BERMUDA

PUBLIC ACCESS TO INFORMATION ACT 2010

2010 : 44

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SCHEDULE

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

Citation

1 This Act may be cited as the Public Access to Information Act 2010.

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 that are in the public interest or for the protection of the rights of others;

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

(c) increase the accountability of public authorities;

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

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

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Interpretation

3 (1) In this Act, unless the context otherwise requires—

"Commissioner" means the Information Commissioner appointed under section 50;

"exempt record" means a record that is exempt from disclosure under this Act by virtue of a provision of 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 responsible for Government Reform;

"personal information" means personal information as defined in section 24;

"prescribed" means prescribed by regulations made under section 59;

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

"record" means a record held by a public authority, in any form or medium, 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, videotape, 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 13 or a person who makes a request for amendment of a record under section 19, 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;

"working days" means a number of days, excluding Saturday, Sunday or a public holiday.

(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.

[Section 3 subsection (1) definition "Minister" substituted by BR 115 / 2017 para. 4 effective 7 December 2017]

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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

(aa) records relating to the Justice Protection Investigative and Protective Agency, held by the Bermuda Police Service in accordance with the Justice Protection Act 2010;

(b) records obtained or created by any of the following public authorities in the course of carrying out their functions—

(i) the Office of the Auditor General;

(ii) the Human Rights Commission;

(iii) the Office of the Information Commissioner;

(iv) the Office of the Ombudsman;

(v) the Department of Public Prosecutions which, for the purposes of this section, includes the Justice Protection Administrative Centre;

(vi) the Attorney General's Chambers;

(vii) the Department of Internal Audit;

(viii) the Financial Policy Council.

(2) The reference to records in subsection (1) does not include 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).

(3) For the avoidance of doubt, no record which contains information about a protected person shall be accessible to the public under this Act.

(4) In this section—

"protected person" means any of the persons listed in Schedule 1 of the Justice Protection Act 2010.

[Section 4 subsection (1) amended by 2014 : 27 s. 3 effective 1 April 2015; subsection (1) amended and subsections (3) and (4) inserted by 2015 : 43 s. 2 effective 8 December 2015; subsection (1)(b)(viii) inserted by 2019 : 26 s. 2 effective 29 July 2019]

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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 name and contact information of the person designated by the authority under section 62 as the person to whom requests under this Act may be directed;

(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; and

(i) any other information that may be prescribed.

(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.

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(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) A public authority shall provide information to the general public about information it holds, on an annual basis, by—

(a) print media;

(b) radio media;

(c) television media; or

(d) online web-page,

and on how to access information held by the public authority, to enable the public to have minimum need to resort to this Act for obtaining information held by a public authority.

(2) Public authorities shall keep a log of all access requests made under section 13, excluding the names of requesters, any other information that could reveal the identity of the requester and any personal information about any person.

(3) The log shall indicate whether a request has been granted or refused and, in the case of a refusal, the log shall include the reasons for refusal.

(4) The information in the log, other than information that has been provided pursuant to an access request, shall be made available to members of the public upon request.

(5) Public authorities shall make their quarterly expenditures available to members of the public upon request.

(6) 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).

(7) In January of each year, the Minister shall publish a list setting out the title and corresponding salary range of every position of public officer within the meaning of section 102(1) of the Bermuda Constitution Order 1968.

(8) Publication of the list referred to in subsection (7) 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.

[Section 6 subsection (1) deleted and substituted by 2014 : 27 s. 4 effective 1 April 2015; subsection (4) deleted and substituted by 2015 : 43 s. 3 effective 8 December 2015]

Powers of Commissioner in relation to information statements

7 (1) The Commissioner may—

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(a) provide guidance to public authorities with regard to the preparation of information statements under section 5; and

(b) review the information statement of any public authority to determine if it complies with section 5.

(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 5, the Commissioner may issue an order to the authority requiring it to publish its statement or to bring it into compliance with section 5, 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 6.

(2) Where the Commissioner determines that a public authority has not complied with section 6, the Commissioner may issue an order to the authority requiring it to comply with section 6 within a period to be specified by the Commissioner.

Effect of order by Commissioner

9 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.

Saving for 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 who is a Bermudian or a resident of Bermuda 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

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(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.

Request for access

13 (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 form or manner set out in section 17 (1) the requester wishes to be given access and, subject to subsection 17(2), access shall be given in that form or manner.

