

AN ACT TO PROVIDE FOR FREEDOM OF ACCESS TO OFFICIAL INFORMATION; SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED: THE ESTABLISHMENT OF THE FREEDOM OF INFORMATION COMMISSION: THE APPOINTMENT OF INFORMATION OFFICERS; SETTING OUT THE PROCEDURE FOR MAKING REQUESTS FOR INFORMATION AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

**Preamble** WHEREAS there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of freedom of information and thereby actively promote a society in which the people of Sri Lanka have effective access to information to enable them to more fully exercise and protect all their rights:

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

**Short title** 1. This Act may be cited as the Freedom of Information Act, No. .... of 2010 and shall come into operation the day immediately following the date of the expiration of a period of twelve months of the date of certification in terms of Article 80 of the Constitution. A Notification regarding the date on which this Act is due to come into operation shall be published, not less than three months prior to such date.

### **Application of the Provisions of the Act**

**Right of access to information** 2. Subject to the provisions of subsection (2) of section 3 and section 4 of this Act, every citizen shall have a right of access to official information which is in the possession, custody or control of a public authority.

**Provisions of this Act to prevail over other written law except in certain circumstances** 3. (1) The provisions of this Act shall have affect notwithstanding anything to the contrary in any other written law, and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

(2) Notwithstanding the provisions of subsection (1) the provisions of this Act shall not apply in respect of any official information in the possession, custody or control of any public authority established by any written law where the members, officers or servants of such public authority are prohibited under such written law from disclosing or releasing any information received by them or which came to their knowledge in the

performance and discharge of their duties and function under such written law.

### **Denial of Access to Official Information**

#### **When right of**

#### **access may be denied**

4. (1) A request under this Act for access to official information shall be denied, where –

- (a) the information relates to any matter in respect of which a decision by the Government is pending;
- (b) the disclosure of such information would constitute an invasion of personal privacy of any person, unless –
  - (i) the person has consented in writing to such disclosure; or
  - (ii) the disclosure of such information is considered to be vital in the public interest;
- (c) the disclosure of such information –
  - (i) would cause serious harm to the defence of the State or its territorial integrity or national security;
  - (ii) would cause danger to life or safety of any person; or
  - (iii) would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State or international organisation, where the information was given to or to or obtained from such State or international organisation in confidence.unless the disclosure of such information is considered to be vital in the public interest;
- (d) the information relates to the assessment or collection of revenue by the Inland Revenue Department;
- (e) the disclosure of such information would reveal any trade secrets or harm the commercial interests of any person, unless –
  - (i) the person has consented in writing to such disclosure; or
  - (ii) the disclosure of such information is considered to be vital in the public interest;
- (f) the information could lead to the disclosure of any medical secrets or medical records relating such person, unless that person has consented to such disclosure;
- (g) the information is subject to professional privilege;

- (h) the information is required to be kept confidential by reason of the existence of a fiduciary relationship;
- (i) the disclosure of such information could cause grave prejudice to—
  - (i) the prevention or detection of any crime; or
  - (ii) the apprehension or prosecution of offenders; or
- (j) the information relates to an examination conducted by the Department of Examination or a Higher Educational Institution which is required to be kept confidential, including any information relating to the results of any qualifying examination held by such Department or Institution.

(2) Notwithstanding the provisions of subsection (1), a request for information shall not be denied on any of the grounds referred to therein, other than the grounds specified in paragraphs (e), (f) and (g) of that subsection, if the information requested for is over ten years old.

(3) A disclosure by any public authority of any information which is prohibited from being disclosed under subsection (1) shall be an offence under this Act and the officer in such public authority who was responsible for such disclosure shall on conviction be liable to a fine not exceeding five thousand rupees and in addition to any disciplinary action that may be taken against such officer by such public authority.

Provided however, no action shall be instituted against such officer where the officer discloses such information in good faith.

**Denial of Request**

- 5. Where a request for information is denied on any of the grounds referred to in section 4 access may nevertheless be given to that part of any record or document which contains any information that is not prevented from being disclosed under that section and which can reasonably be severed from any part that contains information denied from being disclosed.

**Duties of Ministers and public authorities**

**Public authorities to maintain and preserve its records**

- 6. (1) It shall be the duty of every public authority to maintain all its records in such manner and in such form as is consistent with its operational requirements duly catalogued and indexed.

(2) All records being maintained by every public authority shall be preserved –

- (a) in the case of new records which are opened after the coming into operation of this Act for a period of not less than ten years from the date on which such record is opened; and
- (b) in the case of those records already in existence on the date of the coming into operation of this Act for a period of not less than ten years from the date of the coming into operation of this Act.

