CONSULTATION DRAFT – October 15, 2009

A BILL

entitled

PUBLIC ACCESS TO INFORMATION ACT 2009

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Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1 This Act may be cited as the Public Access to Information Act 2009.

Purpose

2 The purpose of this Act is to—

(a) give the public the right to obtain access to information held by public authorities to the greatest extent possible, subject to exceptions for the public interest and the protection of the rights of others;

(b) increase transparency and eliminate unnecessary secrecy with regard to information held by public authorities;

(d) inform the public about the activities and operations of public authorities, including the manner in which they make decisions; and

(h) have more information placed in the public domain as a matter of routine.

Interpretation

3 (1) In this Act—

"Commissioner" means the Information Commissioner appointed under section 49;

"exempt record" means a record that is exempt from disclosure under Part 4;

"head" in relation to a public authority listed in column 1 of the Schedule means that person listed in column 2 of the Schedule opposite that public authority;

"Minister" means the Minister to whom responsibility for this Act has been assigned;

"personal information" means personal information as defined in section 25;

"prescribed" means prescribed by regulations made under section 58;

"public authority" means an entity listed in column 1 of the Schedule;

"record" means a record that is held by a public authority in connection with its functions in any form or medium, and in which information is recorded, whether printed or on tape or film or by electronic means or otherwise, and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record produced by means of equipment or a program;

"requester" means a person who makes a request for a record under section 14 or a person who makes a request for amendment of a record under section 20, as the case may be;

"third party", in relation to a request to a public authority for access to a record means any person (other than the requester or the public authority) who gave information in the record to a public authority in confidence, or any person to whom information in the record relates.

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(2) In this Act, a reference to a record includes, where the context requires, a part of a record.

(3) In this Act, a reference to a record that is held by a public authority includes a record that is in the possession or custody of, or is under the control of, that authority.

(4) For the purposes of this Act, any record that is held by an independent contractor relating to a contract for which the contractor is engaged by a public authority is deemed to be a record held by that public authority; and there is deemed to be included in the contract a provision that the contractor shall, if requested by the public authority concerned, give a copy of the record to the public authority.

(5) Nothing in this Act precludes a person from obtaining access to records under any other provision of law.

Application

4 (1) Subject to subsection (2), this Act does not apply to—

(a) records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body or person; or

(b) records obtained or created by any of the following public authorities in the course of an investigation, examination, review or audit conducted by them or under their authority—

(i) the Office of the Director of Public Prosecutions,

(ii) the Office of the Auditor General,

(iii) the Office of the Ombudsman,

(iv) the Office of the Information Commissioner.

(2) Subsection (1) does not apply to records relating to the general administration of—

(a) any court, tribunal or other body or person referred to in subsection (1)(a); or

(b) any public authority referred to in subsection (1)(b).

PART 2
PROVISION OF INFORMATION BY PUBLIC AUTHORITIES

Information statement

5 (1) Every public authority shall prepare an information statement setting out—

(a) a description of the structure and organization of the authority and the legislation governing the authority;

(b) a description of the functions, powers and duties of the authority, including its obligations under this Act;

(c) a summary of the services that the authority provides, including ongoing programs of the authority;

(d) a description of all classes of records that are held by the authority, in sufficient detail to facilitate the exercise of the right of access under this Act;

(e) a description of all manuals used by employees of the authority in administering or carrying out the programs and activities of the authority;

(f) a description of the policies, rules and guidelines used by the authority to make decisions or recommendations in respect to any person;

(g) the title and contact information for persons in the authority who have responsibilities relating to the administration of this Act, including the address of the person in the authority to whom requests for access to records under this Act should be sent; and

(h) any other information that the head of the authority considers relevant for the purpose of facilitating access by the public to information held by the authority.

(2) Every public authority shall update its information statement at least once a year, and may do so more frequently.

(3) Every public authority shall cause its information statement, as updated from time to time, to be made available for inspection by the public at reasonable times by—

(a) keeping copies at its principal office;

(b) providing a copy to the Bermuda National Library and to the Bermuda Archives; and

(c) making copies available electronically, including on any website of the public authority.

(4) A public authority shall publish a notice in the Gazette indicating the places where its information statement is available for inspection by the public, including any web address of the public authority on which the statement is published.

(5) Every public authority shall provide a copy of its information statement, as updated from time to time, to the Commissioner.

Provision of other information

6 (1) Public authorities shall be proactive in providing information to the public at regular intervals through various means of communications so that the public needs only to have minimum resort to the use of this Act to obtain information.

(2) Public authorities shall keep a log of all access requests made under section 14 (excluding the names of requesters), and the information in the log shall be made available to a member of the public upon request, together with any information that has been provided to a requester pursuant to an access request.