(4) A public authority shall acknowledge receipt of a request within five working 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 the requester's 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 five working days after receipt of the request cause a copy of the request to be given—

(a) to that other public authority; or

(b) in the case of 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.

(6) 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.

(7) 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 subsections (4), (5) and (6) shall apply in respect of the request that has been copied to the authority.

Decision on request

14 (1) Subject to the provisions of this Act, a public authority shall, not later than six weeks after receipt, or deemed receipt, of a request under section 13, decide—

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

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(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 immediately after a decision has been made give notice in writing of the decision to the requester, and to any third party who made representations under section 39, 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.

(3) Subject to subsection (4), where the decision is to grant a request, the public authority concerned shall provide access to the record concerned in accordance with section 17—

(a) where it is reasonably practicable to do so, before the date when the period under section 42 for applying for a review of the decision has expired without an application having been made; or

(b) as soon as possible after the date when the period under section 42 for applying for a review of the decision has expired without an application having been made.

(4) Where an application has been made under section 41 for a review of a decision to grant a request, the public authority concerned shall provide access to the record concerned in accordance with section 17 as soon as possible after—

(a) the date when the period under section 45 for applying for a review of a decision made under section 43 has expired without an application having been made; or

(b) if an application under section 45 has been made, the date when a review under Part 6 in respect of a decision made under section 43 has been completed.

[Section 14 subsection (1) amended by 2014 : 27 s. 2 effective 1 April 2015; subsection (3) deleted and substituted by 2015 : 43 s. 4 effective 8 December 2015]

Extension of time

15 (1) A public authority may extend the original period of six weeks referred to in section 14(1) by such further period, not exceeding six weeks, as the authority considers necessary if, in the opinion of the head of the authority, compliance with the original period of six weeks is not reasonably practicable because—

(a) there is insufficient time to consider representations made by third parties under section 39 or to complete any consultations with regard to whether access to particular information is in the public interest; or

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(b) dealing with the request within the original period of six weeks 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.

[Section 15 subsection (1) amended by 2014 : 27 s. 2 effective 1 April 2015]

Refusal of request on administrative grounds

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

(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;

(f) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or

(g) the fee payable under section 20 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

17 (1) A public authority shall give access to a record under this Act by providing the requester with the information in the record in any of the following forms or manners that it considers appropriate—

(a) a reasonable opportunity to inspect the record;

(b) a copy of the record;

(c) a transcript of the information;

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

(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 by the public authority.

(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

18 (1) Subject to subsection (2), where a record requested contains information 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 in accordance with section 17.

(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 14 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.

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Request to amend record of personal information

19 (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, 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 five working days after receipt of a request, acknowledge receipt of the request and shall, within six weeks after receipt of the request, 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 six weeks by such further period, not exceeding six weeks, as the authority considers necessary if, in the opinion of the head of the authority, compliance with the original period of six weeks is not reasonably practicable.

(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 by giving the requester a copy of the amended record.

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

[Section 19 subsections (3) and (4) amended by 2014 : 27 s. 2 effective 1 April 2015]

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Fees in respect of access requests

20 (1) The amount of any fee payable by a requester for the provision of access to a record under this Act shall be calculated by the public authority concerned in accordance with regulations made under section 59.

(2) No fee is payable simply for the making of a request under this Act for access to a record.

(3) Access to a record under this Act shall not be provided until any fee in respect of the provision of access has been paid.

PART 4

EXEMPT RECORDS

Public interest test

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

Health or safety of individual

22 (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 shall be disclosed if disclosure of it is in the public interest.

Personal information

23 (1) Subject to the provisions of this section, a record that consists of personal information 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 in writing to its disclosure;

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

(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

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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 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, within the meaning of section 2 of the Bermuda Health Council Act 2004, who has expertise in relation to the subject matter of the record.

(5) 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 eighteen; or

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

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

Definition of personal information

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

(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 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

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

(2) But "personal information" does not include—

(a) information about an individual, except where the individual is a police officer of the Bermuda Police Service who is or was engaged in a surveillance function during the course of his employment; 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; or

(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.

[Section 24 subsection (2)(a) amended by 2015 : 43 s. 5 effective 8 December 2015]

Commercial information

25 (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;

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

(c) 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; or

(d) information, the disclosure of which would prejudice, or could reasonably be expected to prejudice, the conduct or outcome of contractual or other negotiations of any person to whom the information relates.