**Ministers duty to  
publish a report**

7. (1) It shall be the duty of –

- (a) the President and of every Minister to whom any subject has been assigned under paragraph (1)(a) of Article 44 of the Constitutions and
- (b) the President in respect of any subject or function of which the President remains in charge, under paragraph (2) of Article 44 of the Constitution.

to publish once in every two years and in such manner as may be determined by him, a report containing the following information –

- (i) particulars relating to the organization, functions, activities and duties of the Ministry of such Minister, and of all the public authorities falling within the functions assigned to such Minister;
- (ii) the powers, duties and functions of officers and employees of the Ministry and the public authorities referred to in paragraph (a), and the procedure followed by them in their decision making process;
- (iii) the norms set for the Ministry and the public authorities referred to in paragraph (a), in the discharge of their functions, performance of their duties and exercise of their powers;
- (iv) rules, regulations, instructions, manuals and any other categories of records under the control of the Ministry and of the public authorities referred to in paragraph (a), which are used by its officers and employees in the discharge of their functions, performance of their duties and exercise of their powers;

(v) the details of facilities available to citizens for obtaining official information from the Ministry and the public authorities referred to in paragraph (a); and

(vi) the name, designation and other particulars of the Information Officer or Officers appointed to the Ministry and to the public authorities referred to in paragraph (a).

(2) Notwithstanding the provisions of subsection (1), it shall be the duty of the President and of every Minister as the case may be within six months of the coming into operation of this Act, to publish in such manner as may be determined by the President or such Minister a report containing the information referred to in paragraph (a) to (f) of that subsection.

**Duty of a Minister to inform public about the initiation of projects.**

8. Prior to the commencement of any work or activity relating to the initiation of any project, it shall be the duty of the President or the Minister as the case may be, to whom the subject pertaining to such project has been assigned to communicate to the public generally and to any persons who are particularly likely to be affected by such project in such manner as specified in guidelines issued for that purpose by the Commission all such information relating to the project that are available as on the date of such communication.

For the purpose of this section, “project” means any project the value of the subject matter of which exceeds :-

(a) in the case of foreign funded projects, one million united states dollars; and

(b) in the case of locally funded projects five million rupees.

**Duty of public authorities to submit reports etc.**

9. (1) It shall be the duty of every public authority to submit to the Commission annually a report containing the following information.

(a) the number of requests for information received;

(b) the number of requests for information which were granted or refused in full or in part;

(c) the reasons for refusal in part or in full of requests received;

- (d) the number of appeals submitted against refusals to grant in part or in full requests for information received; and
- (e) the total amount received as fees for granting requests for information.

(2) A public authority shall be required on request to disclose the reasons for taking any decision, whether administrative or quasi-judicial to any person affected by any such decision.

### **Establishment of Freedom of Information Commission**

#### **Establishment of the Freedom of Information Commission**

10. (1) There shall be established for the purposes of this Act a body called the Freedom of Information Commission (in this Act referred to as the “Commission”).

(2) The Commission shall by the name assigned to it by subsection (1) be a body corporate with perpetual and a common seal and may sue and be sued in its corporate name.

#### **Constitution of the Commission**

11. (1) The Commission shall consist of three persons of eminence and integrity who have distinguished themselves in public life and who are not members of any political party and who at the time of appointment and while functioning as a member of the Commission do not hold any public or judicial office.

(2) The member of the Commission shall be appointed by the President on the recommendations of the Constitutional Council, and subject to the provisions of subsection (3) of this section shall hold office for a period of five years. The President shall nominate one of the member of the Commission to be its Chairman.

(3) A member of the Commission shall cease to be a member, where—

- (a) he earlier resigns his office by writing addressed to the President;
- (b) he is removed from office by the President on the Constitutional Council forming an opinion that such member is physically or mentally incapacitated and is unable to function further in office;

- (c) he is convicted by a court of law for any offence involving moral turpitude; or
- (d) he is deemed to have vacated office by absenting himself from three consecutive meetings of the Commission without obtaining prior leave of the Commission.

**Appointment of officers and servants of the Commission**

12. (1) The Commission may appoint such officers and servants as it considers necessary to assist the Commission in the discharge and performance of its duties and functions under this Act.

(2) The officers and servants appointed under subsection (1) shall be subject to such terms and conditions of service as determined by the Commission and be paid such remunerations as determined by the Commission in consultation with the Minister in charge of the subject of Finance.

**Duties and functions of the Commission**

13. The duties and functions of the Commission shall be to:-

- (a) monitor the performance and ensure the due compliance by public authorities of the duties cast on them under this Act;
- (b) make recommendations for reform both of a general nature and directed at any specific public authority;
- (c) hear and determine any appeals made to it by any aggrieved person under section 28 of this Act;
- (d) lay down guidelines on which public authorities will be required to determine fees to be levied for the release of any official information by them under the provisions of this Act;
- (e) co-operate with or undertake training activities for public officials on the affective implementation of this Act; and
- (f) publicise the requirements of this Act and the rights of individuals under it.

