

EXPLANATORY NOTES ON FREEDOM OF INFORMATION BILL

The purpose of this Bill is to give the public a general right of access to official documents and to make provisions for incidental and connected purposes.

Part I of the Bill provides for the Preliminary Part and contains clauses 1-6.

Clause 1 makes provisions for the Short Title and Commencement.

Clause 2 provides for the Interpretation Section in which some of the words to be used throughout the Bill are defined.

Clause 3 provides that the Bill shall apply to all public bodies and official documents created or held by a public body not more than thirty years immediately preceding the date of commencement of the Bill, with stated exceptions.

Clause 4 states the objects of the Bill.

Clause 5 binds the State to the provisions of the Bill.

Clause 6 provides a guide with respect to using the Bill.

Part II of the Bill provides for Measures to Promote Openness and contains Clauses 7-10.

Clause 7 makes provision for publication of information by public authorities.

Clause 8 makes provision for the voluntary disclosure and automatic availability of certain records.

Clause 9 makes it mandatory for the Commissioner to publish a guide on minimum standards and best practices, regarding the duty of public bodies to public information pursuant to clause 8, and upon request provide access to a public body regarding the duty to publish.

Clause 10 makes provision for the appointment of an information officer by a public body who shall have the following responsibilities –

- (a) to promote within the public body, the best possible practices in relation to record maintenance, archiving and disposal; and
- (b) to serve as a central contact within the public body for receiving requests for access to information and for receiving complaints regarding the performance of the public body relating to information disclosure.

Part III provides for Access to Information and Manner of Access and contains Clauses 11-24.

By virtue of clause 11, every person shall have a right to obtain access to an official document of a public body, other than an exempt document.

Clause 12 makes provision for access to an official document apart from the provisions of this Act.

Clause 13 makes provision for request for access. By virtue of this clause, a person who wishes to obtain access to an official document from a public body which holds the document, shall make an application for a request for access in the prescribed form, to the information officer of the public body. The procedure for application is set out in the remaining Clauses of the Bill.

Clause 14 places a duty on the information officer receiving the application for a request for access, to render such assistance to the person making the request, free of charge as is necessary to enable the person to comply with the procedural requirements.

Clause 15 deals with transfer of requests.

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Clause 17 provides for the deferral of access.

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Clause 19 provides the grounds on which an information officer may refuse an application for a request for access.

Clause 20 makes provision for allowing the extension of the time period to deal with an application for a request for access.

Clause 21 provides for deemed refusal of request.

Clause 22 makes provision for severability.

Clause 23 provides for vexatious, repetitive or unreasonable requests.

Clause 24 provides the form of access that may be given.

Part IV of the Bill provides for Exempt Documents and contains Clauses 25-33. These clauses specifically list the type of documents that are subject to exemption under this Act.

Part V provides for Amendment and Annotation of Records and contains Clauses 34-38.

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FREEDOM OF INFORMATION BILL, 2007

AN ACT to give to the public a general right of access to official documents; and to make provision for incidental matters and thereto purposes connected therewith.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada and by the authority of the same as follows:

PART 1 PRELIMINARY

Short title and commencement

1. This Act may be cited as the

FREEDOM OF INFORMATION ACT, 2007.

PART 1 PRELIMINARY

Interpretation

2. (1) In this Act-

“applicant” means a person who makes an application pursuant to regulation 13;

“Commissioner” means the Information Commissioner appointed pursuant to Part VI;

“document” includes, in addition to a document in writing -

- (a) any map, plan, graph or drawing;
- (b) any photography
- (c) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable with or without the aid of some equipment, of being reproduced therefrom;
- (d) any film, including microfilm, negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;

“exempt document” means a document referred to in Part IV that is exempt from

disclosure, whether or not the rest or part of the document is liable to disclosure;

“exempt information” means information, the inclusion of which in a document causes the document to be an exempt document;

“Government” means the Government of Grenada;

“government company” means a company registered under the companies Act, in which the Government, whether by the holding of shares or by other financial output, is in a position to inform the of the company;

“hold” in relation to an official document that is liable to production pursuant to the provisions of this Act, means in the possession, custody or control of a public authority;

“information officer” means a person appointed as an information officer of a public body pursuant to section 10;

“Minister” means the Minister responsible for the administration of justice;