(2) Subsection (1) does not apply if—

(a) the information concerned relates to the requester;

(b) the person to whom the information relates consents in writing to its disclosure; or

(c) the information was given to the public authority concerned by the person to whom it relates and the person 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.

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

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Information received in confidence

26 (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 shall be disclosed if disclosure of it is in the public interest.

Information received in confidence— International tax agreements

26A (1) Subject to subsection (2), a record is an exempt record if it is—

(a) a record of a request that has been submitted to the Minister of Finance for his consideration, being a record that was brought into existence in connection with an international tax agreement;

(b) an official record of any deliberation or decision by the Minister of Finance in connection with an international tax agreement;

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

(d) a record, the disclosure of which would involve, or could reasonably be expected to involve, the disclosure of any deliberation or decision of the Minister of Finance, other than a record by which a decision of the Minister of Finance 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, or could reasonably be expected to involve, the disclosure of any deliberation or decision of the Minister of Finance.

[Section 26A inserted by 2014 : 27 s. 5 effective 1 April 2015]

Cabinet documents

27 (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;

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

(ba) drafting instructions, draft bills, draft statutory instruments or a record of drafting instructions, draft bills, or draft statutory instruments;

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

(d) a record, the disclosure of which would involve, or could reasonably be expected to 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, or could reasonably be expected to involve, the disclosure of any deliberation or decision of the Cabinet.

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

[Section 27 subsection (1) amended by 2014 : 27 s. 6 effective 1 April 2015]

Ministerial responsibility

28 (1) Subject to subsection (2), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected to 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 shall be disclosed if disclosure of it is in the public interest.

Deliberations of public authorities

29 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected to undermine, the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.

(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 shall be disclosed if disclosure of it is in the public interest.

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Operations of public authorities

30 (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 ongoing negotiations by or on behalf of the Government or a public authority.

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

Financial and economic interests

31 (1) Subject to subsection (2), a record 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) A record shall be disclosed if disclosure of it is in the public interest.

National security, defence, and international relations

32 (1) Subject to subsection (3), a record is exempt from disclosure if—

(a) disclosure of it would prejudice, or could reasonably be expected to prejudice, the security or defence of Bermuda or relations between Bermuda and any 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 shall be disclosed if disclosure of it is in the public interest.

Governor's responsibilities and communications with the United Kingdom

33 (1) Subject to subsection (2), 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, the disclosure of which would prejudice, or could reasonably be expected to prejudice, the effective conduct of public affairs; or

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(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, the disclosure of which would prejudice, or could reasonably be expected to prejudice, the effective conduct of public affairs.

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

Law enforcement

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

(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 prejudice, or could reasonably be expected 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 public authority whose functions include that of enforcing the law; or

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

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

Legal professional privilege

35 (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) Subject to subsection (3), a record shall be disclosed if disclosure of it is in the public interest.

(3) For the avoidance of doubt a record held by the Attorney General or the Director of Public Prosecutions, that is the subject of legal professional privilege, shall be an exempt record and shall not be subject to public disclosure of any kind.

[Section 35 subsection (2) amended and subsection (3) inserted by 2014 : 27 s. 7 effective 1 April 2015]

Contempt of court and parliamentary privilege

36 A record is exempt if its disclosure would, or could reasonably be expected to be—

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

(b) an infringement of parliamentary privilege.

Disclosure prohibited by other legislation

37 (1) Subject to subsection (6), 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).

(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.

(6) For the avoidance of doubt a record held by the Attorney General or the Director of Public Prosecutions, that is the subject of legal professional privilege, shall be an exempt record and shall not be subject to public disclosure of any kind.

[Section 37 subsection (1) amended and subsection (6) inserted by 2014 : 27 s. 8 effective 1 April 2015]

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Non-disclosure of existence of a record

38 (1) A public authority may refuse to disclose whether a record exists if the record itself, if it exists or were to exist, is or would be an exempt record.

(2) The existence or non-existence of a record shall be disclosed if disclosure of it is in the public interest.

Notice to third parties

39 (1) If a public authority intends to disclose a record that the head of the public authority has reason to believe might contain information of a type referred to in section 23, 25 or 26, the head of the public authority shall give notice to any third party who gave the information to the authority, or to whom the information relates—

(2) A notice under subsection (1) to a third party shall—

(a) state that the authority intends to disclose a record that might contain information of a type referred to in section 23, 25 or 26 that was given to the authority by the third party or that relates to the third party, as the case may be;

(b) describe the contents of the record; and

(c) state that, within fourteen days after the notice is given, the third party may consent in writing to the disclosure of the record or make written representations to the authority with regard to the intended disclosure.

