

CAYMAN ISLANDS



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**A BILL FOR A LAW TO GIVE TO THE PUBLIC A GENERAL RIGHT
OF ACCESS TO OFFICIAL DOCUMENTS; AND TO MAKE
PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES.**

THE FREEDOM OF INFORMATION BILL, 2005

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make provision for the public to have a general right of access to official documents.

Clause 1 provides the short title and commencement.

Clause 2 contains the definitions.

Clause 3 states that the Law will apply to public authorities and to documents that are not more than thirty years old.

Clause 4 specifies the objects of the Law as being to promote democracy.

Clause 5 requires every public authority to publish information relating to certain matters that are relevant to freedom of information.

Clause 6 stipulates the general right of access to information.

Clause 7 prescribes how to apply for access.

Clause 8 deals with cases where the public authority to which an application is addressed is not the best source from which to obtain the information.

Clause 9 ensures that needless requests do not need to be addressed.

Clause 10 states the various forms in which access may be granted.

Clause 11 deals with cases where the information furnished by the person applying for disclosure is not enough to identify the information.

Clause 12 makes provision for partial access to a document.

Clause 13 makes provision for the collection of costs of providing information and the possibility of exemption from fees in certain case

Clause 14 provides for the grant of access.

Clause 15 exempts from disclosure certain information which is generally exempt from such legislation.

Clause 16 exempts from disclosure certain Governor in Cabinet documents.

Clause 17 exempts from disclosure certain document relating to law enforcement.

Clause 18 exempts from disclosure documents that would amount to breach of confidence.

Clause 19 exempts from disclosure certain documents affecting the national economy.

Clause 20 exempts from disclosure certain documents that contain the deliberative processes of government.

Clause 21 exempts from disclosure certain documents relating to commercial interests.

Clause 22 exempts from disclosure certain documents relating to heritage sites.

Clause 23 protects the confidentiality of personal affairs.

Clause 24 empowers the Governor in Cabinet to issue certificates of exemption from disclosure in respect of certain documents.

Clause 25 allows a person applying for particular information or who has been granted access to information to apply for the documents concerned to be amended or annotated as necessary.

Clause 26 empowers public authorities to amend documents in special circumstances.

Clause 27 confers public authorities with limited authority to annotate documents.

Clause 28 obliges public authorities which have amended or annotated documents to inform the applicant and other relevant public authorities.

Clause 29 makes it possible to transfer, to other public authorities, requests for amendment or annotation.

Clause 30 allows an aggrieved applicant to apply for review, in the public authority concerned, of an adverse decision.

Clause 31 prescribes the procedure for internal review within a public authority.

Clause 32 provides for a further appeal to the Appeal Tribunal.

Clause 33 provides for the appointment of information officers in public authorities.

Clause 34 protects whistleblowers.

Clause 35 provides for the power of the Chief Secretary to publish guidelines regarding best practices relating to freedom of information.

Clause 36 enjoins public authorities to keep documents in a manner that allows easy retrieval.

Clause 37 provides for the need to train officials in relation to freedom of information.

Clause 38 makes certain provisions relating to the applicability of other laws.

Clause 39 outlaws certain actions that are intended to prevent disclosure of information.

Clause 40 makes further provision relating to other laws.

Clause 41 requires the Minister or Official Member responsible to make annual reports to be laid before the Legislative Assembly.

Clause 42 empowers the Governor in Cabinet to make regulations for giving fuller effect to the legislation.

Clause 43 provides that once the law is passed, there will be a review of it not later than two years after the day on which it enters into force.

Schedule 1 prescribes the information that is to be published by public authorities which is relevant to access to documents.

Schedule 2 contains provisions relating to the Appeal Tribunal.

THE FREEDOM OF INFORMATION BILL, 2005

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CAYMAN ISLANDS

**A BILL FOR A LAW A LAW TO GIVE TO THE PUBLIC A GENERAL
RIGHT OF ACCESS TO OFFICIAL DOCUMENTS; AND TO MAKE
PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES.**

ENACTED by the Legislature of the Cayman Islands.

**PART I
PRELIMINARY**

1. (1) This Law may be cited as the Freedom of Information Law, 2005.