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

- (a) by that body; or
- (b) before the commencement of this Act;

“person” includes a body corporate or an unincorporated body;

“personal information” means information, which relates to a natural living person who can be identified from that information;

“prescribed” means prescribed by Regulations;

“public authority” means-

- (a) a ministry or department of Government;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a government company which-
 - (i) is wholly aimed by the Government or in which Government holds more than 50% shares; o

(ii) is specified in an order under section 3 (3);

(iii) any other body or organization specified in an order under section 3 (3);

“publish” means to make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;

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

“record” includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified;

“request for access” means a request for access to an official document from a public authority pursuant to section 13;

“responsible Minister in relation to a public authority means the Minister of Government to whom responsibility for the public authority is assigned;

“State” means the state of Grenada.

Application

3. (1) Subject to subsection (2), this Act shall apply to-

(a) all public bodies;

(b) all official documents created by or held by a public body not more than thirty years immediately preceding the date of commencement of this Act,

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

(3) The Minister may, by Order, declare that this Act shall apply to-

(a) such Government companies in addition to those specified in the definition of “public authority”, as may be specified in the Order;

(b) any other body or organization which provides services of a public nature that are essential to the welfare of the Grenadian society,

or to such aspects of their operations as may be specified in the Order.

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

(5) This Act shall not apply to-

- (a) the Governor General in relation to the exercise of the powers and duties conferred by him or her pursuant to the provisions of the Constitution of Grenada or any other law;
- (b) a Commission of Inquiry established by the Governor General pursuant to the provisions of the Commissions of Inquiry Act;
- (c) the judicial functions of-
 - (i) a court;
 - (ii) the holder of a judicial office or other office connected with a court;
- (d) the security or intelligence services in relation to their strategic or operational intelligence-gathering services;
- (d) a court or the holder of a judicial office connected with a court in relation to its or his or her judicial functions;
- (e) information contained in an official document held in the registry or other office of the court, unless the information relates to the administration of the court;
- (f) such statutory body or authority as the Minister may by Order specify.

(6) For the purposes of this Act, a registry or other office of court administration and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority.

(7) For the purposes of subsection (5), “security or intelligence services” includes-

- (a) The Royal Grenada Police Force;
- (b) The Department of Customs and Excise; and
- (c) The Financial Intelligence Unit.

Objects of Act

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

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

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

Act to bind the State

5. This Act shall bind the State.

Guide to using this Act

6. (1) The Commissioner shall, as soon as practicable, after the commencement of this Act, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to the provisions of this Act, and shall disseminate the guide in an accessible form.

(2) The guide in subsection (1) shall be updated as deemed necessary by the Commissioner.

PART II

MEASURES TO PROMOTE OPENNESS

Publication of information by public authorities

7. (1) Within six months after the commencement of the provisions of this Act, the coming into existence of a public authority, or the coming into operation of an Order pursuant to section 3 (3), whichever is later, the information officer of a public authority shall come to be published information specified in schedule I-

Voluntary disclosure and automatic availability of certain records

8. (1) The information officer of a public body, shall on a periodic basis, not less frequently than once each year, submit to the responsible Minister a description of-

- (a) the categories of records of the public authority that are automatically available without a person having to make an application for a request for access pursuant to the provisions of this Act, including such categories available
 - (i) for inspection in terms of legislation other than this Act;

- (ii) for purchasing or copying from the public authority;
 - (iii) from the public authority free of charge; and
- (b) how to obtain such records.
- (2) On a periodic basis, not less frequently than once each year, and at the cost of the public authority, the responsible Minister shall, by notice in the *Gazette*-
- (a) publish every description submitted pursuant to subsection (1); or
 - (b) update every description so published as the case may be.
- (3) The only fee payable, if any, for a request for access to a record included in a notice pursuant to subsection (2), shall be the prescribed fee for reproduction.
- (4) The information officer of a public authority shall delete any part of a record contemplated in subsection (1)(a), which on request for access, may be exempted in accordance with Part IV.

Guidance on duty to publish

9. The Commissioner shall-

- (a) publish a guide on the minimum standards and best practices regarding the duty of public authorities to publish information pursuant to section 8; and
- (b) upon request, provide advice to a public body regarding the duty to publish.