(3) The public authority shall give a copy of any notice given under this section to the requester.

(4) The public authority shall consider any representations made by a third party pursuant to a notice under this section before making a decision under section 14 whether to grant or refuse to grant a request for access to a record referred to in this section.

Expiry of certain exemptions

40 (1) Subject to subsection (2), a record shall not be exempt under this Part after the expiry of 30 years from the date when the record was created.

(2) Subsection (1) does not apply to a record that is exempt from disclosure under section 23 or 37.

PART 5

INTERNAL REVIEW

Internal review by authority

41 A requester or a third party may apply in writing 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—

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(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) a 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 do anything relating to a request within the time required by this Act.

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 six weeks 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 six weeks 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.

[Section 42 subsections (1) and (2) amended by 2014 : 27 s. 2 effective 1 April 2015]

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 six weeks 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.

[Section 43 subsection (2) amended by 2014 : 27 s. 9 effective 1 April 2015]

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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, within five working days after receiving an application under this section, notify the person who made the application 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.

PART 6

REVIEW BY INFORMATION COMMISSIONER

Application for review

45 (1) Subject to subsection (2), a requester or a third party may apply in writing 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 six weeks 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 six weeks after the date when the decision was required to be made.

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

[Section 45 subsection (1) amended by 2014 : 27 s. 2 effective 1 April 2015]

Mediation

46 (1) The Commissioner may at any time attempt to have the matter that is the subject of an application for review resolved by negotiation, conciliation, mediation or otherwise.

(2) The Commissioner may authorize any person appointed or engaged under section 52 to act as a mediator in any mediation.

(3) Participation in the mediation is voluntary and any party to it may withdraw at any time.

(4) The mediator may decide to terminate the mediation at any time, in which case the mediator shall provide reasons for so deciding.

(5) Anything said or admitted during the mediation and any document prepared for the purposes of the mediation shall not be admissible in evidence against any person in

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any subsequent proceedings concerning a matter that is the subject of the mediation and no evidence in respect of the mediation may be given against any person.

Review

47 (1) If the Commissioner decides not to attempt to resolve the matter under section 46 or if any such attempt is not successful, the Commissioner shall commence a review of the matter.

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

(3) Every review shall be conducted in private.

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

(5) 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.

(6) The Commissioner shall, as soon as practicable—

(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

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

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

(3) Subject to section 49, 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.

Judicial review

49 (1) Any person (including any public authority) aggrieved by a decision of the Commissioner under this Act may apply to the Supreme Court for a review of the decision and the Court, after considering the application, may confirm, vary, remit or set aside the decision.

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(2) An application under subsection (1) for judicial review shall be heard and determined by a judge in chambers unless the Court, with the consent of the parties, directs otherwise.

PART 7

OFFICE OF INFORMATION COMMISSIONER

Establishment and appointment

50 (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 five years and may be re-appointed for a further period of five years.

(4) In the exercise of his 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 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 Information Commissioner.

Mandate of Commissioner

51 (1) The mandate of the Commissioner is to promote public access to information in accordance with this Act, including by raising public awareness and understanding of the rights conferred by the Act and by providing guidance to public authorities with regard to the obligations imposed on them by the Act.

(2) The Commissioner shall perform the functions assigned to him by this Act and by any other statutory provision.

Staff

52 (1) There shall be appointed to assist the Commissioner in the discharge of his 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 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

53 (1) The Commissioner and every person appointed or engaged under section 52 shall maintain secrecy in respect of all matters that come to their knowledge in the exercise

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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 any person appointed or engaged under section 52 in the exercise of their functions shall not be disclosed except for the purpose of this Act.

Privilege

54 (1) No proceedings, civil or criminal, shall be brought against the Commissioner or any person appointed or engaged under section 52 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 52 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

55 (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

56 (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;

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(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 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 and investigations by Commissioner

57 (1) The Commissioner shall keep the operation of this Act under review and shall, not later than two 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 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 58.

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Annual report by Commissioner

58 (1) The Commissioner shall, within three months after the end of each calendar year, prepare a report on the operation of this Act during that year and cause copies of the report to be laid before each House of the Legislature.