(3) Public authorities shall make their quarterly expenditures available to a member of the public upon request.

(4) Public authorities shall cause to be published in the Gazette on a regular basis details of every contract entered into by the authority that has a total value of $50,000 or more, including the name of the contractor, the monetary value of the contract, the goods and services to be provided under the contract and the time for performance of the contract (completion or delivery date).

(5) The Minister shall publish from time to time a list of all positions of public officer in central government public authorities, which list shall set out the title and corresponding salary range of every position. Publication shall be by posting a copy of the list on the Government website and by providing copies for inspection by the public at the Bermuda National Library and the Bermuda Archives.

(6) For the purposes of subsection (5), "central government public authorities" are those listed in items 2 to 9 of Column 1 of the Schedule.

Powers of Commissioner in relation to information statements

7 (1) The Commissioner may—

(a) provide guidance to public authorities with regard to the preparation of information statements under section 4; and

(b) review the information statement of any public authority to determine if it complies with section 4.

(2) Where a public authority has not published an information statement or where the Commissioner determines that an authority's statement does not comply with section 4, the Commissioner may issue an order to the authority requiring it to publish its statement or to bring it into compliance with section 4, as the case may be, within a period to be specified by the Commissioner.

Powers of Commissioner in relation to other information

8 (1) The Commissioner may monitor and provide guidance to public authorities with regard to the provision of other information under section 5.

(2) Where the Commissioner determines that a public authority has not complied with section 5, the Commissioner may issue an order to the authority requiring it to comply with section 5 within a period to be specified by the Commissioner.

Effect of order by Commissioner

9 (1) An order issued by the Commissioner under section 7 or 8 is binding on the public authority to which it has been issued and, upon the order being filed with the Registrar of the Supreme Court, it shall have the effect of an order of the Supreme Court and shall be enforceable in the same manner as an order of the court.

Role of Commissioner generally under this Part

10 The Commissioner shall foster and encourage the publication by public authorities of information of relevance or interest to the general public in relation to the activities and functions of the authority generally, in addition to the information that is required to be provided under this Part.

Exempt records

11 Nothing in this Part requires a public authority to publish or provide any information that constitutes an exempt record under this Act.

PART 3
RIGHT OF ACCESS

Access to records

12 (1) Subject to this Act, every person has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.

(2) Public authorities shall make every reasonable effort to—

(a) assist persons in connection with requests; and

(b) respond to requests completely, accurately and in a timely manner.

(3) A requester is not required to give any reasons for making a request.

(4) The identity of a requester shall be kept confidential and, except with the consent of the requester, may not be disclosed to any person other than a person who is required to deal with the request under this Act.

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Application of Part 3

13 (1) Subject to subsections (2) and (3), this Part does not apply to records held by a public authority that were created before the coming into operation of this section.

(2) A requester has the right to be given access to personal information relating to the requester that is contained in a record, regardless of when the record was created.

(3) A public authority has a discretion to give access to records, other than exempt records, held by the authority that were created before the coming into operation of this section.

Request for access

14 (1) A request for access to a record under this Act must be made in writing to the public authority that holds the record.

(2) A request must identify the record or contain sufficient information to enable the public authority to identify the record by taking reasonable steps to do so.

(3) A request may specify in which of the forms set out in section 18 the requester wishes to be given access.

(4) A public authority shall acknowledge receipt of a request within 10 days after receipt of the request, and the authority shall at the same time inform the requester of the process for dealing with the request and of their rights under this Act.

(5) Where a request under this section is received by a public authority and any record requested is not held by that authority but, to the knowledge of that authority, is held by one or more other public authorities, the public authority that received the request shall, not later than 10 days after receipt of the request, cause a copy of the request to be given to that other public authority or, where there is more than one other public authority, to the authority whose functions are, in the opinion of the head of the public authority that first received the request, most closely related to the subject matter of the request. The head of the public authority that first received the request shall inform the requester in writing of the other public authority or authorities to whom a copy of the request has been given.

(6) A public authority to whom a copy of a request has been given under subsection (5) shall, for the purposes of this Act, be deemed to have received the request at the time of the receipt by that authority of the copy, and the authority shall comply with this section in respect of the request that has been copied to it.

Decision on request

15 (1) Subject to the provisions of this Act, a public authority shall, not later than 28 days after receipt, or deemed receipt, of a request under section 14(6), decide—

(a) whether to grant or refuse to grant the request in whole or in part; and

(b) if the request is to be granted, the form and manner in which the right of access to the record concerned is to be given, and the amount of any fee payable for the provision of access.

