

## **BILL**

**To provide for the appointment of an independent and impartial Information Commissioner and Deputy Information Commissioners; to provide for the obligations of public entities; to provide for the right of access to information held by public and private entities; to provide for the promotion, creation, keeping, organisation and management of information in a form and manner that facilitates transparency, accountability, good governance and access to information; to provide for requests for access to information; to provide for internal review, appeal and judicial review of decisions on access to information; to provide for information exempt from disclosure; and to provide for incidental matters.**

*(Introduced by the Minister of Information and Communication Technology)*

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**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1  
INTRODUCTORY PROVISIONS

**Definitions**

1. In this Act, unless the context otherwise indicates -

“classified information” means classified information as defined in section 1 of the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“Deputy Information Commissioner” means the person appointed as a Deputy Information Commissioner under section 5;

“disability”, includes physical, mental, intellectual and sensory impairment;

“head of an information holder” means the administrative head of the information holder;

“information”, includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, facts, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held;

“Information Commissioner” means the person appointed as the Information Commissioner under section 5;

“information holder” means a public entity or private entity from whom information has been requested;

“information officer” means a person designated as an information officer in terms of section 22;

“inspect”, includes taking notes and pictures and listening to audio recording of any information;

“Minister” means the Minister responsible for information;

“next of kin” means -

- (a) a widow or widower of a deceased person;
- (b) a person with whom a deceased person lived as if they were married;
- (c) a parent, child or sibling of a deceased person; or
- (d) if -
  - (i) there is no next of kin referred to in paragraphs (a), (b) and (c); and
  - (ii) the requester concerned took all reasonable steps to locate such next of kin, but was unsuccessful,

an individual who is related to the deceased in the second degree of affinity or consanguinity;

“oversight mechanism”, includes the Information Commissioner and Parliamentary committees;

“personal information” means information or opinion, including information forming part of a database, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, and includes information relating to -

- (a) the race, gender, sex, pregnancy, marital status or national, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language or birth of the individual;

- (b) the education or the medical, criminal or employment history of the individual or to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, fingerprints or blood type of the individual;
- (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;
- (f) the correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual;
- (h) the views or opinions of another individual about a proposal for a grant, an award given or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and
- (i) 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, but excludes information about an individual who has been dead for more than 20 years;

“prescribed” means prescribed by regulation;

“private entity” means -

- (a) a natural person who carries on or has carried on any trade, business, profession or



activity, but only in such capacity;

- (b) a partnership or trust which carries on or has carried on any trade, business, profession or activity; or
- (c) a juristic person or a successor in title, and where applicable, includes a former juristic person, but excludes a public entity;

“public entity” means -

- (a) an “office”, “ministry” or “agency” of government as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);
- (b) an entity established by or under the Namibian Constitution or a statute;
- (c) a private entity that -
  - (i) is totally or partially owned by the State, or financed, directly or indirectly, by the State; or
  - (ii) carries out statutory functions or services or public functions or services;

“publish” means to make available in a form and manner which is easily accessible to the public, and includes providing copies or making information available through broadcast and electronic means of communication;

“reasonable reproduction cost” means the minimum market rate of reproduction;

“regulation” means a regulation made under this Act;

“record” means all documented information, regardless of its characteristics, media or

physical form, and the manner it is recorded or stored, and includes accounts, agreements, books, drawings, letters, magnetic and optical disks, memos and micrographics;

“requester” means a person who requests access to information under this Act or any person acting on behalf of the person requesting access to information under this Act;

“Selection Committee” means the Selection Committee established under section 6;

“third party” means a person other than the information holder or the requester;

“third party information” means personal, commercial or confidential information of a third party; and

“this Act” includes the regulations.

### **Application of Act**

2. (1) This Act applies to information held by a public entity or private entity whether or not the information had been produced before the commencement of this Act.

(2) This Act does not apply to -

(a) information relating to -

(i) proceedings and decisions of Cabinet and its committees;

(ii) judicial functions of a court, a tribunal or investigating unit established under any law; and

(iii) the nomination, selection and appointment of a judicial officer or any other person exercising a judicial or quasi-judicial function in terms of any law;

- (b) published materials or published materials available for purchase by the public;  
and
- (c) library or museum materials preserved solely for public use, reference or exhibition purposes.

### **Interpretation of Act**

**3.** (1) When interpreting this Act, due consideration must be given to the Namibian Constitution, the general principles referred to in section 4, the objects of this Act and the relevant international instruments applicable to Namibia.

(2) This Act -

- (a) is intended to complement and not replace the procedures for access to information existing under any other law; and
- (b) is not intended to limit in any way access to any type of information under the control of a public or private entity that is normally available to the general public.

(3) Unless otherwise provided in this Act, nothing in this Act -

- (a) limits any other legislation that grants access to information held by a public or private entity; or
- (b) prevents any other legislation that prohibits or limits the disclosure of information held by a public or private entity,

but in the case of a conflict between this Act and such other legislation, the legislation with a provision that is more favourable than the other in terms of granting access to information prevails.