(2) The report shall include the following information—

(a) the number of requests made under section 13 for access to records and how they were disposed of;

(b) the number of requests made under section 19 to amend records of personal information and how they were disposed of;

(c) the number of times that exemptions under Part 4 were invoked by public authorities, by category;

(d) the number of applications made for internal review under Part 5 and how they were disposed of;

(e) the number of applications for review by the Commissioner under part 6 and how they were disposed of; and

(f) the number of applications made under section 49 for judicial review and the status or result of such applications.

(3) Every public authority shall, before the end of each calendar year, provide a written report to the Commissioner containing the information set out in subsection (2) as it pertains to that public authority.

PART 8

MISCELLANEOUS

Regulations

59 (1) The Minister may make regulations—

(a) prescribing fees payable for the provision of access to records under this Act, including the manner of calculating fees, circumstances in which no fee is payable and the maximum fee that may be charged;

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

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

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

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

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Codes of practice

60 (1) 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 Director of the Department of Libraries and Archives, establish codes of practice for public authorities regarding the maintenance and management of records of public authorities in a manner that facilitates ready access to the records.

(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.

[Section 60 subsection (2) amended by 2015 : 44 s. 9 effective 11 December 2015; Section 60 subsection (2) amended by 2018 : 21 s. 2 effective 28 May 2018]

Training and organization

61 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.

Information officer

62 Every public authority shall designate one of its officers to be the person to whom requests under the Act may be directed.

Protection against liability

63 No proceedings, civil or criminal, shall be brought against any public authority, its employees or agents in respect of the disclosure or non-disclosure by any of them of any record under this Act, or any action taken or omitted to be taken under this Act, unless it is shown that the authority, employee or agent acted in bad faith.

Offence to alter or destroy record

64 (1) Any person who, subject to subsection (2), alters, erases, destroys or conceals any record with the intention of preventing its disclosure under this Act commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both such fine and imprisonment.

(2) For the avoidance of doubt, no criminal or civil proceedings shall be brought against any person for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of their employment with a public authority.

[Section 64 repealed and replaced by 2014 : 27 s. 10 effective 1 April 2015]

General offence

65 (1) Any person who, subject to subsection (2), knowingly contravenes any provision of this Act (other than section 56 or 64) or regulations made under this Act is

guilty of an offence and is liable on summary conviction to a fine of $5,000 or to imprisonment for six months or to both such fine and imprisonment.

(2) For the avoidance of doubt, no criminal or civil proceedings shall be brought against any person for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of their employment with a public authority.

[Section 65 repealed and replaced by 2014 : 27 s. 11 effective 1 April 2015]

Commencement

66 (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(1))

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

[Schedule amended by 2015 : 43 s. 6 effective 8 December 2015; amended by 2015 : 48 s. 25 effective 1 November 2017]

[Assent Date: 10 August 2010]

Operative Dates: Sections 50 to 55 and 60 to 62 in force 2 September 2014 by BR 70 / 2014 para. 2. All remaining sections in force 1 April 2015 by BR 17 / 2015 para. 2.

[*Amended by:*
2014 : 27
2015 : 43
2015 : 44
2015 : 48
BR 115 / 2017
2018 : 21
2019 : 26]

BERMUDA

PUBLIC ACCESS TO INFORMATION REGULATIONS 2014

BR 79 / 2014

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SCHEDULE 1
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Form of Letter of Acknowledgement

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SCHEDULE 3
Application for Amendment or Annotation of a Record

The Premier, in exercise of the power conferred by section 59 of the Public Access to Information Act 2010, makes the following Regulations:

Citation

1 These Regulations may be cited as the Public Access to Information Regulations 2014.

Interpretation

2 In these Regulations—

"chief officer" means—

(a) in the case of a Ministry, the Permanent Secretary of the Ministry or of the Cabinet Office; or

(b) in the case of the portfolio of the—

(i) National Security;

(ii) Legal Affairs;

(iii) Finance; or

(iv) Civil Service,

and such public officer in the portfolio as may be designated by the Governor; and

(c) in the case of a statutory authority or a Government corporation, the person appointed as chief officer (by whatever name called) by the board of that authority or corporation, or by other relevant authority;

"information officer" includes any person authorised to act as an information officer for the purpose of the Act and these Regulations;

"public interest" means but is not limited to things that may or tend to—

(a) promote greater public understanding of the process or decisions of public authorities;

(b) provide reasons for decisions taken by the Government;

(c) promote accountability of and within the Government;

(d) promote accountability for the public expenditure or the more effective use of public funds;

(e) facilitate public participation in decision-making by the Government;

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(f) improve the quality of services provided by the Government and the responsiveness of the Government to the needs of the public or of any section of the public;

(g) deter or reveal wrong-doing or maladministration;

(h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or

(i) reveal untrue, incomplete or misleading information or acts of a public authority.