(2) A public authority shall give notice in writing of its decision to the requester, and to any third party who made representations under section 40, specifying—

(a) the reasons for the decision, including findings on any material issues relevant to the decision and particulars of any matter relating to the public interest taken into consideration for the purposes of the decision; and

(b) the provisions of this Act regarding review and appeal of the decision.

Extension of time

16 (1) A public authority may extend the original period of 28 days referred to in subsection (1) by such further period, not exceeding 28 days, as the authority considers necessary if, in the opinion of the head of the authority, compliance with the original period of 28 days is not reasonably possible because—

(a) there is insufficient time to complete any consultations with third parties or consultations with regard to whether access to particular information is in the public interest;

(b) there is a large amount of information to search;

(c) information is not readily available to the authority; or

(d) dealing with the request within the original period of 28 days would substantially or unreasonably interfere with the day to day operations of the authority.

(2) Where a period is extended by a public authority under this section, the authority shall, before the expiration of the original period, give notice in writing to the requester concerned of the extension and the reasons for it.

Refusal of request on administrative grounds

17 (1) A public authority may refuse to grant a request if—

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(a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;

(b) the request does not contain sufficient information to enable the authority to identify the record by taking reasonable steps;

(c) in the opinion of the head of the authority, granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority;

(d) publication of the record is required by law and is intended to be effected not later than three months after the receipt of the request by the authority;

(e) the request is, in the opinion of the head of the authority, frivolous or vexatious; or

(f) the fee payable under section 21 has not been paid.

(2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

Manner of access to records

18 (1) A public authority may give access to a record under this Act by providing the requester with the information in the record by way of—

(a) a copy of the record;

(b) a transcript of the information;

(c) an electronic machine-readable device or other electronic device that contains the information;

(d) a reasonable opportunity to inspect the record;

(e) a reasonable opportunity to hear or view the record, where the record is of sound or visual images;

(f) a decoded copy of the information, where the information is in shorthand or another code;

(g) such other means as may be determined; or

(h) any combination of paragraphs (a) to (g).

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(2) Where a public authority decides to grant a request and the request is for access to a record in a particular form or manner, access shall be given in that form or manner unless the authority is satisfied that—

(a) access in another form or manner specified in subsection (1) would be significantly more efficient; or

(b) the giving of access in the form or manner requested would—

(i) be physically detrimental to the record,

(ii) involve an infringement of copyright (other than copyright owned by the Crown, the Government or the public authority concerned),

(iii) conflict with a legal duty or obligation of the public authority concerned, or

(iv) affect the protection of an exempt record from disclosure.

(3) Where a public authority decides to grant a request but, for reasons set out in subsection (2), does not give access to the record requested in the form or manner specified in the request, the authority shall give access in such form or manner as the authority considers appropriate.

Access to part of record

19 (1) Subject to subsection (1), where a record requested contains material that constitutes an exempt record, the public authority concerned shall, if it is practicable, prepare a copy, in such form as the authority considers appropriate, of so much of the record requested as does not consist of that material, and the request shall be granted by offering the requester access to the copy.

(2) A public authority is not required to prepare a copy of a record under subsection (1) if the copy would be misleading.

(3) Where a requester is offered access to a copy of part of a record under this section, the notice under section 15 shall specify that such access is offered pursuant to this section and that the copy does not purport to be a copy of the complete record requested.

Request to amend record in respect of personal information

20 (1) Where personal information in a record held by a public authority is incomplete, incorrect or misleading, the authority shall, on request in writing by or on behalf of the person to whom the information relates, amend the record—

(a) by altering it so as to make the information complete or correct or not misleading, as the case may be;

(b) by adding to the record a statement specifying in what respect the information is incomplete, incorrect or misleading; or

(c) by deleting information from the record.

(2) A request under subsection (1) shall, in so far as is practicable—

(a) specify the record concerned and the amendment requested; and

(b) include appropriate information in support of the request.

(3) The public authority concerned shall, within 28 days after receipt of a request under subsection (1), decide whether to grant or refuse to grant the request and shall give notice, in writing or in such other form as may be determined, of the decision of the authority to the person concerned.

(4) A public authority may extend the original period of 28 days by such further period, not exceeding 28 days, as the authority considers necessary if, in the opinion of the head of the authority, compliance with the original period of 28 days is not reasonably possible.

(5) Where a period is extended by a public authority under subsection (4), the authority shall, before the expiration of the original period, give notice in writing to the requester concerned of the extension and the reasons for it.

(6) A notice referred to in subsection (3) shall—

(a) if the decision is to refuse the request, specify the reasons for the refusal;

(b) if the decision is to grant the request, specify the manner in which the record concerned is to be amended; and

(c) indicate the provisions of this Act regarding review or appeal of a decision under this section.

(7) If requested to do so by the requester, a public authority shall provide the requester with evidence that the record has been amended by permitting the requester to view the amended record or giving the requester a copy of the amended record.