Appointment of information officer

10. (1) Every public authority shall appoint an information officer and ensure that members of the public have access to relevant information concerning the information officer, including his or her name, functions and contact details.
- (2) The information officer appointed pursuant to subsection (1) shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities-

- (a) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and
- (b) to serve as a central contact within the public authority for receiving requests for access to information and for receiving complaints regarding the performance of the public authority relating to information disclosure.

(3) The information officer of every public authority shall submit annually to the Commissioner, a report on the activities of the public authority pursuant to the provisions of this Act, which shall include information relating to-

- (a) the number of requests for information received, granted in full or in part, and refused;
- (b) how often and which sections of the Act were relied upon, to grant or refuse access to information;
- (c) its activities pursuant to section 8;
- (d) its activities with respect to training its officials on the right to information and the effective implementation of the provisions of this Act.

PART III **ACCESS TO INFORMATION AND MANNER OF ACCESS**

Freedom of access to information

11. (1) Notwithstanding any law to the contrary, and subject to the provisions of this Act, every person shall have a right to obtain access to an official document of a public authority, other than an exempt document.

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

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

(4) Where an official document is-

- (a) open to access by the public pursuant to any other law, as part of a public register or otherwise; or
- (b) available for purchase by the public in accordance with administrative procedures established for that purpose,

access to that document shall be obtained in accordance with the provisions of that enactment or those procedures.

Access to document apart from this Act

12. Nothing in this Act is intended to prevent or discourage a public authority from publishing or giving access to documents, including an exempt document, otherwise than

as required by this Act, where that public authority can properly do so or is required by law to do so.

Request for access

13 (1) A person who wishes to obtain access to an official document shall make an application the information officer publish the document:-

(2) An application under subsection (1) –

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

(3) the information officer to whom an application is made shall –

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

(4) the information officer shall respond to an application as soon as practicable but not later than –

- (a) thirty days after the date of receipt of the application; or
- (c) in the case of an application transferred to it by another authority pursuant to section (15), thirty days after the date of the receipt by that authority,

so, however, that authority may extend the period of thirty days, in any case where there is reasonable cause for such extension.

- (5) the response of the information officer shall state its decision on the application, and where the public authority decides to refuse or refer access or to extend the period of thirty days, it shall state the reasons therefore, and the options available to an approved applicant.
- (6) An individual who because of illiteracy or a disability, is unable to make an application in accordance with subsection (1), may make that request orally and

the information officer of the public authority to whom such request is made, shall reduce that oral request to writing in the prescribed form and shall provide a copy thereof to the person making the said application.

Duty to assist person making request

14. (1) If a person informs the information officer of a public authority that-
- (a) he or she wishes to make an application; or
 - (b) he or she wishes to make an application another public authority;
- the information officer shall render such reasonable assistance free of charge as is necessary to enable the person to comply with section 13.
- (2) Where a person makes an application for request for access that does not comply with section 13, the information officer concerned shall not refuse the request because of that non-compliance unless the information officer has –
- (a) issued a notice to the person making the application, of an intention to refuse and has stated in the said notice;
 - (i) the reasons for the contemplated refusal; and
 - (ii) that he or she would assist the person so the person may make the application in a manner that would remove the grounds for refusal;
 - (b) given the person making the application, a reasonable opportunity to seek such assistance;
 - (c) as far as reasonably possible, furnish the person making the application with any information held by the public authority concerned, which is relevant and would assist in the making of the application; and
 - (d) give the person making the application a reasonable opportunity to confirm or alter it to comply with the provisions of this Act.

(3) When computing any period referred to in section 18, the period commencing on the date on which notice is given pursuant to subsection (2) and ending on the date on which the person confirms or alters the application made under section 13, shall be disregarded.

(4) The information officer of a public authority to whom an application under section 13 is made, shall-

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

(5) The information officer of a public authority shall respond to an application made pursuant to section 13, as soon as practicable but not later than-

- (a) thirty days after the date of receipt of the application; or
- (b) thirty days in the case of an application transferred to him or her by the information officer of another public authority pursuant to section 15, after the date of receipt by him or her;

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

(6) The response of an information officer shall state his or her decision on the application, and where the information officer decides to refuse or defer the applicant or extend the period of thirty days, he or she shall state his or her reasons for doing so and the options available to the applicant.