Right of access

3 An application for access to a record shall contain the particulars set out in Schedule 1.

Provision of access

4 A record shall be provided to the applicant as soon as practicable—

(a) not later than six weeks from the date the request is received by a public authority; or

(b) where an additional six weeks extension has been granted in accordance with section 15(1) of the Act, not later than six weeks from the date the extension is granted by a public authority.

Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

Receipt and acknowledgement of requests and Schedule 2 forms

6 (1) An officer in a public authority to whom an application is given or transmitted shall accept it and pass it to the information officer as soon as practicable but not later than five working days after the date of receiving the application.

(2) In the circumstances referred to in paragraph (1) the date of receipt of the application by the public authority shall be the date on which the application was initially received by the officer.

(3) Not more than five working days after receipt of an application that meets the requirements of section 13 of the Act the information officer shall dispatch to the applicant a letter of acknowledgement in the form set out in Schedule 2.

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Access to records during working hours

7 The preparation of records by a public authority for the purpose of granting access and inspection, viewing or listening to or collection of copies of records shall be done during the working hours of the public authority unless otherwise authorized by the chief officer.

Transfer of requests

8 (1) As soon as practicable after receipt by the public authority of an application the information officer shall make a determination under section 13(5) of the Act as to whether the application should be referred to another public authority.

(2) Where an application is transferred to another public authority under section 13(6), the information officer shall within five working days dispatch correspondence to the applicant indicating that the public authority has transferred the application to the appropriate public authority, naming the authority.

Unreasonable interference or disruption of other work

9 (1) Before a public authority makes a decision to refuse access under section 16(1)(c) of the Act (on the basis that the request would unreasonably interfere or disrupt other work) the information officer shall send written communication to the applicant—

(a) explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and

(b) inviting consultation with a view to narrowing the request.

(2) The information officer shall make a determination on the criteria for refusal in section 16(1)(c) of the Act on a case by case basis and for this purpose—

(a) the resources to be considered are the existing resources of the public authority reasonably required to process the request consistent with attendance to other priorities including—

(i) identifying, locating or collating the records within the public authority's filing systems; and

(ii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters; and

(b) the types of factors which shall be considered to determine whether the interference with or disruption of the other work would be unreasonable include—

(i) the nature and size of the public authority;

(ii) the number, type and volume of records falling within the request; and

(iii) the time involved in fully processing the request.

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(3) In this regulation, a reference to the time spent by a public authority in searching for, locating or collating a record within a public authority's filing system or otherwise spent in processing the application does not include—

(a) where the record is not found in the place in which, according to the filing system of the public authority (referred to in this regulation as the "relevant filing system") it ought to be located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the record had been found in that place; or

(b) where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the record is located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the relevant filing system had indicated the place in which the record is located and the record had been found in that place.

Notice to third parties

10 (1) Where the information officer intends to give a requester access to a record which he believes contains personal information relating to a third party, he shall, within five working days of receipt of the application, send the third party written notice of the application for access.

(2) If the third party does not respond within the time specified in paragraph (5) or the information officer is not satisfied that the communication has reached the third party, he shall make such further attempts as are practicable to contact the third party by other feasible means of communication such as telephone, fax or email until he is so satisfied.

(3) The information officer may, in exercise of the powers contained in section 15 of the Act, extend the period for decision making.

(4) The notice shall—

(a) state that a request has been made by an applicant (without naming him) for access to a record containing personal information about a third party;

(b) describe the contents of the request and record concerned;

(c) state that, within fourteen working days from the date of notice (and the notice shall be dispatched on the date of the notice), the third party may, in writing, consent to the disclosure or may make written representations to the public authority explaining why the information should not be disclosed; and

(d) state that a decision will be made within fourteen working days from the expiry of the fourteen working days whether or not to give the requester access to the record or from the date a response is received from the third party if earlier.