Short title and
commencement

(2) This Law shall come into operation on such date as may be appointed by Order made by the Governor in Cabinet and for that purpose different dates may be appointed for different provisions.

2. In this Law -

Definitions

“Appeal Tribunal” means the Tribunal referred to in section 32;

“appointed day” means the day appointed pursuant to section 1;

“document” means -

- (a) a document in writing;
- (b) a map, plan, graph or drawing;
- (c) a photograph;
- (d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to

be capable (with or without the aid of some other equipment) of being reproduced therefrom;

- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“exempt document” means a document referred to in Part III;

“exempt matter” means matter that is exempt from disclosure, whether or not the rest or part of the rest of the document is liable to disclosure;

“government company” means a company in which the government has a controlling interest and includes a subsidiary of such company;

“hold”, in relation to an official document that is liable to production under this Law, means in a public authority’s possession, custody or control;

“Minister responsible” means the Minister or Official Member responsible for the public authority which holds an official document;

“official document” means a document held by a public authority in connection with its functions as such, whether or not it was created -

- (a) by that authority; or
- (b) before the commencement of this Law;

“public authority” means -

- (a) a ministry, portfolio or department;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a government company which -
 - (i) is wholly owned by the Government or in which the Government holds more than 50% of the shares; or
 - (ii) is specified in an Order under section 3 (3);
- (d) any other body or organization specified in an Order under section 3 (3);

“relevant decision” means a decision made in relation to the disclosure or otherwise of a document.

Application

3. (1) Subject to subsection (2), this Law applies to -

- (a) public authorities;

- (b) official documents created by or held by a public authority not more than thirty years immediately preceding the appointed day,

but paragraph (a) shall not be read so as to allow access to documents containing information -

- (c) that may not be disclosed under section 50 of the Monetary Authority Law (2004 Revision);
- (d) relating to the directors, officers and shareholders of a company registered as an exempted company under Part VII or VIII of the Companies Law (2004 Revision);
- (e) any other class of information which the Governor in Cabinet may, by Order, specify.

(2) The Governor in Cabinet may, by Order, declare that this Law shall apply to official documents created by or held by a public authority at such date, being earlier than the thirty years referred to in subsection (1) (b), as may be specified in that Order.

(3) The Governor in Cabinet may, by Order, declare that this Law shall apply to -

- (a) such companies, in addition to those specified in paragraph (e) (i) of the definition of "public authority", as may be specified in the Order;
- (b) any other body or organization which provides services of a public nature which are essential to the welfare of the Caymanian society, or to such aspects of their operations as may be specified in the Order.

(4) An Order under subsection (3) may be made subject to such exceptions, adaptations or modifications, as the Governor in Cabinet may consider appropriate.

(5) The Governor in Cabinet may, by Order, declare that the application of this Law in relation to any government company specified in paragraph (c) (i) of the definition of "public authority" shall be subject to such exceptions, adaptations or modifications as the Governor in Cabinet may consider appropriate.

(6) This Law does not apply to -

- (a) the Governor in Cabinet, in relation to the exercise of the powers and duties conferred or imposed on him by or under the Cayman Islands (Constitution) Order 1972, or under any other law;
- (b) the judicial functions of -

UK SI 1972 1101

- (i) a court;
- (ii) the holder of a judicial office or other office connected with a court;
- (c) the security or intelligence services in relation to their strategic or operational intelligence-gathering activities;
- (d) such statutory body or authority as the Governor in Cabinet may specify by Order.

(7) This Law applies to official documents of an administrative nature held in a registry or other office of a court.

(8) In subsection (6) "security or intelligence services" includes -

- (a) the Cayman Islands Police Service;
- (b) the Special Constabulary within the Cayman Islands Police Service;
- (c) the Department of Customs.

Objects of Law

4. The objects of this Law are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely -

- (a) governmental accountability;
- (b) transparency; and
- (c) public participation in national decision-making,

by granting to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.

PART II RIGHT OF ACCESS

Publication of
information by public
authorities

5. (1) A public authority shall cause to be published within twelve months of -

- (a) the appointed day;
- (b) its establishment; or
- (c) the coming into operation of an Order under section 3 (3) which specified that authority, whichever is later, an initial statement of its organization and functions containing the information specified in the Schedule 1.