(8) No fee is payable in respect of a request under this section.

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Fees in respect of access request

21 (1) The amount of any fee payable by a requester for the provision of access to a record under this Part shall be determined by the public authority concerned in accordance with regulations made under section 58.

(2) No fee is payable simply for the making of a request under this Part for access to a record, as opposed to the provision of access to the record.

(3) No fee is payable under this section where provision is made in any other statute as to the fee that may be charged by a public authority for access to, or disclosure of, the record requested.

(4) Where a fee is payable under this or any other Act in respect of access to, or disclosure of, a record, access shall not be given under this Act until the fee is paid.

PART 4
EXEMPT RECORDS

Public interest test

22 For the purposes of this Part, the test of whether disclosure by a public authority of a record or its existence is in the public interest is whether the public interest would, on balance, be better served by disclosure than non-disclosure.

Health or safety of individual

23 (1) Subject to subsection (2), a record is exempt from disclosure if its disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.

(2) A record may be disclosed if disclosure of it is in the public interest.

Personal information

24 (1) Subject to the provisions of this section, a record that consists of personal information (including personal information relating to a deceased individual) is exempt from disclosure.

(2) Subsection (1) does not apply if—

(a) subject to subsection (3), the information concerned relates to the requester;

(b) the individual to whom the information relates consents to its disclosure to the requester;

(c) the information in the record is of the same kind as information that—

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(i) is contained in the record in respect of individuals generally, or in respect of a class of individuals that is of significant size, and

(ii) is available to the general public;

(d) the information was given to the public authority concerned by the individual to whom it relates and the individual was informed on behalf of the authority, before the information was given, that the information belonged to a class of information that would or might be made available to the general public; or

(e) disclosure of the information is necessary in order to avoid a serious and imminent danger to the life or health of an individual.

(3) Where disclosure of the information to the requester might be prejudicial to the physical or mental health, well-being or emotional condition of the requester, a public authority may refuse a request for—

(a) a record of a medical or psychiatric nature relating to the requester; or

(b) a record kept for the purposes of, or obtained in the course of, the carrying out of social work in relation to the requester,

(4) Where, under subsection (3), a public authority refuses to grant a request, the authority shall, if requested to do so by the requester, provide access to a record referred to in that subsection to a health professional specified by the requester and having expertise in relation to the subject-matter of the record.

(6) A public authority may grant a request for a record containing personal information in relation to an individual where the requester concerned is—

(a) the parent or guardian of the individual, if the individual is under the age of majority; or

(b) the executor or administrator of the estate of the individual.

(5) A record that contains personal information relating to an individual may be disclosed if disclosure of it is in the public interest or would benefit the individual.

Definition of personal information

25 (1) Subject to subsection (2), "personal information" means information about an identifiable individual that is recorded in any form including—

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(a) information relating to the race, national or ethnic origin, religion, age, sex or marital status of the individual;

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, fingerprints or blood type of the individual;

(e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;

(f) correspondence sent to a public authority by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; or

(g) the views or opinions of any other person about the individual.

(2) "personal information" does not include—

(a) information about an individual who is or was an officer or employee of a public authority that relates to the position or functions of the individual;

(b) information about an individual who is or was performing services under contract for a public authority that relates to the services performed, including the terms of the contract and the name of the individual;

(c) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual by a public authority, including the name of the individual and the exact nature of the benefit; or

(d) information about an individual who has been dead for more than 20 years.

Commercial information

26 (1) Subject to subsections (2) and (3), a record that consists of the following information is exempt from disclosure—

(a) trade secrets of any person other than the requester;

(b) information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure; or

(c) other information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates, other than the requester.

(2) A record may be disclosed if disclosure of it is in the public interest.

Information received in confidence

27 (1) Subject to subsection (2), a record that consists of the following information is exempt from disclosure—

(a) information—

(i) that is given to a public authority by a third party (other than another public authority) in confidence on the understanding that it would be treated as confidential, and

(ii) the disclosure of which would be likely to prevent the authority from receiving further similar information required by the authority to properly fulfil its functions; or

(b) information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of law.

(2) A record may be disclosed if disclosure of it is in the public interest.

Cabinet documents

28 (1) Subject to subsections (2) and (3), a record is an exempt record if it is—

(a) a record that has been submitted to the Cabinet for its consideration or is proposed by a Minister of Government to be so submitted, being a record that was brought into existence for the purpose of submission for consideration by the Cabinet;

(b) an official record of any deliberation or decision of the Cabinet;

(c) a record that is a draft or copy of, or contains an extract from, a record referred to in paragraph (a) or (b);

(d) a record that consists of draft legislation; or

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(e) a record, the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet is officially published.