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Notifications of decisions to grant access and right of appeal

11 (1) On reaching a decision to grant access or partial access to personal information the information officer shall as soon as reasonably practicable give written notification of that decision to the applicant with a copy to—

(a) the third party; and

(b) the Information Commissioner;

(c) the notice shall also state that—

(i) the requester has a right to internal review by the public authority under section 41 of the Act;

(ii) the requester has a right of review by the Commissioner under section 45 of the Act;

(iii) the third party has a right to apply for review under paragraph (2);

(iv) access to the record will be given unless the third party applies for review of the decision to the information officer or, as the case may be, the Commissioner under paragraph (2); and

(v) that the record will be withheld until the third party's time for appeal to the Commissioner has expired.

(2) Where the third party is dissatisfied with the decision or any part of it, he may apply for review to the information officer or the Commissioner within six weeks after the date of decision.

(3) If there is no application for review within the period referred to in paragraph (2) the record may be released but only after the expiry of an additional six weeks during which time the Commissioner may exercise his power under section 45(2) of the Act to extend the period of application.

(4) Where following receipt of representations from the third party an information officer decides to claim an exemption for the record, notice of the decision shall be dispatched to the requester within five working days of the date of the decision but the requester has the right of review specified in sections 41 and 45 of the Act.

Application for access to personal information

12 (1) Any person applying for access to his personal information shall provide photo identification confirming that he is the person to whom the information relates.

(2) Where the requester is not the person to whom the personal information relates, the person applying for the information shall provide sufficient proof of his authority to apply for the information and have access to it and such proof includes but is not limited to—

(a) a power of attorney;

(b) a court order;

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(c) probate or letters of administration; or

(d) written authority by a next of kin of the person to whom the information relates to apply for and gain access to the information.

Fees

13 (1) The fees prescribed in the Government Fees Regulations 1976 shall apply.

(2) Where access is granted to a record and the record is to be inspected on the premises of the public authority no fee is payable.

(3) Before access is given to a record the information officer shall give the requester an estimate of the amount of fee payable, and the fee shall be paid before access is granted.

(4) Payment may be made by such method as the public authority may specify and for this purpose the public authority may specify payment by cash, money order or electronic bank card.

(5) The application shall be deemed to have been withdrawn where the requester fails within thirty working days of receipt of the notification of fees—

(a) to respond;

(b) to set an appointment for inspection; or

(c) to present himself at the public authority to receive copies of the record.

(6) Where before the expiry of the period referred to in paragraph (5) the requester asks for an extension the information officer may, where he thinks appropriate, extend that period for a further thirty working days.

(7) During the periods referred to in paragraph (6) the information officer shall do his best to remind the requester that payment needs to be made within the time allowed.

Form of application- Schedule 3

14 An application for amendment or annotation of a record shall contain the particulars set out in Schedule 3.

Manner of amending personal records

15 (1) Information on a paper record shall be corrected by ruling through the information found to be incorrect and writing the correct information next to it.

(2) The amendment shall not obliterate the text of the record as it existed before the amendment and shall be sealed.

(3) The information officer shall insert the following—

"Amended on [insert date] under section 19(1) of the PATI Act 2010".

(4) Where the incorrect information is found in a particular place, a clear reference to the file where the correct information is held shall be added to the file or record holding the incorrect information.

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Manner of annotating personal records

16 (1) Annotation of records shall be completed by adding a file note to the record summarizing the requester's statement cross-indexed to the material claimed to be incomplete, incorrect, out of date or misleading.

(2) The annotation of the record shall be clearly displayed on the cover of all of the requester's files.

Functions of information officers

17 An information officer shall—

(a) ensure persons who are applying for access to personal information prove their identity;

(b) conduct interviews with applicants to ensure that the appropriate records are located;

(c) ensure that applicants are fully informed of the status of their applications;

(d) inform applicants when it is known that a record is already published and if requested provide information as to where the information can be accessed or provide access to that information;

(e) monitor the inspection of records;

(f) make a record of all applications for access as required by these Regulations and maintain a disclosure log for the public authority of all applications granted;

(g) coordinate throughout the public authority the information required to be published under section 5 of the Act.