### **General principles**

**4.** The right of access to information conferred by section 30 is guaranteed based on the following principles that -

- (a) a person has the right to access information held by public entities without delay and free of charge, except where payment of reproduction, translation and transcription is allowed under this Act or any other law;
- (b) a person has the right to expeditiously and inexpensively access information of private entities that may assist in the exercise or protection of any right;
- (c) this Act and any other law, policy or practice creating a right of access to information is interpreted and applied on the basis of a presumption of disclosure, and that non-disclosure is permitted only under exemptions as set out in this Act or any other law;
- (d) information holders are subject to the authority of the Information Commissioner in all matters relating to access to information;
- (e) any refusal to disclose information is subject to internal review, appeal and judicial review;
- (f) public entities are required to proactively disclose information, unless otherwise provided in this Act or any other law; and
- (g) a person who discloses information in good faith is not subject to any sanction

except where a relevant law provides otherwise.

PART 2  
INFORMATION COMMISSIONER AND DEPUTY  
INFORMATION COMMISSIONERS

**Appointment of Information Commissioner and Deputy Information Commissioners**

5. (1) In terms of subsection (3), the President must appoint an independent and impartial person as Information Commissioner to promote, monitor and protect the right of access to information in Namibia.

(2) The Information Commissioner is assisted by one or more Deputy Information Commissioner appointed by the President in terms of subsection (3).

(3) The President appoints, in writing, the Information Commissioner or a Deputy Information Commissioner after the National Assembly by resolution approves the appointment of a candidate from a list of two to three candidates nominated by the Selection Committee.

**Establishment, constitution and meetings of Selection Committee**

6. (1) There is established a Selection Committee for the purposes of -

(a) shortlisting, interviewing, selecting and nominating candidates for -

(i) approval of the National Assembly by a resolution; and

(ii) subsequent appointment by the President as Information Commissioner or Deputy Information Commissioner; and

(b) selecting and nominating persons for appointment as members of a committee under section 14.

(2) Subject to subsection (4), the Selection Committee consists of -

(a) the Chairperson of the Public Service Commission established by section 2 of the Public Service Commission Act, 1990 (Act No. 2 of 1990), who is the Chairperson of the Selection Committee;

(b) the Chairperson of the Council of the Law Society of Namibia referred to in section 45 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), who is the Deputy Chairperson of the Selection Committee;

(c) the Executive Director of the Ministry administering information;

(d) the Chief Executive Officer of the Communications Regulatory Authority of Namibia established by section 4 of the Communications Act, 2009 (Act No. 8 of 2009); and

(e) a person -

(i) nominated by non-governmental organisations established in terms of the laws of Namibia dealing with media; and

(ii) appointed by the Minister together with his or her alternate from a list of not more than three persons.

(3) The Minister must, for the purposes of selecting persons for appointment as contemplated in subsection (1)(e), in at least two local newspapers circulating nationally, request interested non-governmental organisations to submit, within 30 days of publication of

the notice in the newspapers, the names of persons complying with the requirements for appointment as a member of the Selection Committee.

(4) The Chairperson of the Selection Committee must make sure that, as far as practicable, no gender has more than three members on the Committee by arranging that the second in charge of an institution as contemplated in subsection (5) may replace a respective member to create gender balance.

(5) Subject to subsections (6), if a member of the Selection Committee is unable to attend a meeting of the Selection Committee -

(a) a member of the Public Service Commission designated by the Commission, the Vice-Chairperson of the Council of the Law Society, the Deputy Executive Director of the Ministry administering information, the Chief Operations Officer of the Communications Regulatory Authority of Namibia or the alternate member appointed under subsection (2)(e)(i), respectively; or

(b) a person appointed to act as such in the absence of any functionary referred to in paragraph (a),

must attend the meeting of the Selection Committee in the place of the member who is unable to attend the meeting.

(6) All five members of the Selection Committee form a quorum for the purposes of any meeting of the Committee.

(7) The majority of the members of the Selection Committee present and voting at the meeting of the Committee constitute the decision of the Committee.

(8) The Secretary to the National Assembly must serve as the secretary at meetings of the Selection Committee.

- (9) The Minister may, with the approval of the National Assembly, prescribe the -
- (a) terms and conditions of appointment as members of the Selection Committee;
  - (b) procedures to be followed at meetings of the Selection Committee; and
  - (c) advertisement of the vacancies, applications for appointment, and shortlisting of candidates for interviews and selection process for nomination for appointment as Information Commissioner or Deputy Information Commissioner.

**Qualifications for appointment of Information Commissioner and Deputy Information Commissioners**

7. A person qualifies for appointment as Information Commissioner or Deputy Information Commissioner if the person -

- (a) is a fit and proper person and is a person of integrity;
- (b) possesses academic qualifications, knowledge and experience relevant to the functions of the Information Commissioner;
- (c) has knowledge in human rights, especially the right of access to information, or in public or corporate governance; and
- (d) has a clear understanding of the application of the principles of transparency and accountability.

**Disqualification for appointment of Information Commissioner and Deputy Information Commissioners**



**8.** A person does not qualify for appointment as Information Commissioner or Deputy Information Commissioner if the person -

- (a) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
- (b) is a member of Parliament;
- (c) is a member of a regional council or a local authority council;
- (d) is an unrehabilitated insolvent;
- (e) has been convicted of an offence and sentenced to imprisonment without the option of a fine, excluding an offence of a political nature committed before the date of independence of Namibia; or
- (f) holds a political office at any level of the State, or occupies a position within a political party, at the time of nomination.