Transfer of requests

15. (1) where an application is made to a public authority for an official document
- - (a) which is held by another public authority; or
 - (b) the subject matter of which is more closely connected with the functions of another public authority

the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority and shall inform the applicant immediately of the transfer.

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

Fees

16. (1) A fee shall not be charged by a public authority for the making of an application for a request for access, except as otherwise provided by this Act.

(2) Where access to an official document is to be given in the form of printed copies or copies in some other form such as a tape, disc, film or other material, the person requesting the official document shall pay the prescribed fee.

(3) Notwithstanding subsection (2), where a public authority fails to comply with section 8, access to an official document to which the applicant is entitled pursuant to his or her request, shall be provided free of charge.

(4) The Minister may by notice in the *Gazette*-

- (a) exempt any person or category of persons from paying any fee referred to in this section;
- (b) provide that a fee shall not exceed a certain maximum amount;
- (c) provide for the manner in which the fees are to be calculated;
- (d) provide for the maximum fees payable.

(2) For the purposes of clarification, a fee shall not be charged for an application, but if the information is to be provided, the fee shall, in accordance with subsection (1), be charged for the provision of that official document.

Deferral of access

17. (1) An information officer to whom an application is made, may defer access to an official document-

- (a) if it is a document that is required by law to be published but it has not yet been published;
- (b) if it is a document that has been prepared for presentation to Parliament but is yet to be presented;
- (c) if it is a document that has been prepared for submission to a particular person or body but is yet to be submitted; or
- (d) if the premature release of the document would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the document would not be contrary to the public interest.

(2) If access to an official document is deferred pursuant to subsection (1) the information officer shall issue a notice in the prescribed manner to the applicant within fifteen days of receipt of the application and shall in the notice inform the person making the request-

- (a) that he or she may, within thirty days after receipt of the notice, make representations to the information officer as to why the record is required prior to publication or submission; and
- (b) of the likely period for which access is to be deferred.

(3) If the person making the application makes representations in terms of subsection (2) (a), the information officer may, after due consideration of those representations, grant application only if there are reasonable grounds for believing that the applicant will suffer substantial prejudice if access to the official document is deferred for the likely period referred to in subsection (2) (b).

Decision on application

18. (1) The information officer to whom an application for access is made under section 13 or transferred under section 15 as soon as reasonably possible, but in any event within thirty days, after the application is received-

- (a) decide in accordance with the provisions of this Act, whether to grant or refuse the applicant and
- (b) issue a notice to the person making the application of his or her decision pursuant to paragraph (a).

(2) If the request for access is granted, the notice shall state-

- (a) the fee, if any, to be paid upon access; and
- (b) the form in which access shall be given.

Refusal of application

19. (1) An information officer may refuse an application

- (a) if the document to which the application refers is an exempt document;
- (b) if he or she is satisfied that the risk involved in processing the application would substantially and unreasonably direct the resources of the public authority from its operations and if before refusing to grant the application on these grounds, the information officer has taken all reasonable steps to assist the person making

the application to reformulate the application so as to avoid causing such interference.

- (2) If an application is refused, the notice issued pursuant to section 18 (1) (b) shall-
- (a) state adequate reasons for the refusal, including the provision of the Act relied upon;
 - (b) exclude from such reasons, any reference to the content of the record; and
 - (c) state that the person making the application may lodge an appeal with the Commissioner, against the refusal of the application, and the procedure, including the period, for lodging the appeal, as the case may be.

Extension of period to deal with request

20. (1) The information officer to whom an application is made may extend the period of thirty days referred to in section 14 (5) once for a further period of not more than thirty days, if-

- (a) the application is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public authority concerned;
- (b) the request requires a search for records in, or collection thereof, from an office of the public authority not situated in the same town or office as the office of the information officer and such search cannot reasonably be contemplated within the original period;
- (c) consultations among divisions of the public authority or with another public authority is necessary or desirable to decide upon the request and such consultations cannot reasonably be completed within the original period;
- (d) more than one of the circumstances contemplated in paragraphs (a), (b) and (c) exist in respect of the application making compliance with the original period not reasonably possible for access; or
- (e) the person making the application consents in writing to such extension.

(2) If a period is extended pursuant to subsection (1), the information officer shall, as soon as reasonably possible, but in any event within thirty days after the application

request is received or transferred, issue a notice to the person making the application for that extension.