(2) Subsection (1) does not apply to a record that contains purely statistical, technical or scientific material unless the disclosure of the record would involve the disclosure of any deliberation or decision of the Cabinet.

(3) Subsection (1) does not apply to records that have been in existence for more than 30 years.

(4) In this section, "Cabinet" includes any committee of the Cabinet.

Ministerial responsibility

29 (1) Subject to subsection (2), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine individual ministerial responsibility, including free and frank discussion and advice between Ministers, or between Ministers and public officers, in the course of their public duties.

(2) A record may be disclosed if disclosure of it is in the public interest.

Deliberations of public authorities

30 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information relating to the deliberative process of a public authority, including opinions advice, recommendations and the results of consultations.

(2) Subsection (1) does not apply to information contained in a record that is—

(a) factual or statistical information;

(b) information resulting from an investigation or analysis of the performance, efficiency or effectiveness of a public authority in relation to its functions;

(c) information in the nature of a report, study or analysis of a scientific or technical expert; or

(d) information in the nature of the reasons of a public authority for making a particular decision.

(3) A record may be disclosed if disclosure of it is in the public interest.

Operations of public authorities

31 (1) Subject to subsection (2), a record is exempt if its disclosure could reasonably be expected to—

(a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public authority concerned or the procedures or methods employed for the conduct of those tests, examinations, investigations, inquiries or audits;

(b) have a significant, adverse effect on the performance by the public authority of any of its functions relating to management (including industrial relations and management of its staff), or

(c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations by or on behalf of the Government or a public authority.

(2) A record may be disclosed if disclosure of it is in the public interest.

Financial and economic interests

32 (1) Subject to subsection (3), a record of a kind referred to in subsection (2) is exempt from disclosure if its disclosure, or premature disclosure, could reasonably be expected to have a serious adverse effect on the financial interests of Bermuda or on the ability of the Government to manage the national economy.

(2) The kinds of records referred to in subsection (1) are records that contain information relating to—

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, revenue duties or other sources of income of the Government or a public authority;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) the regulation or control of wages, salaries or prices;

(f) proposals for expenditure by the Government or a public authority;

(g) borrowings by the Government or a public authority;

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(h) property held by the Government or a public authority and transactions or proposed or contemplated transactions involving such property;

(i) trade secrets or financial, commercial, industrial, scientific or technical matters belonging to the Government or a public authority that are of substantial value or are reasonably likely to be of substantial value;

(j) records the disclosure of which could reasonably be expected to affect adversely the competitive position of a public authority in relation to activities carried on by it on a commercial basis; or

(k) the economic or financial circumstances of a public authority.

(3) A record may be disclosed if disclosure of it is in the public interest.

National security, defence, and international relations

33 (1) A record is exempt from disclosure if—

(a) disclosure of it would prejudice the security or defence of Bermuda or relations between Bermuda and the United Kingdom or other State or international organization of States; or

(b) the record contains information communicated in confidence by a State or an international organization of States.

(2) For the purposes of this section State includes the United Kingdom and any overseas territory of the United Kingdom.

(3) A record may be disclosed if disclosure of it is in the public interest.

Governor's responsibilities and communications with the United Kingdom

34 (1) A record is exempt from disclosure if—

(a) it contains information that relates to the responsibilities of the Governor under section 62 of the Bermuda Constitution Order 1968; or

(b) it consists of communications between the Office of the Governor and departments of the Government of the United Kingdom relating to business of the Office of the Governor.

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(2) A record may be disclosed if disclosure of it is in the public interest.

Law enforcement

35 (1) Subject to subsection (2), a record is exempt if its disclosure would—

(a) prejudice the prevention, detection or investigation of a breach or possible breach of the law;

(b) prejudice the enforcement of, compliance with, or administration of, any law;

(c) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(d) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law;

(e) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;

(f) endanger any person's life or safety;

(g) prejudice the security of any building, structure, vehicle, ship, boat or aircraft; or

(h) facilitate the commission of an offence.

(2) Subsection (1) does not apply to a record if—

(a) it consists of—

(i) information revealing that the scope of a law enforcement investigation is not authorized by law, or has exceeded the limits imposed by law,

(ii) a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law,

(iii) a report on the degree of success achieved in a program adopted by a public authority for dealing with any contravention or possible contravention of the law,

(iv) a report prepared in the course of a routine law enforcement inspection or investigation by a

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public authority whose functions include that of enforcing the law, or

(v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation; and

(b) its disclosure would be in the public interest.

Legal professional privilege (FCO)

36 (1) Subject to subsection (2), a record is exempt if it is of such a nature that it would be exempt from production in legal proceedings on the ground of legal professional privilege.