### **Powers and functions of Information Commissioner**

**9.** (1) The powers of the Information Commissioner include -

- (a) entering and searching any premises, and seizing of any information or material necessary for the execution of his or her mandate in terms of this Act;
- (b) examining, reproducing, taking extracts from documents or holding information for as long as is necessary, including information found in any premises entered pursuant to paragraph (a);
- (c) demanding the production of information to which access has been refused on the

basis of exempted information under Part 9, for the purpose of deciding whether it is an exempt document;

- (d) bringing an action in his or her own name before an appropriate court or joint court proceedings, if he or she considers necessary;
- (e) authorising or undertaking any action he or she considers necessary or appropriate for the execution of his or her mandate in terms of this Act;
- (f) requiring a public entity to take such steps as may be necessary to ensure compliance with its obligations in terms of this Act;
- (g) determining and issuing general directions for the hearing of a matter including notification of parties; and
- (h) issuing specific directions where issues of sensitivity to the State are concerned and in matters concerning confidential information or minors or circumstances which he or she considers appropriate for such action.

(2) In exercising his or her powers, the Information Commissioner has the following functions -

- (a) to determine the nature, process and undertakings necessary to discharge his or her mandate in terms of this Act, including all work necessary for the promotion, monitoring and protection of the right to access information in all sectors of society;
- (b) to resolve any matter through negotiation, conciliation or mediation if he or she considers such recourse appropriate;
- (c) to determine the need for and the form and type of investigation required for the

determination of any matter;

- (d) to issue such orders in matters before him or her as he or she considers appropriate;
- (e) to grant condonation, where appropriate, on the facts of the matter, and issue written orders obliging the production of information;
- (f) to take any other action or issue and serve notices as may be appropriate for the resolution of any matter before him or her;
- (g) to prepare a plain language guide to this Act to assist users in requesting access to information, and where possible to translate the guide in other languages;
- (h) to conduct matters with as little technicality or formality and as expeditiously as possible;
- (i) to consider the needs of persons who wish to make disclosures such as minors and other vulnerable groups; and
- (j) to quarterly publish his or her findings, recommendations, orders, decisions and directives.

### **Independence and impartiality of Information Commissioner**

#### **10. (1) The Information Commissioner -**

- (a) is independent and impartial in the exercise and performance of his or her powers and functions, subject only to the Namibian Constitution and the law;

- (b) is accountable to the National Assembly for the execution of his or her mandate, operations and performance; and
- (c) may, whenever he or she thinks appropriate, convene a panel of experts for the purpose of assisting the Information Commissioner in exercising any power or performing any function under or in terms of this Act.

(2) A public entity or private entity, or other person has the obligation to accord such assistance as may be needed for the protection of the independence, integrity, dignity and effectiveness of the Information Commissioner.

### **Prohibition of outside work and political activities**

**11.** During his or her term of office, the Information Commissioner or Deputy Information Commissioner may not -

- (a) occupy any other office for financial gain; or
- (b) engage in any political activity such as presiding at a public political meeting or draw up or publish any writing or deliver a public speech or make a public statement with the intention to promote or prejudice the interests of any political party.

### **Term of office of Information Commissioner and Deputy Information Commissioners**

**12.** The Information Commissioner or a Deputy Information Commissioner holds office for a term of five years, and is eligible for reappointment upon the expiry of that term, but a person may not serve for more than two terms of office.

### **Vacation of office and filling of vacancies**

**13.** (1) The Information Commissioner or a Deputy Information Commissioner vacates office if his or her term of office expires and he or she is not reappointed, or if he or she -

- (a) in writing to the President, resigns from his or her office;
- (b) becomes disqualified in terms of section 8; or
- (c) is removed from office by the President as contemplated in section 14.

(2) The President must, in accordance with section 5, fill the vacancy of Information Commissioner or a Deputy Information Commissioner within six months of the occurrence of the vacancy.

**Removal of Information Commissioner and Deputy Information Commissioners from office**

**14.** (1) Subject to this section, the President may remove the Information Commissioner or a Deputy Information Commissioner from office if the Information Commissioner or Deputy Information Commissioner -

- (a) fails to comply with a term or condition of his or her contract of appointment;
- (b) by reason of his or her physical or mental illness, incompetence or any other reason, is incapable of efficiently exercising or performing his or her powers or functions; or
- (c) is found guilty of a prescribed act of misconduct.

(2) If the question of any inquiry into an alleged non-compliance, incapacity, incompetence or act of misconduct of the Information Commissioner or Deputy Information

Commissioner contemplated in subsection (1) arises, the President must immediately notify the Speaker of the National Assembly.

(3) The Speaker of the National Assembly must, within five days after receipt of the notice under subsection (2), notify the Selection Committee to nominate persons for appointment by the President as members of a committee -

(a) to inquire into the matter; and

(b) to submit a report and recommendations to the President.

(4) The committee contemplated in subsection (3) consists of -

(a) a chairperson who -

(i) is a retired magistrate or a judge of the High Court or Supreme Court of Namibia; or

(ii) is a legal practitioner with 10 or more years of post-admission experience; and

(b) two other persons who have 10 or more years of experience in their field of expertise relevant to the powers and functions of the Information Commissioner and are fit and proper persons of integrity.