(2) The Schedule 1 applies for the purposes of making available to the public the documents described in that Schedule.

(3) The information required under subsection (1) shall be published in such manner and be updated with such frequency as may be prescribed.

(4) The Governor in Cabinet may by Order amend Schedule 1.

6. (1) Subject to the provisions of this Law, every person shall have a right to obtain access to an official document other than an exempt document.

General right of access

(2) The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Governor in Cabinet may specify by Order.

(3) An applicant for access to an official document shall not be required to give any reason for requesting access to that document.

(4) Where an official document is -

- (a) open to access by the public pursuant to any other enactment as part of a public register or otherwise; or
- (b) available for purchase by the public in accordance with administrative procedures established for that purpose, access to that document shall be obtained in accordance with the provisions of that enactment or those procedures.

7. (1) A person who wishes to obtain access to an official document shall make an application to the public authority which holds that document.

Application for access

(2) An application under subsection (1) -

- (a) may be made in writing or transmitted by electronic means other than telephone;
- (b) shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify it.

(3) A public authority to which an application is made shall -

- (a) upon request, assist the applicant in identifying the documents to which the application relates;
- (b) acknowledge receipt of every application made in the prescribed manner;
- (c) grant to the applicant access to the document specified in the application if it is not an exempt document.

(4) A public authority shall respond to an application as soon as practicable but not later than -

- (a) thirty days after the date of receipt of the application; or
- (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty days after the date of the receipt by that authority,

so, however, that an authority may, for good cause, extend the period of thirty days for a further period, not exceeding thirty days, in any case where there is reasonable cause for such extension.

(5) The response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty days., it shall state the reasons therefor, and the options available to an applicant.

Transfer of requests

8. (1) Where an application is made to a public authority for an official document -

- (a) which is held by another public authority; or
- (b) the subject-matter of which is more closely connected with the functions of another public authority, the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority and shall inform the applicant immediately of the transfer.

(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen days after the date of receipt of the application.

Vexatious, repetitive or unreasonable requests

9. A public authority is not required to comply with a request where -

- (a) the request is vexatious;
- (b) the public authority has recently complied with a substantially similar request from the same person;
- (c) compliance with the request would unreasonably divert its resources;
- (d) if the information requested is already in the public domain.

Forms of access

10. (1) Access to an official document may be granted to an applicant in one or more of the following forms -

- (a) the applicant may be afforded a reasonable opportunity to inspect the document;
- (b) the authority concerned may furnish the applicant with a copy of the document;

- (c) in the case of a document from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;
 - (d) in the case of a document by which or in which words are -
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or
 - (ii) contained in the form of shorthand writing or in codified form, the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that document.
- (2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.
- (3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would -
- (a) be detrimental to the preservation of the document, or be inappropriate, having regard to its physical state;
 - (b) constitute an infringement of copyright subsisting in any matter contained in the document.
- (4) Copies of documents to which access is granted shall be authenticated by such persons and in such manner as may be determined by the Attorney-General.

11. (1) Where the information provided by the applicant in relation to the document is not reasonably necessary to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the document can be identified.

Assistance and
deferment of access

- (2) A public authority may defer the grant of access to an official document -
- (a) if publication of the document within a particular period is required under the provisions of any enactment, until the expiration of that period;
 - (b) if the document was prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to the person or body;
 - (c) if the premature release of the document would be contrary to the public interest, until the occurrence of any event after which or

the expiration of any period beyond which, the release of the document would not be contrary to the public interest.

(3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen days of its decision, inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate.

Partial access

12. (1) Where an application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom.

(2) A public authority which grants access to a copy of an official document in accordance with this section shall inform the applicant -

- (a) that it is such a copy; and
- (b) of the statutory provision by virtue of which such deleted matter is exempt matter.

Cost of access

13. (1) The communication of information may be made conditional upon the payment by the person making the request of a reasonable fee which shall not exceed the actual cost of searching for, reproducing, preparing and communicating the information.

(2) The Governor in Cabinet may make regulations providing -

- (a) for the manner in which fees are to be calculated;
- (b) maximum fees payable;
- (b) that no fee is to be charged in relation to certain cases.

