Commission shall maintain proper accounts and other relevant records and prepare the statement of accounts in the form and manner approved by the Auditor General
 - (3) The accounts of the Commission shall be audited by the Auditor General.
 - (4) Where the accounts and the statement of accounts of the Commission in respect of a financial year have been audited, the Commission shall furnish, not later than 3 months after the end of the financial year to Minister and the Minister responsible for finance, a copy of the statement together with a copy of any report by the Auditor General on the statement of accounts of the Commission.

**Annual
report**

78. The Commission shall, as soon as possible after the expiration of each financial year and in any event not later than 31st day of March in any year, submit to the Minister, and the Minister responsible for finance; annual report dealing generally with the administration and its activities during the preceding financial year and the Minister shall cause the report to be laid before the National Assembly.

**Minister to
make regula-
tions**

79. (1) The Minister may make regulations for carrying into effect the purposes of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1) the regulations made may provide for
- (a) term of office, salary and allowances of the Commissioners and staff of the Commission;
 - (b) fees for request for information and the manner of payment;
 - (c) fees for reproduction or transcription of information and the manner of payment;
 - (d) the manner of publication of any matter under the Act.