(2) A record may be disclosed if disclosure of it is in the public interest.

Contempt of court and parliamentary privilege

37 A record is exempt if its disclosure would—

(a) be in contempt of court or contrary to an order made by a court, tribunal or other judicial body; or

(b) be an infringement of parliamentary privilege.

Disclosure prohibited by other legislation

38 (1) A record is exempt if its disclosure is prohibited by any statutory provision, other than this Act.

(2) The Minister may by order repeal, revoke or amend any statutory provision referred to in subsection (1) and

(3) An order under subsection (2) may make any modifications that are consequential upon or incidental to the repeal, revocation or amendment of the relevant statutory provision, and an order may contain any transitional provisions and savings that are appropriate.

(4) An order under subsection (2) is subject to the affirmative resolution procedure.

(5) Where a statutory provision made after the coming into operation of this section prohibits the disclosure of a record, the provision shall not have effect unless it provides specifically that it is to have effect notwithstanding this Act.

Non-disclosure of the existence of a record

39 Where a request is made to a public authority for access to a record which is, or if it existed would be, an exempt record, the authority shall, if it is satisfied that the disclosure of the existence or non-existence of the record would be contrary to the public interest, refuse the request and refuse to disclose whether or not the record exists.

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Notice to third parties

40 (1) Before deciding that a matter is in the public interest in the case of a request for information in a record of a type referred to in section 24, 26 or 27, a public authority shall notify any third party who gave the information to the authority, or to whom the information relates—

(a) that the authority is considering whether disclosure of the information is in the public interest;

(b) that the third party may make representations to the authority with regard to the request within 14 days after the third party receives the notification.

(2) A public authority shall consider any representations made by a third party pursuant to a notification under subsection (1) before making a decision under section 15 whether to grant or refuse to grant a request referred to in subsection (1).

PART 5
INTERNAL REVIEW

Internal review by authority

41 A requester or a third party may apply to a public authority for a review by the authority (in this Part referred to as an "internal review") of any decision made by the authority with respect to a request made under Part 3 or of any failure by the authority to take any action that it is required to take under this Act in respect of such request, including—

(a) a decision to grant or refuse to grant access to a record;

(b) a decision as to the manner in which access to a record requested is to be provided;

(c) decision to transfer a request to another authority, in whole or in part;

(d) a decision to extend the time limit for compliance with a request;

(e) a decision as to the fee charged for access to a record;

(f) a decision to refuse a request to amend a record in respect of personal information;

(g) a decision to refuse to disclose the existence of a record; and

(h) a failure to respond to a request within the time required by this Act.

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Time limit to apply for internal review

42 (1) In the case of a decision by a public authority referred to in section 41, an application for an internal review must be made within 28 days after the date when the requester or third party, as the case may be, is notified of the decision.

(2) In the case of failure by a public authority to take any action with regard to a request made under Part 3 within the time limits required by this Act, an application for internal review must be made within 28 days after the date when the authority was required to take such action.

(3) A public authority may in its discretion extend the period for making an application for internal review.

Conduct of review

43 (1) An internal review of a decision by a public authority, other than a decision made by the head of a public authority, shall be conducted by the head of the public authority concerned.

(2) The head of the public authority shall within 21 days after receiving an application for an internal review with respect to a request—

(a) complete the review and make a decision with regard to the review; and

(b) notify the requester and any third party concerned of—

(i) the decision and the reasons for the decision; and

(ii) the right of the requester or third party, as the case may be, to apply to the Commissioner for a review of the decision under Part 6.

Referral to Commissioner

44 (1) Where an application to a public authority for internal review is for review of a decision made by the head of the public authority, the public authority shall refer the application to the Commissioner.

(2) Where an application for an internal review is referred to the Commissioner, it shall be treated as an application for a review under Part 6 and dealt with accordingly.

(3) The public authority concerned shall notify the person who made the application for an internal review that the application—

(a) has been referred to the Commissioner under this section; and

(b) is to be treated as an application under Part 6.

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PART 6
REVIEW BY INFORMATION COMMISSIONER

Application for review

45 (1) Subject to subsection (2), a requester or a third party may apply to the Commissioner for a review, as the case may be, of—

(a) any decision made by the head of a public authority under section 43, within 28 days after being notified of that decision; or

(b) any failure by the head of a public authority to make a decision under section 43, within 28 days after the date when the decision was required to be made.

(2) The Commissioner may in his or her discretion extend the period for a person to apply for a review under this Part.

Conduct of review

46 (1) Subject to this Act, the Commissioner may determine the procedure to be followed in the conduct of a review under this Part.

(2) Every review shall be conducted in private.

(3) The Commissioner shall give a reasonable opportunity for the requester, the public authority and any third party concerned to make representations.