(3) For purposes of clarification, no fee shall be charged for a request for information but if the information is to be provided, the fee shall, in accordance with subsection (1), be charged for the provision of that information.

Grant of access

14. Subject to this Law, where -

- (a) an application is made in accordance with section 7 for access to an official document; and
- (b) the cost incurred by the public authority in granting access has been paid by the applicant, access to the document shall be granted in accordance with this Law.

PART III
EXEMPT DOCUMENTS

15. Official documents are exempt from disclosure if -
- Documents affecting security, defence or international relations
- (a) the disclosure thereof would prejudice the security, defence or international relations of the Islands;
 - (b) those documents contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.
16. (1) An official document is exempt from disclosure if it is a Governor in Cabinet document, that is, -
- Governor in Cabinet documents
- (a) it is a Cabinet Submission, Cabinet Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted;
 - (b) it is a Cabinet Decision, or other official record of any deliberation of the Cabinet.
- (2) Subsection (1) does not apply to -
- (a) any document appended to a Cabinet document that contains material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature; or
 - (b) a document by which a decision of the Cabinet has been officially published.
17. Official documents relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to, -
- Documents relating to law enforcement
- (a) endanger any person's life or safety;
 - (b) affect -
 - (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or
 - (ii) the trial of any person or the adjudication of a particular case;
 - (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
 - (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;

- (e) facilitate the escape of a person from lawful detention; or
- (f) jeopardize the security of prison.

Documents subject to legal privilege, etc

18. An official document is exempt from disclosure if -

- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; or
- (b) the disclosure thereof would -
 - (i) constitute an actionable breach of confidence;
 - (ii) be in contempt of court; or
 - (iii) infringe the privileges of Parliament.

Documents affecting national economy

19. (1) An official document of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Caymanian economy, or the Government's ability to manage the economy.

(2) The types of documents referred to in subsection (1) include but are not limited to documents relating to -

- (a) duties ;
- (b) monetary policy;

or documents that are not liable to disclosure under the Confidential Relationships (Preservation) Law (1995 Revision).

Documents revealing Government's deliberative processes

20. (1) Subject to subsection (3), an official document is exempt from disclosure if it contains -

- (a) opinions, advice or recommendations prepared for;
- (b) a record of consultations or deliberations arising in the course of, proceedings of the Cabinet or of a committee thereof.

(2) Subsection (1) does not apply to documents which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.

(3) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

Documents relating to business affairs, etc

21. (1) Subject to subsection (2), an official document is exempt from disclosure if -

- (a) its disclosure would reveal -
 - (i) trade secrets;

- (ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
- (b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests.

(2) Subsection (1) shall not apply where the applicant for access is the person or organization referred to in that subsection or a person acting on behalf of that person or organization.

22. (1) Subject to subsection (2), an official document is exempt from disclosure if its disclosure would, or could reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of -

Documents relating to heritage sites, etc

- (a) any historical, archaeological or anthropological resources;
- (b) anything which is eligible for placement on the Heritage Register under section 21 of the National Trust Law (1997 Revision) or any other law relating to the preservation of the heritage of the Islands;
- (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;
- (d) any other rare or endangered living resource.

(2) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

23. (1) Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.

Documents relating to personal affairs

(2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the document relates.

24. (1) Where -

Issuance of certificates re exemption

- (a) the Governor in Cabinet is satisfied that an application for access relates to a document specified in section 16 (1);
- (b) a Minister responsible is satisfied that an application for access relates to an official document to which section 15, 17 or 19, as the case may be, applies,

the Governor in Cabinet or the Minister responsible, as the case may require, may issue a certificate to the effect that the document is an exempt document and shall specify the basis of the exemption.

(2) Where the Governor in Cabinet or a Minister responsible is satisfied as mentioned in subsection (1) by virtue of anything contained in any particular part or parts of an official document, a certificate issued under that subsection in respect of that document shall identify that part or those parts of the document by reason of which the certificate is issued.

(3) A certificate issued under subsection (1) shall be conclusive that the document is exempt.

**PART IV
AMENDMENT AND ANNOTATION OF RECORDS**

Application for
amendment or
annotation of records

25. (1) Where a person seeks or has been granted access to information but claims that an official document relating to his application contains personal information about himself that -

- (a) is incomplete, incorrect, out of date or misleading; and
- (b) has been used, is being used or is available for use by a public authority for administrative purposes,

the person may apply to the public authority for an amendment or an annotation of that document.