(5) The Secretary to the National Assembly must serve as the secretary at meetings of the committee contemplated in subsection (3).

(6) If the inquiry into the action of misconduct of the Information Commissioner or a Deputy Information Commissioner is referred to the committee, the President -

- (a) may suspend the Information Commissioner or Deputy Information Commissioner from exercising and performing the powers and functions of his or her office, pending the inquiry by the committee; and
  - (b) must immediately cancel the suspension imposed under paragraph (a), if -
    - (i) the conditions for suspension lapse; or
    - (ii) the committee recommends to the President that the appointment of the Information Commissioner or Deputy Information Commissioner is not to be terminated.
- (7) The committee contemplated in subsection (3) must -
- (a) inquire into the matter in accordance with the procedure that conforms to the rules of natural justice; and
  - (b) within 21 days after conclusion of the inquiry, submit its report and recommendations to the President.
- (8) If the recommendation of the committee referred to in subsection (3) is that the Information Commissioner or Deputy Information Commissioner must be removed from office, the President must refer the recommendation and the reasons for the recommendation to the Speaker of National Assembly -
- (a) within seven days after receipt of the recommendation if the National Assembly is in session; or
  - (b) if the National Assembly is not then in session, within seven days after the next session of the National Assembly starts.

(9) On adoption by the National Assembly of a resolution calling for the termination of appointment of the Information Commissioner or a Deputy Information Commissioner, the President must, immediately on receipt of the resolution, by notice in writing, terminate the appointment of the Information Commissioner or Deputy Information Commissioner.

### **Acting Information Commissioner**

**15.** (1) If the office of the Information Commissioner becomes vacant or the Information Commissioner is absent from office or unable for any reason to perform the functions of his or her office, a Deputy Information Commissioner must act as Information Commissioner.

(2) Despite subsection (1), but subject to sections 7 and 8 -

(a) if the circumstances so require, the President may appoint any other person to act as Information Commissioner during such vacancy or temporary absence of the Information Commissioner; or

(b) if -

(i) the offices of both the Information Commissioner and Deputy Information Commissioner are vacant; or

(ii) both the Information Commissioner and Deputy Information Commissioner are absent or unable for any reason to perform the functions of their offices,

the President must appoint another person to act as Information Commissioner during such vacancy or temporary absence.

(3) Subject to section 6(9)(a), a person -



- (a) may not act as Information Commissioner for longer than six months; and
- (b) who is appointed as acting Information Commissioner while the office of the Information Commissioner is vacant is entitled to the remuneration attached to that office for the period the person so acts.

### **Funds and remuneration of Information Commissioner**

**16.** (1) The funds required for the purposes of exercising the powers and performing the functions of the Information Commissioner consist of money -

- (a) appropriated by Parliament for that purpose; and
- (b) any money made available by any person for that purpose from any lawful source with the approval of the Minister.

(2) The remuneration and other conditions of service of the Information Commissioner and Deputy Information Commissioner are at a level commensurable with that of the Director-General and Deputy Director-General of the Anti-Corruption Commission appointed in terms of the Anti-Corruption Act, 2003(Act No. 8 of 2003), respectively.

### **Staff and seat of Information Commissioner and accounting officer**

**17.** (1) In the performance of his or her functions under this Act, the Information Commissioner is assisted by the staff members from the Public Service made available for that purpose on assignment or secondment as the Prime Minister, on the recommendation of the Public Service Commission, may direct by notice in the *Gazette*.

(2) The Information Commissioner must supervise and take control over the staff members referred to in subsection (1).

(3) The Information Commissioner may obtain the services of any person, other than a staff member referred to in subsection (1), to assist the Information Commissioner in performing the functions of the Information Commissioner on such terms and conditions as may be determined by agreement with such person.

(4) The Information Commissioner may issue administrative directives, not inconsistent with this Act or the Public Service Act, 1995 (Act No. 13 of 1995) -

- (a) on the general control, training, and responsibilities of staff members; and
- (b) on such other matters as may be necessary or expedient for the good administration of the office or the prevention or abuse of power or neglect of duty, and generally for ensuring the efficient and effective functioning of the Information Commissioner.

(5) The President, by proclamation, must assign and announce the seat of the Information Commissioner and the accounting officer responsible for the funds of the Information Commissioner.

### **Annual reports**

**18.** (1) As soon as practicable, but not later than three months after the end of each financial year, the Information Commissioner must prepare and submit to the Minister a report concerning the activities of the office of the Commissioner during such financial year for tabling in the National Assembly.

- (2) The report must include -
  - (a) the state of implementation of access to information in terms of this Act;
  - (b) the findings of any audit undertaken; and

- (c) offences reported or prosecuted that have been noted during investigations under this Act.

### PART 3

#### LAW REFORM, MONITORING AND AUDITING

##### **Research and law reform**

**19.** (1) The Information Commissioner must review, research and submit recommendations for reform on proposed legislation or policies to the relevant authorities, especially legislation or policies affecting the right of access to information, when requested to do so.

(2) The Information Commissioner may undertake or commission any research he or she thinks necessary to achieve the objects of this Act.