(4) Unless permitted by the Commissioner, no person has a right to be present during representations made to the Commissioner by another person, or the right to have access to, or to comment on, representations made by another person.

Time to complete review

47 The Commissioner shall, as soon as practicable after receiving an application for a review under this section or after receiving an application for review that has been referred to the Commissioner under section 44, as the case may be—

(a) complete the review and make a decision with regard to the review; and

(b) notify the requester, the public authority and any third party concerned of the Commissioner's decision and the reasons for that decision.

Decision by Commissioner

48 (1) The Commissioner may make a decision to—

(a) affirm, vary or reverse the decision of a public authority that is the subject of review by the Commissioner; or

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(b) make such other order, in accordance with this Act, as the Commissioner consider appropriate.

(2) A decision of the Commissioner shall, where appropriate, specify the period within which effect shall be given to the decision.

(3) A decision of the Commissioner is binding on all persons affected by it and, upon the decision being filed with the Registrar of the Supreme Court, it shall have the effect of an order of the Supreme Court and shall be enforceable in the same manner as an order of the court.

PART 7
OFFICE OF INFORMATION COMMISSIONER

Establishment and appointment

49 (1) The Office of Information Commissioner is established as a public office.

(2) The Information Commissioner shall be appointed by the Governor after consultation with the Premier, who shall first have consulted the Opposition Leader.

(3) The Commissioner shall be appointed for a period of 5 years and may be re-appointed for a further period of 5 years

(4) In the exercise of his or her functions, the Commissioner shall not be subject to the direction or control of any other person or authority.

(5) Subject to such exceptions as the Governor acting in his or her discretion may authorize in writing, the Commissioner shall not hold any office of profit other than that of Commissioner or otherwise engage in any occupation for reward outside the duties of the Office of Commissioner.

Staff

50 (1) There shall be appointed to assist the Commissioner in the discharge of his or her functions such number of public officers as may be required.

(2) The Commissioner may, in addition, engage from time to time such technical or professional advisers as the Commissioner considers necessary to assist in the discharge of his or her functions under this Act.

(3) Every person appointed or engaged under this section is subject to the Commissioner's direction and control in the performance of functions under this Act.

Obligation to maintain secrecy

51 (1) The Commissioner and every person appointed or engaged under section 50 shall maintain secrecy in respect of all matters that

come to their knowledge in the exercise of their functions and shall not communicate any such matter to any person except for the purpose of carrying out their functions under this Act.

(2) Information or documents obtained by the Commissioner or persons appointed or engaged under section 50 in the exercise of their functions shall not be disclosed except for the purpose of this Act.

Privilege

52 (1) No proceedings, civil or criminal, shall lie against the Commissioner or any person appointed or engaged under section 50 in respect of anything done or omitted to be done in the performance or intended performance of their functions under this Act unless it is shown that the Commissioner or person acted in bad faith.

(2) Neither the Commissioner nor any person appointed or engaged under section 50 shall be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to their knowledge in the exercise of their functions under this Act.

Funding for office and accounting

53 (1) All salaries, allowances and other expenditure payable or incurred under this Act in respect of the office of Commissioner, shall be payable out of money appropriated by the Legislature for that purpose.

(2) The Commissioner is designated as controlling officer in respect of estimates of expenditure approved in relation to the office of Commissioner.

(3) The Commissioner shall cause proper accounts to be kept and maintained of all the financial transactions with respect to the office of Commissioner and shall prepare in respect of each financial year, a statement of such accounts in such form as the Accountant General may direct.

(4) The accounts of the office of Commissioner shall be audited and reported on annually by the Auditor General, and for that purpose the Auditor General or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

Powers of Commissioner

54 (1) In conducting a review, the Commissioner has power—

(a) to summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath or affirmation, and to produce such documents and things as the Commissioner deems requisite to conduct the review, in the same manner and to the same extent as a judge of the Supreme Court;

(b) to administer oaths and affirmations;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

(d) to enter any premises occupied by any public authority on satisfying any security requirements of the authority relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries authorized under this Act as the Commissioner sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation

(2) Notwithstanding any other Act or any privilege under the law of evidence, the Commissioner may, during the conduct of a review under this Act, examine any record to which this Act applies that is under the control of a public authority, and no such record may be withheld from the Commissioner on any grounds.

(3) Any document or thing produced to the Commissioner under this section by any person or public authority shall be returned by the Commissioner within ten days after a request is made by that person or authority for its return; but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.

(4) A person who fails or refuses to comply with a requirement under this section or who hinders or obstructs the Commissioner in the performance of his or her functions under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or both.