(2) An application under this section shall be in writing and shall specify, as far as practicable, the document claimed to be the personal record requiring amendment or annotation and shall -

- (a) in the case of an application for amendment, specify -
 - (i) whether information in the record is claimed to be incomplete, incorrect, out of date or misleading and the information in respect of which that claim is made;
 - (ii) the applicant's basis for making that claim; and
 - (iii) the nature of the amendment required by the applicant;
- (b) in the case of an application for annotation, be accompanied by a statement specifying -
 - (i) the matters referred to in paragraph (a) (i) and (ii); and
 - (ii) the information that would make the record complete, correct, up to date and not misleading.

Amendment of records

26. (1) Where, in relation to any application under section 25, a public authority is satisfied as to the truth of the matters stated in the application, it shall,

before or after first granting access, amend the document concerned in the prescribed manner.

(2) Where a public authority decides not to amend an official document it shall -

- (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 25 (2) (b); and
- (b) annotate the document by adding thereto the statement referred to in paragraph (a).

27. Where, in relation to an application for annotation of an official document containing personal information before or after access is first granted, a public authority -

Annotation of personal records

- (a) is satisfied as to the truth of the matters specified in that application, the authority shall annotate the document in the prescribed manner;
- (b) is not so satisfied, it may refuse to annotate the document.

28. A public authority which amends or annotates an official document pursuant to section 26 or 27, or decides not to do so, shall take reasonable steps to inform -

Notice of amendments or annotations

- (a) the applicant; and
- (b) any other public authority which it is satisfied has made prior use of the document, of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

29. Section 8 applies, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

Transfer of applications for amendment or annotation

PART V REVIEW AND APPEAL

30. (1) An applicant for access to an official document may, subject to subsection (4), apply for an internal review of a decision by a public authority to -

Internal review

- (a) refuse to grant access to the document;
- (b) grant access only to some of the documents specified in an application;
- (c) defer the grant of access to the document;
- (d) charge a fee for action taken or as to the amount of the fee.

(2) An applicant for amendment or annotation of a personal record may, in accordance with subsection (4), apply for a review of a decision by a public authority to refuse to make that amendment or annotation.

(3) For the purposes of subsections (1) and (2), a failure to give a decision on any of the matters referred to in subsection (1) (a) to (c) or to amend or annotate a personal record within the time required by this Law shall be regarded as a refusal to do so.

(4) An application under subsection (1) or (2) may only be made where the decision to which the application relates was taken by a person other than the Minister responsible, a chief officer or the principal officer of the public authority concerned.

Procedure for internal review

31. (1) An internal review shall be conducted -
- (a) by the responsible Minister in relation to documents referred to in sections 15, 16, 17 and 19;
 - (b) in any other case, by the chief officer in the relevant ministry or the principal officer of the public authority whose decision is subject to review.
- (2) An application for internal review shall be made -
- (a) within thirty days after the date of a notification (in this subsection referred to as “the initial period”) to the applicant of the relevant decision, or within such further period, not exceeding thirty days, as the public authority may permit; or
 - (b) where no such notification has been given, within thirty days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the authority.
- (3) A person who conducts an internal review -
- (a) may take any decision in relation to the application which could have been taken on an original application;
 - (b) shall take that decision within a period of thirty days after the date of receipt of the application.

Appeals

32. (1) An appeal shall lie pursuant to subsections (2) and (3), to the Appeal Tribunal referred to in Schedule 2.
- (2) A person may lodge an appeal -
- (a) where internal review under section 30 is applicable -
 - (i) against a decision taken on such review;