(h) transfer applications to other public authorities after consultation with the appropriate information officer on the functions and duties of the public authority and the existence or otherwise of the records required by the requester in that public authority;

(i) assist persons who have limited ability to read or write English or with any mental or physical disability;

(j) examine records to which access has been applied for to determine whether—

(i) the record is exempt in its entirety;

(ii) the record contains exempt matter;

(iii) access should be granted; or

(iv) the grant of access should be deferred under section 11 of the Act;

(k) publish on an annual basis the relevant publication scheme, and this function may be performed in conjunction with other public authorities; and

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(l) keep up to date his knowledge of the Act, the laws relevant to the administration of his public authority, the Code of Practice on Records Management, and the laws and practices affecting the management of records and information.

Delegation of functions

18 (1) An information officer may delegate to an officer such of his functions as he thinks necessary or expedient but shall remain accountable for the discharge of those functions.

(2) Any complaint against the information officer concerning the service provided by the information officer that is not a matter which is subject to internal review shall be referred to the chief officer of the public authority.

Sharing of information officers

19 A public authority may agree with one or more other public authorities to appoint one information officer.

Duty to keep register of applications

20 (1) Subject to subsection (2), the information officer shall, in the monitoring and tracking computer system used by the Government, keep a register of applications in electronic form which shall include but be not limited to—

(a) an application number;

(b) the name of the requester;

(c) the date of the application (which shall be the date of original receipt, where it was at that time a complete and valid request under the Act or these Regulations) or a subsequent date (where the application had to be resubmitted so as to be complete and valid);

(d) a summary of the requester's request;

(e) the date the response was sent to the requester;

(f) a summary of information provided, where information was provided;

(g) where the request was refused, the specific clause relied upon with an explanation of reasons; and

(h) whether an appeal was filed and the outcome of that appeal.

(2) For the purposes of this Regulation, an external public authority may use—

(a) the Government monitoring and tracking computer system; or

(b) an electronic or other system, created by the external public authority, for the purpose of complying with this Regulation.

(3) In this regulation—

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"external public authority" means the public authorities listed in paragraphs 13 to 17 of the Schedule to the Public Access to Information Act 2010.

[Regulation 20 paragraph (1) inserted and amended and paragraphs (2) and (3) inserted by 2015 : 43 s. 7 effective 8 December 2015]

Request on behalf of minors

21 (1) In this section "child" means a person under the age of eighteen years.

(2) A parent or guardian of a child may, without obtaining the consent of the child, apply for and be granted access to information (including personal information) relating to that child but access shall not be granted if, in the opinion of the information officer—

(a) such information is of such a nature as not to be ordinarily made available to a parent in the normal course of dealing with a public authority; or

(b) after consultation with the Director of Child and Family Services, the granting of access to such information would not be in the best interest of the child.

Commencement

22 These Regulations shall come into operation on the same date on which the Public Access to Information Act 2010 comes into operation.

SCHEDULE 1

(Regulation 3)

PARTICULARS TO BE SET OUT IN THE FORM OF AN APPLICATION FOR ACCESS

Name of Public Authority to which the application is being made

Details of requester

Title (Mr., Mrs., Ms., Miss., Other)

Surname (Family name)

First name

Middle names

Postal address (include Postal code)

Email address

Telephone number

Details request

(Include subject matter of the request and the time frame to which the request refers. Include dates and any known documents)

If you are making a request for personal information, please include the following:

The full name of the person to whom the information relates

The authority which entitles you to apply on behalf of the above named person (if a third party).

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SCHEDULE 2

(Regulation 6)

FORM OF LETTER OF ACKNOWLEDGEMENT

Reference Number [Insert Number]

Dear [Name]

Thank you for your application dated [insert date of application], received by us on [insert date of receipt].

Your request is being dealt with under the terms of Public Access to Information Act and Regulations.

You will receive a response to your request within twenty-eight days as set out in the Act.

If you have any queries about this letter, please contact me. Please quote your reference number in any future correspondence.

Sincerely,

Information Officer

[Name, address, email address, telephone number]

SCHEDULE 3

(Regulation 14)

APPLICATION FOR AMENDMENT OR ANNOTATION OF A RECORD

Applicant's Name: _____

Applicant's Account Number or File Number: _____

Applicant's
Address: _____

_____

_____

Date or dates of entry to be amended:

_____

_____

Type of entry to be amended: _____

Please explain how the entry is incorrect or incomplete. What should the entry say to be more accurate or complete?

_____

_____

_____

_____

_____
Signature of the Applicant

_____
Date of Application

_____
Name and signature of Information Officer

PUBLIC ACCESS TO INFORMATION REGULATIONS 2014

Made this 25th day of September 2014

Premier

[*Amended by:*
2015 : 43]