**Fund of the Commission**

14. (1) The Commission shall have its own Fund to which shall be credited all sums of money as may be voted upon from time to time by Parliament for the use of the Commission and any money that may be received by the Commission by way of donations, gifts or grants from any source whatsoever, whether in or outside Sri Lanka.

(2) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the discharge and performance of its duties and functions.

**Financial year and  
audit of accounts.**

15. (1) The financial year of the Commission shall be the calendar year.

(2) The Commission shall cause proper books of accounts to be maintained of the income and expenditure and all other transactions of the Commission.

(3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

**Part II of  
Finance Act, 38 of  
1971 to apply.**

16. The provisions of Part II of the Finance Act. No. 38 of 1971 shall mutates mutandis apply to the financial control and accounts of the Commission.

**Exemption from  
prosecution**

17. No criminal or civil proceedings shall lie against or any member of the Commission or any officer or servant appointed to assist the Commission, for any act which in good faith is done or omitted to be done in the course of the discharge and performance of their duties and functions under this Act.

**Procedural requirements  
to be published**

18. The Commission shall within six months of its establishment formulate and give adequate publicity to the procedural requirements for the submission of appeals to the Commission under section 28 of this Act.

**Information Officers**

**Appointment of  
an Information Officers  
and their duties**

19. (1) Every public authority shall for the purpose of giving effect to the provisions this Act, appointment one or more officer as an Information Officer of such public authority.

(2) It shall be the duty of an Information Officer to deal with requests for information made to the public authority of which he has been appointed its Information Officer and render all necessary assistance to any citizen making such request to obtain the information being request for.

(3) The Information Officer may seek the assistance of any other officer as he may consider necessary for the officer as he may consider necessary for the proper discharge of the duty imposed on him under subsection (2) and where assistance is sought form any such officer it shall be the duty of such officer to render the assistance requested for by the Information Officer.

**Procedure for  
obtaining official  
information.**

20. (1) A citizen desirous of obtaining any official information under this Act, shall make a request in writing to the appropriate Information Officer specifying the particulars of the information requested for:

Provided that where any citizen making a request under this subsection is unable due to any reason to make such request in writing he shall be entitled to make the request orally and it shall be the duty of the appropriate. Information Officer to reduce it to writing on behalf of the person making the request.

(2) For the purpose of this section –

“writing” includes writing done through electronic means;  
and

“appropriate Information Officer” means the Information Officer appointed to the public authority from which the information is being requested for

**Decision on  
requests submitted  
under section 20**

21. (1) An Information Officer shall as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 20, make a decision either to provide the information requested for on the payment of a fee, or to reject the request on any one or more grounds as specified in section 4 of this Act. The decision arrived at by the Information Officer shall forthwith be communicated to the person who made the request. Where the decision has been taken to provide the information

requested for, access to such information shall be granted as soon as practicable.

(2) Where providing the information requested for requires the payment of any fee in addition to the fee referred to in subsection (1) the Information Officer shall request for the payment of such additional fee giving details of such fee and specifying the date before which such additional payment should be made by the person concerned.

(3) Notwithstanding the requirement made for the payment of a fee under subsections (1) and subsection (2) of this section the Minister may by Order published in the Gazette determine circumstances in which information may be provided by an Information Officer without the payment of a fee.

**Public authority  
to display fees to be  
charged**

22. A public authority shall be required to display in a conspicuous place within its official premises a notice specifying the fees being charged for obtaining any official information from such public authority. The fees so specified shall be determined on the guidelines issued by the Commission for the purpose.

**Manner in which  
official information is  
to be provided**

23. (1) Where a request for information is being granted such information shall be provided in the form in which it is requested for unless the Information Officer is of view that providing the information in the form requested for would be detrimental to the safety or preservation of the relevant document or record in respect of which the request was made.

(2) Where an Information Officer is unable to provide the information in the manner requested for it shall be the duty of such officer to render all possible assistance to the person who made the request, to facilitate compliance with such request.

**Rejection of a request  
to be communicated.**

24. Where a request for information is rejected by an Information Officer it shall be the duty of such Officer to specify the following information in the Communication sent to the person who made the request under subsection (1) of section 21.

(a) the ground or grounds on which such request is being rejected; and

(b) the period within which and the person to whom an appeal against such rejection may be preferred.

**Where information requested for was supplied by a third party.**

25. (1) Where a request made to an Information Officer by any citizen to disclose official information relates to or has been supplied by a third party and such information has been treated as confidential at the time the information was supplied the Information Officer shall before arriving at decision regarding its disclosure invite such third party by notice issued in writing to make his or her representation for or against such disclosure within seven days of the receipt of such notice.