- (ii) if the time specified in section 31 (2) (b) has expired without the applicant being notified of a decision;
 - (b) in any other case, against a relevant decision in relation to any of the matters referred to in paragraphs (a) to (c) of section 30 (1) or section 30 (2), and accordingly section 30 (3) shall apply with necessary modifications to an appeal under this paragraph.
- (3) An appeal shall be made -
- (a) by the lodgement of a document within thirty days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
 - (b) where no notification has been given within the period required by this Law, within thirty days after the expiration of that period.
- (4) Where an appeal is not made within the period specified in subsection (2), the Appeal Tribunal may extend that period if it is satisfied that the appellant's delay in so doing is not unreasonable.
- (5) On hearing an appeal, the Appeal Tribunal -
- (a) may, subject to paragraph (b), make any decision which could have been made on the original application;
 - (b) shall not nullify a certificate issued under section 24.
- (6) The Appeal Tribunal may call for and inspect an exempt document, so however, that, where it does so, it shall take such steps as are necessary to ensure that the document is inspected only by members of staff of the Appeal Tribunal acting in relation to that matter.

PART VI
MEASURES TO PROMOTE OPENNESS

33. (1) Every public authority shall appoint an information officer who, in addition to any duties specifically provided for under this Law, shall, under the general and specific supervision of the head of the authority concerned, -
- (a) promote in the public authority best practices in relation to document maintenance, archiving and disposal; and
 - (b) receive requests for information, assist individuals seeking information and receive complaints regarding the performance of the public authority relating to information disclosure.
- (2) The public authority concerned shall ensure that members of the public know the name, function, contact details and such other information relating to the information officer as the authority may consider necessary or expedient to make available to the public.

Information officers

(3) The information officer may be full-time or be appointed from among staff performing other functions for the public authority concerned.

Whistleblowers

34. (1) No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information on wrong-doing, or that which would disclose a serious threat to health, safety or the environment, as long as he acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing or a serious threat to health, safety or the environment.

(2) For the purposes of subsection (1), “wrongdoing” includes but it not limited to -

- (a) the commission of a criminal offence;
- (b) failure to comply with a legal obligation;
- (c) miscarriage of justice; or
- (d) corruption, dishonesty, or serious maladministration.

Guidance on duty to publish

35. The Chief Secretary shall -

- (a) publish a guide on minimum standards and best practices regarding the duty of public bodies to published pursuant to section 5; and
- (b) upon request, provide guidance to the public authority regarding the duty to publish.

Maintenance of records

36. (1) Every public authority shall maintain its documents in a manner which facilitates access to information under this Law and in accordance with the code of practice provided for in subsection (3).

(2) Every public body shall ensure that there are adequate procedures and facilities for the correction of personal information.

(3) The Chief Secretary shall, after consultation with interested parties, issue from time to time a code styled the Code of Practice on Access to Information, which shall contain the practices relating to the keeping, management and disposal of documents, as well as the transfer of records to the National Archives.

Training of officials

37. Every public authority shall ensure that training is provided for its officials regarding the right to information and the effective implementation of this Law.

**PART VII
MISCELLANEOUS**

38. (1) Nothing in this Law shall be construed as authorizing the disclosure of any official document -

Protection from liability
re defamation, breach of
confidence and
copyright

- (a) containing any defamatory matter; or
- (b) the disclosure of which would be in breach of confidence or of copyright.

(2) Where access to a document referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Law, no action for defamation, breach of confidence or breach of copyright shall lie against -

- (a) the Government, a public authority, minister or public officer involved in the grant of such access, by reason of the grant of access or of any re-publication of that document; or
- (b) the author of the document or any other person who supplied the document to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the document.

(3) The grant of access to an official document in accordance with this Law shall not be construed as authorization or approval -

- (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the document or its contents by the person to whom access is granted;
- (b) for the purposes of any law relating to copyright, of the doing by that person of any act comprised within the copyright in any work contained in the document, as follows.

39. (1) A person commits an offence, if in relation to an official document to which a right of access is conferred under this Law, he -

Offences

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the document with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Provisions re other Laws

40. (1) Where access to an official document is granted in accordance with this Law, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.

(2) This Law overrides any other law relating to disclosure or non-disclosure of information except any law relating to official secrets and the Confidential Relationships (Preservation) Law (1995 Revision).

(3) Any person who contravenes this Law shall not be protected against any law relating to official secrets.

Annual reports

41. (1) The Minister responsible shall, as soon as practicable after the end of each year (but in any case not later than the 30th of June in the following year) prepare a report of the operation of this Law during the year, containing the matters specified in subsection (4).