(3) Recommendations for reform and any outcome of research undertaken by the Information Commissioner must be included in the annual report of the Information Commissioner.

##### **Monitoring and evaluation**

**20.** (1) Subject to subsection (1), every public entity must provide reports to the Information Commissioner on the implementation of this Act for monitoring and evaluation by the Information Commissioner.

(2) The Information Commissioner must, after consultation with the public entities, develop and publish guidelines, in the prescribed manner, on the terms and conditions, including the manner, means and timeframes required in relation to reports under this Act.

(3) The Information Commissioner may at any time request any further information from a public entity to facilitate and enhance monitoring and may issue an order in writing compelling the provision of such further information.

### **Auditing of compliance with Act**

**21.** (1) The Information Commissioner must, in the prescribed manner and within the prescribed time, cause an audit into the compliance with this Act by public entities.

(2) Before the conduct of an audit, the Information Commissioner must notify the public entity to be audited of the audit.

(3) When conducting an audit, the Information Commissioner may do any or all of the following -

- (a) conduct inspections at the premises of the public entity;
- (b) undertake any investigation he or she considers appropriate in furtherance of an audit;
- (c) engage with staff of the public entity;
- (d) request copies of any information and any other related records from the public entity;
- (e) access any information he or she considers necessary to undertake the audit.

(4) After having concluded an audit, the Information Commissioner must take appropriate action or steps to call for or require the remedying and correction of matters or instances through such means as are fair, proper and effective, including -

- (a) issuing time-bound recommendations to the public entity;
- (b) monitoring implementation of his or her recommendations; and
- (c) investigating reasons for non-compliance with his or her recommendations, if any.

## PART 4

### OBLIGATIONS OF PUBLIC ENTITIES AND PRIVATE ENTITIES

#### **Designation of information officers by public and private entities**

**22.** (1) The head of every public or private entity must designate a competent and suitable staff member as information officer to exercise and perform the powers and functions of an information officer conferred and imposed by or under this Act.

(2) If the head of a public or private entity fails to designate a staff member as information officer, the head of the public or private entity must serve as information officer for the purposes of this Act.

#### **Designation of deputy information officers by public and private entities**

**23.** (1) To enable a public or private entity to comply with the requirements of this Act, a public or private entity may designate one or more staff members as deputy information officers to assist the information officer.

(2) A deputy information officer designated under subsection (1) exercises and performs his or her powers and functions under the direct supervision of the information officer.

**Implementation plans by public entities**

**24.** (1) A public entity must submit an implementation plan to the Information Commissioner -

- (a) within 12 months of the commencement of this Act, in respect of an existing entity; or
- (b) within 12 months of establishment or registration, in respect of an entity established or registered after the commencement of this Act.

(2) The implementation plan of a public entity contemplated in subsection (1) must include -

- (a) the operational plan to implement obligations of the public entity under this Act;
- (b) an information publication plan in respect of the proactive disclosure of information contemplated in section 33, including -
  - (i) policies and plans for the purposes of realising its proactive disclosure obligations, including information classification processes; and
  - (ii) measures to ensure frequent and accurate proactive disclosure of information;
- (c) budgetary projections for implementation against available resources for implementation;
- (d) staff estimates per capita and identification of staff;

- (e) processes, mechanisms and policies to facilitate and enhance implementation of this Act, including measures to secure optimal responsiveness to requests for information and record management;
  - (f) mechanisms the public entity uses to monitor and track applications, notifications and responses;
  - (g) steps to secure continued capacity building and compulsory training plans for staff;
  - (h) plans for public consultations, community outreach, information sharing and awareness raising; and
  - (i) plans for, and frequency of, self-initiated implementation audits.
- (3) The Information Commissioner may -
- (a) call for further implementation plans or amended implementation plans;
  - (b) issue directives on specific plans for enhanced implementation; or
  - (c) require that the plan produced in terms of subsection (1) to be reviewed within such timeframes and at such frequencies as he or she considers necessary.

### **Publication of information manuals by public entities**

- 25.** (1) A public entity must prepare and publish an information manual -
- (a) within 24 months of the commencement of this Act in respect of an existing entity; or

- (b) within 24 months of establishment or registration in respect of an entity established or registered after the commencement of this Act.
- (2) The information manual must be -
- (a) submitted to the Information Commissioner for approval prior to publication and circulation;
  - (b) circulated to the public as prescribed;
  - (c) updated and published whenever material changes to the information occur; and
  - (d) reviewed every fifth year and published if material changes are made.
- (3) The information manual must include -
- (a) a description of the structure of the public entity and its objectives, powers and functions;
  - (b) physical and electronic contact details of the information officer and deputy information officers;
  - (c) the plain language guide developed by the Information Commissioner under section 9(2);
  - (d) a description of any arrangement or provision for a person to make recommendations or to otherwise participate in the formulation of policy or the exercise of powers or performance of functions by the public entity;
  - (e) a description of remedies available in respect of an act or omission by the public entity;



- (f) the manner of payment of reproduction fees, translation fees and transcription fees; and
- (g) the categories of information that the information holder proactively discloses and those which are made available through the formal request process.

(4) A public entity must endeavour to publish its information manual in as many local languages as possible.