(2) The Information Officer shall be required in making his decision on any request made for the disclosure of official information which relates to or has been supplied by a third party to take into consideration the representations made by the third party under subsection (1) and shall, where any objections are raised by such third party, deny access to the information requested for:

Provided however, where the disclosure of the information in question is vital in the public interest, the Information Officer shall disclose the same notwithstanding any objection raised by such third party against its disclosure.

**Protection against Actions.**

26. Where access to any information has been granted by an Information Officer under this Act, no action shall lie against such Officer or the public authority concerned by reason of granting access to such information.

**Granting access to information not to constitute an authorization for publication.**

27. The granting of access to any information in consequence of a request made under this Act, shall not be taken to constitute an authorization or approval of the publication of such information by the citizen to whom such access was granted.

**Appeals Against Rejections**

**Appeals against a rejection of a request**

28. (1) Any citizen whose request for official information is rejected by an Information Officer may within thirty days of receipt

of the decision relating to such rejection prefer an appeal to the person referred to in the communication issued under subsection (2) of section 24, being the person designated to hear any such appeal.

(2) The decision on any appeal preferred under subsection (1) shall be made within one month of preferring the same.

**Appeals to the  
Commission**

29. A person aggrieved by the decision made in appeal under subsection (2) of section 28 may appeal against that decision to the Commission and the Commission may affirm vary or reverse the decision appealed against and remit the request back to the Information Officer concerned for necessary action. The Commission shall further specify the time within which the appropriate Information Officer shall be required to make a decision on such request.

**Appeals to the  
Supreme Court**

30. (1) A person aggrieved by the decision of the Commission made under section 29 shall have a right of appeal to the Supreme Court against the decision of the Commission. Every such appeal shall be forwarded in the manner prescribed by the relevant rules of the Supreme Court.

(2) Where any appeal is preferred to the Supreme Court under subsection (1) such Court may affirm vary or reverse the decision appealed against, and shall have the power to make any other order that it may consider necessary to give effect to its decision on appeal.

**Appeal may be made  
on behalf of an aggrieved  
party 31.**

An appeal under section 28 section 29 or section 30 of this Act, may where the aggrieved party concerned is unable due to some reason to prefer such appeal on his own be made by any other person on his behalf who is duly authorized in writing by such aggrieved party to prefer the same.

**General**

**Commission to  
prepare a report of its  
activities**

32. (1) The Commission shall cause to be prepared a report of its activities as often as it may consider necessary so however that it shall prepare at least one report in each calendar year. The

Commission shall also cause every report prepared by it to be placed before Parliament.

(2) A copy of the report prepared under subsection (1) shall within two weeks of it being placed before Parliament be made available for public inspection at the office of the Commission.

**Offences**

33. (1) Any Information Officer who –

(a) rejects a request made for information without giving reasons for such rejection;

(b) rejects a request made on any ground other than a ground specified in section 4 of this Act; or

(c) fails without any reasonable cause to make a decision on a request made within the time specified under this Act for making such decision.

Shall be guilty of an offence and shall on conviction be liable to a fine not less than five thousand rupees.

(2) Any officer whose assistance was sought for by and Information officer under subsection (3) of section 19 fails without reasonable cause to provide such assistance shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand rupees.

(3) A fine imposed for the commissions of an offence referred to in subsection (1) or (2) of this section shall be in addition and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so for the failure to carry out a duty imposed under this Act.

**Release or disclosure of official information by**

34. Notwithstanding any legal or other obligation to which a person may be subject to by virtue of being an employee of any public authority no employee of a public authority shall, be subjected to any punishment disciplinary or otherwise for releasing disclosing

any official information which is permitted to be released or disclosed on a request submitted under this Act so long and so long only as such employee acted in good faith and in the reasonable belief that the information was substantially true and such information disclosed evidence of any wrong doing or a serious threat to the health or safety of any citizen or to the environment.

**an employee of  
a public authority**

**Regulations**

35. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, forthwith after its publication in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

**Interpretation**

36. In this Act unless the context otherwise requires –

“citizen” includes any body of persons, whether corporate or unincorporate;

“Information Officer” means an  
Information officer appointed under section 19 of this Act;

“Official information” includes any

correspondence, memorandum, draft legislation, book, plan map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound, recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;

“public authority” means –

- (a) a Ministry of the Government;
- (b) any body or Office established by or under the Constitution other than the Parliament and the Cabinet of Ministers;
- (c) a Government Department;
- (d) a public corporation;
- (e) a company incorporated under the Companies Act, No. 17 of 1982, in which the State is a shareholder;
- (f) a local authority; and
- (g) any department or other authority or institution established or created by a Provincial Council.

**Sinhala text to prevail  
in case of inconsistency**

37. In the event of any inconsistency between the Sinhala and Tamil texts of this Act the Sinhala text shall prevail.