(2) The report referred to in subsection (1) shall be laid on the table of the Legislative Assembly.

(3) Each public authority shall submit to the minister, quarterly reports on the matters specified in subsection (4).

(4) The matters referred to in subsections (1) and (3) are -

- (a) the number of applications for access received, granted, deferred, refused or granted subject to deletions;
- (b) the categories of exemptions claimed and the numbers of each category;
- (c) the number of applications received for -
 - (i) amendment of personal records;
 - (ii) annotation of personal records;
- (d) the number of -
 - (i) applications for internal review of relevant decisions;
 - (ii) appeals against relevant decisions, and the rate of success or failure thereof;
- (e) such other matters as are considered relevant.

Regulations

42. The Governor in Cabinet may, subject to an affirmative resolution of the Legislative Assembly, make regulations -

- (a) generally for giving effect to the provisions and purposes of this Law;
- (b) for anything that is required or permitted to be prescribed under this Law.

43. (1) This Law shall be reviewed from time to time by a committee of the Legislative Assembly appointed for that purpose.

Review of Law by
Parliamentary
Committee

(2) The first such review shall be conducted not later than one year after the appointed day.

SCHEDULE 1

INFORMATION TO BE PUBLISHED BY PUBLIC AUTHORITIES

(Section 5)

1. The information referred to in section 5 of this Law is -

- (a) a description of the subject area of the public authority;
- (b) a list of the departments and agencies of the public authority and -
 - (i) subjects handled by each department and agency;
 - (ii) the locations of departments and agencies;
 - (iii) opening hours of the offices of the authority and its departments and agencies;
- (c) the title and business address of the principal officer;
- (d) a statement of the documents specified in subparagraph (e) being documents that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of, an enactment or scheme administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;
- (e) the documents referred to in subparagraph (d) are -
 - (i) manuals or other documents containing interpretations, rules, guidelines, practices or precedents;
 - (ii) documents containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Law.

2. The principal officer of the authority shall -

- (a) cause copies of such of the documents specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) within 12 months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not more than 12 months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.

3. The principal officer is not required to comply fully with paragraph 2 (a) before the expiration of 12 months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.

4. This Schedule does not require a document of the kind specified in paragraph 1 (e) containing exempt matter, to be made available in accordance with paragraph 2, but, if such a document is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with paragraph 2.

5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Law, or has been specified by order under section 5 of the Law as if the references in paragraph 3 to the appointed day were references to the day on which the authority comes into existence or has been so specified.

SCHEDULE 2 APPEAL TRIBUNAL

(Section 32)

1. The Tribunal shall, subject to paragraph 2, consist of five members appointed by the Governor in Cabinet after consultation with the Leader of Government Business.

2. For the hearing of any appeal under this Law the Tribunal may consist of one member sitting alone if the parties to the appeal agree.

3. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for a period of three years or such shorter period as the Governor in Cabinet may determine at the time of appointment and shall be eligible for re-appointment.

4. The Governor in Cabinet shall appoint one of the members of the Tribunal appointed under paragraph 1 to be chairman thereof.

5. The Tribunal may appoint one of their number to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member.

6. (1) Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing addressed to the Governor in Cabinet and transmitted through the chairman, and from the date of the receipt by the Governor of such instrument that member shall cease to be a member of the Tribunal.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Governor in Cabinet and such resignation shall take effect as from the date of receipt by the Governor of that instrument.

7. The Governor in Cabinet, may terminate the appointment of any member of the Tribunal who -

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with or suspends payment to his creditors;
- (c) is convicted and sentenced to a term of imprisonment;
- (d) is convicted of any offence involving dishonesty;
- (e) fails to carry out the functions conferred or imposed on him by this Law.

8. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member.

9. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

10. There shall be paid to the chairman and other members of the Tribunal, in respect of each appeal, such honorarium as may be determined by the Chief Secretary as Head of the Civil Service.

11. Subject to paragraph 2, the decision of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

12. Subject to the provisions of the Law, the Tribunal shall regulate its own proceedings.

13. The office of chairman or member of the Tribunal shall not be a public office for the purposes of the Constitution or any law relating to civil servants.

Passed by the Legislative Assembly the day of , 2005.

Speaker.

Clerk of the Legislative Assembly.