### **Annual reports by public entities**

**26.** (1) The head of a public entity must annually, but not later than the end of April, submit to the Information Commissioner a report, in relation to the public entity, stating in respect of the preceding year -

- (a) the number of requests for access to information refused -
  - (i) in full; and
  - (ii) in part;
- (b) the number of times each provision of Part 9 was relied on to refuse access to information in full or in part;
- (c) the number of cases in which the periods stipulated in section 37 were extended in terms of section 39;
- (d) the number of applications for internal review lodged;
- (e) the number of appeals lodged on the ground that a request for access was deemed

as having been refused in terms of section 41;

- (f) the number of cases in which, as a result of an internal review, access to information was refused;
- (g) the number of appeals to the Information Commissioner and the outcome of those appeals;
- (h) the number of judicial reviews lodged with an appropriate court and the outcome of those reviews;
- (i) a description of the steps or efforts taken by the head of the entity to encourage all staff of the entity to comply with this Act;
- (j) any facts which indicate an effort by the entity to administer and implement the spirit and objects of this Act according to its submitted plan;
- (k) the particulars of any penalties issued against any person under this Act;
- (l) the particulars of any disciplinary action taken against any person under this Act;
- (m) the particulars of any difficulties encountered in the implementation of this Act in terms of the operations of the entity, including issues of staffing and costs; and
- (n) the categories of information that have been proactively disclosed by the entity, including -
  - (i) those documents referred to in section 33; and
  - (ii) where the public can access that information; and

- (o) any recommendation by the entity made for the reform of this Act, other laws, regulations or practice relevant to the optimal realisation of the objects of this Act.

(2) The Information Commissioner must take whatever steps necessary to ensure compliance with subsection (1).

### **Submission of implementation plans, information manuals and annual reports by public entities**

**27.** (1) A public entity must annually, within the prescribed time, submit to the Information Commissioner -

- (a) an information publication plan with respect to its proactive disclosure obligations contained in section 33, in accordance with section 24(2); and
- (b) annual reports on the implementation of this Act in accordance with section 26.

(2) A public entity must publish information manuals detailing the categories of information it proactively discloses in accordance with section 33.

### **Public entities and private entities to assist Information Commissioner**

**28.** A public entity or private entity must assist the Information Commissioner in the course of any application, investigation or appeal under this Act to the best of its abilities.

### **Exemption of certain categories of organisations from obligations**

**29.** The Information Commissioner may, in writing, exempt a category of organisations operating on a non-profit basis which are public entities by virtue of paragraph (c)(ii) of the definition of public entity from any obligation under this Act.

PART 5  
ACCESS TO INFORMATION

**Right of access to information**

**30.** (1) A person has an enforceable right of access to information held by -

(a) a public entity; or

(b) a private entity if the information may assist in the exercise or protection of any fundamental human right or freedom.

(2) For the purposes of this Act, unless otherwise proven, any information provided to a requester in accordance with this Act by any information holder is presumed to be true and accurate in content and in form and the requester may rely on and use the information on that basis.

(3) Nothing in this Act prevents a public entity from -

(a) publishing information; or

(b) giving access to information,

including information exempt from disclosure under Part 9, if it can do so without infringing any rights or is required by law to do so under this Act or any other law.

**Promotion of access to information**

**31.** (1) The Information Commissioner has the mandate to promote public awareness of the right of access to information by educating and training the public on how to use this Act and by popularising the right.

(2) In promoting the right of access to information, the Information Commissioner must -

- (a) assess all implementation plans required in terms of section 24 to ensure that public entities have clear obligations and processes which support awareness raising and education interventions at community level, including disadvantaged groups;
- (b) consult and collaborate with civil society organisations and interest groups;
- (c) provide recommendations and guidelines to public entities for internal training of personnel, and provide training on request, if resources are available;
- (d) monitor internal training of staff within public entities and issue directives for mandatory training, if necessary;
- (e) assist both requesters and information holders on matters of interpretation and implementation of this Act;
- (f) develop such materials as he or she thinks necessary to advance promotion of access to information; and
- (g) make public and widely disseminate the annual reports of the Information Commissioner.

### **Producing, keeping, organising and management of information**

**32.** (1) A public entity must produce, keep, organise and manage its information in a manner which facilitates the right of access to information as provided in this Act and any other law.

(2) In furtherance of the obligations contemplated in subsection (1), a public entity must -

- (a) produce information in respect of all its activities, including but not limited to those expressly provided for under section 27;
- (b) arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification and allocation; and
- (c) keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.

### **Proactive disclosure of information**

**33.** (1) A public entity must proactively disclose information produced by or in relation to the public entity within 30 days after production or receipt of the information by publishing -

- (a) manuals, policies, procedures or rules and similar instruments which have been prepared for use by its staff in discharging its functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the entity with respect to rights, privileges, benefits, obligations, penalties or other detriments, to or for which persons may be entitled;
- (b) the names, designations and other particulars of the information officer and deputy information officers of the entity, including their physical contact details and electronic addresses where persons may submit requests for information;
- (c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public entity;