Review of operation of Act and investigations by Commissioner

55 (1) The Commissioner shall keep the operation of this Act under review and shall, not later than 2 years after this section comes into operation, carry out an investigation into practices and procedures adopted by public authorities generally for the purposes of compliance with the provisions of this Act.

(2) The Commissioner shall prepare a written report on the investigation under subsection (1) and provide a copy of the report to the Minister.

(3) The Commissioner may at any time carry out other investigations into the practices and procedures adopted by public authorities generally or any particular public authority for the purposes of compliance with the provisions of this Act.

(4) The Commissioner may prepare a report, in writing or such other form as may be determined, of his or her findings and conclusions resulting from the carrying out of an investigation under subsection (3).

(5) The Commissioner shall cause a copy of any report under this section—

(a) to be provided to the Minister and to any public authority concerned and;

(b) to be appended to the Commissioner's annual report under section 57.

Publication of commentaries by Commissioner

56 The Commissioner may prepare and publish commentaries on the practical application and operation of the provisions, or any particular provisions, of this Act, including commentaries based on the experience of the Commissioner in relation to reviews, and decisions following reviews, under Part 6.

Annual report by Commissioner

57 The Commissioner shall, within three months after the end of each calendar year—

(a) prepare a report in relation to his or her activities under this Act in that year, and

(b) cause copies of the report to be laid before each House of the Legislature.

PART 8
MISCELLANEOUS

Regulations

58 (1) The Minister may make regulations—

(a) prescribing the circumstances in which fees are, or are not, payable to a public authority by a requester in respect of a request for access to records under Part 3;

(b) prescribing the manner in which any fee payable is to be calculated;

(c) prescribing the maximum fees payable, not exceeding the cost to the public authority of providing access to the records requested;

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(d) amending the Schedule by the addition, modification or deletion of the name of any public authority or head of a public authority;

(e) amending the references in section 6(6) to items in Column 1 of the Schedule by the addition, modification or deletion of any item; and

(f) providing for the management and maintenance of records held by public authorities; and

(g) generally for carrying out the purposes and provisions of this Act.

(2) The negative resolution procedure applies to regulations made under this section.

Codes of Practice

59 The Minister shall, following consultation with the Commissioner, establish codes of practice for public authorities regarding the administration of this Act.

(2) The Minister shall, in consultation with the Commissioner and the Archivist, establish codes of practice for public authorities regarding the appropriate management of records of public authorities.

(3) A code of practice established under subsection (1) or (2) is not a statutory instrument for the purposes of the Statutory Instruments Act 1977.

Training etc

60 The Minister shall ensure that appropriate measures are taken by public authorities with regard to training of staff, organizational arrangements and any other matters that the Minister considers appropriate, for the purposes of facilitating compliance with this Act.

Review and annual report by Minister

61 (1) Within 2 years after this section comes into operation, the Minister shall—

(a) cause a review of this Act and its implementation to be carried out;

(b) prepare a report on the review; and

(c) cause copies of the report to be laid before each House of the Legislature.

(2) Within six months after the end of each calendar year, the Minister shall—

(a) prepare a report on the operation and implementation of this Act and on the compliance by public authorities with this Act., and

(b) cause copies of the report to be laid before each House of the Legislature.

General offence

62 Any person who knowingly acts in contravention of this Act, or regulations made under this Act, is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or both.

Commencement

63 (1) This Act comes into operation on a day to be appointed by the Minister by notice published in the Gazette.

(2) The Minister may appoint different days for different provisions of the Act.

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SCHEDULE **(Section 3)**

Column 1 **Public Authority**	Column 2 **Head of Public Authority**
1. The Office of the Governor	1. The Governor
2. The Cabinet Office	2. The Secretary to the Cabinet
3. The Bermuda Police Service	3. The Commissioner of Police
4. The Bermuda Regiment	4. The Commanding Officer
5. The Office of the Clerk of the Legislature	5. The Clerk of the Legislature
6. The Office of the Director of Public Prosecutions	6. The Director of Public Prosecutions
7. The Office of the Auditor General	7. The Auditor General
8. The Office of the Ombudsman	8. The Ombudsman
9. Every department of the Government	9. The head of department
10. Every entity that is established by statutory provision and carries out functions of a governmental or quasi-governmental nature	10. The chairperson of the entity, or, where there is no chairperson, the person who fulfils the role of chief executive officer of the entity
11. Every entity that is owned or controlled by the Government or that is substantially funded by monies authorized by the Legislature	11. The chairperson of the entity, or, where there is no chairperson, the person who fulfils the role of chief executive officer of the entity
12. The City of Hamilton	12. The Mayor of the City
13. The Town of St George	13. The Mayor of the Town
14. Every parish council under the Parish Councils Act 1971	14. The Chairman of the parish council

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