(3) The notice pursuant to subsection (2) shall state-

- (a) the period of the extension;
- (b) the adequate reasons for the extension, including the provisions of this Act relied on; and
- (c) that the person making the application may lodge an appeal with the Commissioner.

Deemed refusal of request

21. If an information officer fails to give a decision on an application within the period contemplated in section 14 (5), the information officer shall, for the purposes of this Act, be regarded as having refused the application.

Severability

22. (1) If an application is made for an official document of a public body containing information which may be refused under Part IV, every part of the record which-

- (a) does not contain; and
- (b) can reasonably be severed from any part that contains,

any such information, shall despite any other provision of this Act, be disclosed.

(2) If an application for -

- (a) a part of a record is granted; and
- (b) the other part of the record is refused, as contemplated in subsection (1),

the provisions of section 18(2) shall apply to paragraph (a) of this section and the provisions of section 19(2) shall apply to paragraph (b) of this section.

Vexatious repetitive or unreasonable requests

23. The information officer of a public authority shall not be required to comply with an application where-

- (a) the request is vexatious;

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

Access and form of access

24. (1) If an applicant has been given notice pursuant to section 18(1) that his or her request for access has been granted, that person shall-

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

immediately, be given access in the forms referred to in subsection (2) as the person making the application has indicated.

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

- (a) the applicant may be afforded a reasonable opportunity to inspect the document;
- (b) the public authority concerned may furnish the applicant with a copy of the document;
- (c) in the case of a document from which sounds or visual images are capable of being reproduced arrangements may be made for the applicant to hear the sounds or view the visual images;
- (d) in the case of a document by which or in which needs are
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sounds and images; or
 - (ii) contained in the form of shorthand writing or in codified form,

the applicant may be furnished with a transcript of the data or the words, sounds or images recorded or contained in that document.

(3) Subject to subsection (4), where an applicant requests that access be given in a particular form, access shall be given in that form.

(4) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would-

- (a) be detrimental to the presentation of the document, or be inappropriate, having regard to its physical state;
- (b) constitute an infringement of copyright subsisting in any matter contained in the document.

(5) Copies of documents to which access is granted shall be authenticated in the prescribed manner.

PART IV **EXEMPT DOCUMENTS**

Documents affecting security defence or international relations

25. An official document is exempt from disclosure if-

- (a) the disclosure thereof would prejudice the security, defence or international relations of Grenada;
- (b) it contains information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.

Cabinet documents

26. (1) An official document is exempt from disclosure if it is a Cabinet document, that is to say-

- (a) it is a Cabinet Submission, Cabinet Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted; or
- (b) it is a Cabinet Decision, or other official record of any deliberation of the Cabinet.

(2) Subsection (1) shall not apply to-

- (a) any document appended to a Cabinet document that contains material of a purely factual nature or reports, studies, or tests or surveys of a scientific or technical nature; or

- (b) a document for which a decision of the Cabinet has been officially published.

Official documents relating to law enforcement

27. An official document relating to law enforcement is exempt from disclosure if its disclosure would, or could reasonably be expected to-

- (a) endanger the life or safety of a person;
- (b) prejudice-
 - (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or
 - (ii) the fair trial of any person or the adjudication of a particular case;
- (c) disclose or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
- (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;
- (e) facilitate the escape of a person from lawful detention; or
- (f) jeopardize the security of any correctional' facility.

Official documents subject to legal privilege

28. An official document shall be exempt from disclosure if-

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

Official documents affecting national economy

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

(2) The types of documents referred to in subsection (1) shall include, but shall not be limited to documents relating to taxes, duties or rates, monetary policy and exchange rate policy or currency or exchange rates.

Documents revealing Government's deliberative process

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

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

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

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

Disclosure relating to business affairs, etc

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

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

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

Documents relating to personal affairs

32. (1) Subject to subsection (2), a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.

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

Issuance of certificates of exemption

33. (1) Where the Minister -

- (a) is satisfied that an application relates to a document specified in section 26(1);
- (b) is satisfied that an application relates to an official document to which section 25, 27 or 29 as the case may be, applies;

the Minister may issue a certificate to the effect that the document is an exempt document and shall specify the basis of the exemption.