- (d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of its policies, draft legislation or similar documents;
  - (e) whether meetings of the public entity, including its boards, councils, committees or similar other bodies, are open to members of the public and, if so, the process for direct or indirect engagement, but where a meeting is not open to the public, the public entity must proactively make public the contents of submissions received, the process for decision making and decisions reached;
  - (f) detailed information on the design and execution of any subsidy programs implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
  - (g) all contracts, licences, permits, authorisations and public-private partnerships granted by the entity;
  - (h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the entity; and
  - (i) any other information directed by any oversight mechanism.
- (2) A public entity must publish the following information produced by or in relation to the public entity -
- (a) the particulars of its organisation, mandate, powers and obligations;
  - (b) information containing interpretations and particulars of Acts and policies

- administered by the public entity;
- (c) details of its processes and procedures for producing, keeping, organising and managing information;
  - (d) a list of all the categories of information held by the public entity or under its control;
  - (e) a directory of its staff, including their powers, functions and title, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
  - (f) a description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted as part of the entity or for the purpose of advising or managing the public entity;
  - (g) the detailed actual budget, revenue, expenditure and indebtedness for -
    - (i) the current financial year, including all related estimates, plans, projections and reports, including audit reports; and
    - (ii) in respect of an existing entity, two previous financial years preceding the date of the commencement of this Act;
  - (h) the annual report submitted in terms of section 26; and
  - (i) any other information directed by any oversight mechanism.

**Unpublished information not to prejudice public**



**34.** If a public entity fails to publish information referred to in section 33 in a timely manner, a member of the public who was not aware of such information may not be subjected to any prejudice if he or she could lawfully have avoided the prejudice had he or she been aware of the information.

### **Requests for access to information**

**35.** (1) A person who wishes to obtain access to information held by an information holder must make a request in writing or orally to the information officer.

(2) If a person makes a request orally the information officer must reduce the oral request to writing and provide a copy of that written request to the requester.

(3) On receipt of a request, an information officer must immediately provide an acknowledgement of the request to the requester in the prescribed form if the information requested is not readily available to be accessed.

(4) If the information requested is readily available to be accessed, the information officer must immediately provide the information and retain a record of the request and the response.

(5) If an information officer is able to provide an immediate response to a requester and such response is to the satisfaction of the requester, the information officer must produce and retain a record of the request and the response.

(6) Subject to subsections (7)(b) and (c), a requester must provide a reason for requesting access to information.

(7) A requester must -

(a) provide such details concerning the information requested as is reasonably

necessary to enable the information officer to identify and allocate the information;

- (b) if the requester believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect and the basis for such belief;
- (c) if the request is to a private entity, explain why the requested information may assist in the exercise or protection of any fundamental right or freedom;
- (d) identify the nature of the form and language in which the requester prefers access; and
- (e) if the request is made on behalf of someone else, include an authorisation from the person on whose behalf the request is made.

### **Information holders to assist requesters**

**36.** (1) If a person -

- (a) wishes to make a request for access to information to an information holder; or
- (b) has made a request for access to information to an information holder that does not comply with the requirements of this Act,

the information officer must take all necessary steps to assist the person, free of charge, to make the request in a manner that complies with this Act.

(2) If a person with a disability wishes to make a request for access to information, an information officer must -

- (a) take all necessary steps to assist the person to make the request in a manner that

complies with this Act and meets his or her needs; and

- (b) provide information in accessible communication format and technologies as chosen by the requester and appropriate to his or her kind of disability in a timely manner and without additional cost.

### **Consideration of requests for access to information**

**37.** (1) A request for access to information is not affected by -

- (a) any reason the requester gives for requesting access; or
- (b) the belief of an information officer as to what the reasons of the requester are for requesting access,

except in so far as it relates to a request for information made for reasons contemplated in subsection (3), or section 35(7)(b) or (c).

(2) Subject to subsection (3), the information officer to whom a request for access to information is made must, as soon as reasonably practicable within 21 days after receipt, consider the request, and must -

- (a) grant the request; or
- (b) refuse the request,

and must notify the requester of the decision in writing.

(3) If a request for access to information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 hours after receipt of the request consider the request, and must -

- (a) grant the request; or
- (b) refuse the request,

and must notify the requester of the decision in writing.

(4) If the request for access to information is granted under subsection (2) or (3), the notice referred to in that subsection must state -

- (a) the reproduction fee, translation fee or transcription fee payable, if any;
- (b) the form in which access to information is to be given;
- (c) that, if the information requested contains third party information, information is not released until such time -
  - (i) any right of the third party to review the granting of access to the information has expired; or
  - (ii) any review lodged by the third party has been determined; and
- (d) that the requester may, in accordance with section 48, apply for review of -
  - (i) the reproduction fee, translation fee or transcription fee payable; or
  - (ii) the form in which access has been granted.

(5) Subject to subsections (4)(c) and (6), if a requester has been given notice that his or her request has been granted, the information officer must immediately release the information -

- (a) on payment of a reproduction fee, translation fee or transcription fee, whichever is payable; or
  - (b) if no reproduction fee, translation fee or transcription fee is payable.
- (6) If an information officer -
- (a) is required to respond to a request within 48 hours in terms of subsection (3); and
  - (b) grants the request,

the information officer must immediately give the requester access to information, irrespective of whether any reproduction fee, translation fee or transcription fee has been paid or not.