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

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

PART V
AMENDMENT AND ANNOTATION OF RECORDS

Application for amendment or annotation or annotation of records

34. (1) Where a person claims that an official document contains personal information about the person that-

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

the person may apply to the information officer of the public body for an amendment or an annotation of that document.

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

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

Amendment of records

35. (1) Where in relation to any application made pursuant to section 34, the information officer of a public authority is satisfied as to the truth of the matters stated in the application, he or she shall, before or after first granting access, amend the document concerned in the prescribed manner.

(2) Where the information officer decides not to amend an official document he or she shall-

- (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 34 (2) (b); and
- (b) annotate the document by adding thereto the statement referred to in paragraph (a).

Annotation of personal records

36. Where, in relation to an application for annotation of an official document containing personal information, the public authority-

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

Notice of amendments or annotations

37. (1) The information officer of a public authority who amends or annotates an official document pursuant to section 35 or 36, as the case may be or decides not to do so, shall take reasonable steps to inform the applicant and any other public authority which it is satisfied has made prior use of the document of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

(2) Where the information officer amends or annotates an official document pursuant to this Part, he or she shall inform the information officer of any other public body whom he or she is satisfied has made prior use of the document, of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

Transfer of applications for amendment or annotation

38. Section 13 shall apply, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

**PART VI
REVIEW AND APPEAL****Appointment of Commissioner**

39. (1) An Information Commissioner shall be appointed by the Governor General after nomination by a two thirds majority vote of Parliament, and after a process in accordance with the following principles-

- (a) participation by the public in the nomination process;
- (b) transparency and openness; and
- (c) the publication in the *Gazette* of a shortlist of candidates.

(2) A person shall not be appointed as the Commissioner if he or she-

- (a) holds an official office in, or is an employee of a political party, or holds an elected or appointed position in Government or Parliament; or
- (b) has been convicted of an indictable offence.

(3) The Commissioner shall hold office for a term of three years and may be reappointed to serve a maximum of two terms, but may be removed by the Governor General, upon recommendation passed by a two thirds majority of Parliament.

Independence and Powers

40 (1) The Commissioner shall enjoy operational and administrative autonomy from any person or entity, including the Government and any of its agencies, except as specifically provided by law.

(2) The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for by the provisions of this Act.

Salary and expenses

41. The Commissioner shall be paid a salary equal to the salary of a Magistrate and shall be entitled to reasonable travel and living expenses incurred in the performance of his or her duties.

Staff

42. The Commissioner shall be provided with such officers and employees as are necessary to enable him or her to perform his or her duties or functions.

General activities

43. In addition to any other powers and responsibilities provided for in this Act, the Commissioner may-

- (a) monitor and report on the compliance by public authorities in respect to their obligations pursuant to the provisions of this Act;
- (b) make recommendations for reform both of a general nature and directed at specific public authorities;
- (c) co-operate with or undertake training activities for officials of public authorities, on the right to information and the effective implementation of the provisions of this Act; and
- (d) publicize the requirements of this Act and the rights of persons under it.

Reports

44. The Commissioner shall, within three months after the end of each financial year bring before Parliament an annual report of compliance by public bodies with this Act, the activities of his or her office and audited accounts of his or her office during that financial year.

Protection of Commissioner

45. (1) No criminal or civil proceedings shall lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty pursuant to the provisions of this Act.

(2) For the purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act shall be privileged, unless that information is shown to have been supplied with malice.

Complaint to Commissioner

46. A person whose application has been refused by a public authority, may lodge an appeal to the Commissioner on any of the following grounds-

- (a) that the public authority has refused to indicate whether or not it holds a record, or has refused to communicate information, contrary to section 11;
- (b) that the public authority has failed to respond to an application within the time limits established pursuant to section 14 (5);
- (c) that the public authority has failed to provide a notice in writing of its response to an application in accordance with section 14 (2);
- (d) that the public authority has charged an excessive fee, contrary to section 16;
- (e) that the public authority has failed to communicate information forthwith, contrary to section 18; or
- (f) that the public authority has failed to communicate information in the form requested, contrary to section 24,

Decision of Commissioner

47. (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 46 as soon as is reasonably possible, and in any case within thirty days after receipt of such application give both the complainant and the relevant public authority an opportunity to provide their views in writing.

(2) The Commissioner may summarily reject an application-

- (a) which is frivolous, vexatious or clearly unwarranted; or
- (b) where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant public authority.

(3) In any application made pursuant to section 46, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations pursuant to Part III.

(4) In his or her decision pursuant to subsection (1), the Commissioner may-

- (a) reject the application;
- (b) require the public authority to take such steps as are necessary to bring it into compliance with its obligations pursuant to Part III;
- (c) require the public body to compensate the complainant for any loss or other detriment suffered; or
- (d) in cases of egregious or willful failures to comply with an obligation pursuant to Part III, impose a fine on the public authority.

(5) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public authority.

Direct implementation of decision

48. (1) The Commissioner may, after giving a public authority an opportunity to provide their views in writing, decide that a public authority has failed to comply with an obligation pursuant to Part III.

(2) In his or her decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under Part III including by-

- (a) appointing an information officer pursuant to section 10;
- (b) publishing certain information and categories of information;
- (c) making certain changes to its practices in relation to the keeping, management and destruction of records;
- (d) enhancing the provision of training on the right to information for its officials;
- (e) providing the Commissioner with an annual report, in compliance with section 10(3);
- (f) in the case of egregious or willful failures to comply with an obligation under Part III, paying a fine.

(3) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public authority.

Power of the Commissioner to investigate

49. (1) In coming to a decision pursuant to section 47 or section 48, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

(2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

Appeal from decision or order of the Commissioner

50. (1) A complainant, or a public body who have been aggrieved by a decision of the Commissioner may, within 28 days of the decision being given, appeal to the court for a full review of a decision of the Commissioner pursuant to section 45 or section 46, or an order pursuant to section 47(1).

(2) In any appeal from a decision pursuant to section 45, the burden of proof shall be on the public body to show that it acted in accordance with its obligation under this Act.

PART VII CIVIL AND CRIMINAL RESPONSIBILITY

Binding nature of decision and order of Commissioner

51. Upon expiry of the 28 day period for appeals pursuant to section 50, the Commissioner may certify in writing to the court any failure of a complainant of a public body to comply with a decision pursuant to section 47 or section 48, or an order pursuant to section 49(1), and the court shall consider such failure under the rules relating to contempt of court.

Good faith disclosures

52. A person shall not be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duties in terms of this Act, as long as the person acted reasonably and in good faith.

Criminal offences

53. (1) A person shall not willfully-

- (a) obstruct access to any record contrary to the provisions of this Act;
- (b) obstruct the performance by a public body of a duty pursuant to the provisions of this Act;
- (c) interfere with the work of the Commissioner; or

(d) destroy any record without lawful authority.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment for a period not exceeding two years or to both.

PART VIII **MISCELLANEOUS PROVISIONS**

Regulations

54. (1) The Minister may, by notice in the *Gazette* and after consultation with the Commissioner, make Regulations for the purposes of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make Regulations particularly for the following-

- (a) to prescribe additional forms of communication of information pursuant to section 24;
- (b) relating to the training of officials;
- (c) relating to the reports to the Commissioner pursuant to section 10(3);
- (d) to prescribe the form of any notice required pursuant to the provisions of this Act.

(3) Regulations made pursuant to this section shall, before publication in the *Gazette*, be laid before Parliament.

Passed by the House of Representatives the day of 2007.

.....
Clerk to the House of Representatives

Passed by the Senate the day of 2007.

.....
Clerk to the Senate

SCHEDULE 1
Section 7

1. The information referred to in section 4 of this Act is-
 - (a) a description of the subject area of the public authority
 - (b) a list of the departments and agencies of the public authority and-
 - (i) subjects handled by each department and agency
 - (ii) the locations of departments and agencies
 - (iii) opening hours of the offices of the authority and its departments and agencies;
 - (c) the title and business address of the principal officer;
 - (d) a statement of the documents specified in sub-paragraph (e) being documents that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the authority, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subjects;
 - (e) the documents referred to in sub-paragraph (d) are-
 - (i) manuals or other documents containing interpretations, rules, guidelines, practices or precedents;
 - (ii) documents containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Act.
1. The principal officer of the authority shall-
 - (a) cause copies of such of the documents specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) within 12 months after the publication of the statement under paragraph 1 (d) and thereafter at intervals of not more than 12 months, cause to be published in the Gazette, statements bringing up to date information contained in the previous statement or statements.

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

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

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