- (7) If a request for access to information is refused, the notice referred to in subsection (2) or (3) must -
- (a) state reasons for the refusal, based on the contents and substance of the request and the information considered by the information officer;
  - (b) contain a reference to specific provisions of this Act or any other law on which the refusal is based; and
  - (c) inform the requester that he or she may apply to the head of the information holder for review of the decision in accordance with section 48.

**Information requested contains third party information**

**38.** (1) If an information officer considers a request for access to information that contains -

- (a) personal information of a natural third party; or
- (b) commercial or confidential information of a third party,

the information officer must, within seven days of receipt of the request, take reasonable steps to notify, in writing -

- (i) the third party to whom the information relates; or
- (ii) if the third party is deceased, the executor of the deceased estate, the next of kin or legal representative of the third party

(2) Subject to subsection (9), the notice referred to in subsection (1) must include the

-

- (a) nature of the request and the content of the information; and
- (b) information that -

- (i) the third party may consent to the release of the information or make a representation as to why access to the information should not be granted in accordance with subsection (3);
- (ii) if the third party does not make a representation as to why access to the information should not be granted, access must be granted;
- (iii) the information officer may grant or refuse the request even if the third party makes a representation under subsection (3); and

(iv) if the information officer decides to release the information, the third party may lodge an application for review of the decision under section 48.

(3) Subject to subsection (4), a third party may, within 14 days of being informed of a request under subsection (1) -

- (a) inform the information officer, orally or in writing, that he or she consents to the release of the information to the requester; or
- (b) make a representation to the information officer, orally or in writing, stating why the request for access to the information should not be granted.

(4) If consent is given or a representation is made orally under subsection (3), the information officer must reduce the consent or representation to writing and provide a copy of the consent or representation to the third party.

(5) If a third party -

- (a) does not provide a response under subsection (3); or
- (b) cannot be located after reasonable steps have been taken to do so,

after 14 days of the request, the information officer must -

- (i) assume that the third party does not object to the granting of access to information to the requester; and
- (ii) if the third party cannot be located, prepare and sign an affidavit stating all steps taken to locate the third party, and retain such affidavit and grant access.

(6) On determining whether to grant the requester access to the personal, commercial or confidential information of the third party, the information officer must notify the third party in writing of the decision within seven days.

(7) If the third party objected to the granting of access and the information officer has granted the request for access, the notice referred to in subsection (6) must state -

- (a) the reasons for granting the request;
- (b) that the third party may apply for a review of the decision in accordance with section 48 within 14 days of receipt of the notice; and
- (c) that the requester will be granted access to the information, unless an application for review is lodged within 14 days of receipt of the notice.

(8) If an information officer considers a request -

- (a) to which the information officer must respond to within 48 hours as required by section 37(3); and
- (b) that contains personal information of a natural third party or commercial or confidential information of a third party,

the information officer must take reasonable steps to notify the third party to whom the information relates.

(9) The notification referred to in subsection (8) must be in writing, and the notification must state -

- (a) the nature of the request and the content of the information;



- (b) the name of the requester; and
- (c) whether the information officer may or may not release the information to the requester.

(10) If an information officer complies with subsection (8) but the third party cannot be located or fails to make his or her representation within 48 hours stating why the request should not be granted, the information officer must -

- (a) decide on the request with or without a representation being made; or
- (b) in the case where the request for access is granted, if appropriate, consider severing any portion that contains third party information from the information.

### **Extension of time to respond to request for access to information**

**39.** (1) Subject to subsection (3), an information officer may extend the period within which to consider a request received under section 35 to a period of not more than 14 days on a single occasion, if -

- (a) the request is for a large amount of information or requires a search through a large amount of information that cannot be provided or completed within 21 days without unreasonable interference with the main activities of the information holder; or
- (b) the holding of consultations is necessary to comply with the request and cannot be reasonably completed within 21 days.

(2) If the information officer considers any part of the information requested within 21 days specified in section 37(2), the information officer may decide in respect of such part in accordance with that section.

(3) If a period to respond to a request is extended in terms of subsection (1), the information officer must, within the 14 day extension, notify the requester in writing of the extension.

(4) The notice in terms of subsection (3) must state -

(a) the period of the extension;

(b) the reasons for the extension, based on the provisions of this Act; and

(c) that the requester may apply for review of the decision in accordance with section 48.

#### **Referral of request for access to information**

**40.** (1) If a request for access to information is made to a public entity, and the public entity -

(a) does not hold the information; or

(b) knows or reasonably presumes the information to be -

(i) held by another public entity; or

(ii) more closely connected with the mandate or functions of another public entity,

the public entity must, after inquiry with the other public entity, refer the request or such part of the request as may be appropriate to the other public entity.

(2) A public entity that needs to refer a request in accordance with subsection (1) must, within five days of receipt of the request -

- (a) refer the request to the other public entity; and
- (b) notify the requester of the referral in writing.

(3) A public entity that receives the referred request under subsection (2) must within five days notify the requester of the receipt in writing.

(4) If a request is referred to another public entity in accordance with subsection (2), the request is considered to have been -

- (a) made to the public entity to which it was referred; and
- (b) received by the public entity on the date the original public entity received the request.

#### **Deemed refusal of request for access to information**

**41.** An information officer is deemed to have refused a request for access to information if the information officer fails to make a decision on the request within -

- (a) the period specified in section 37; or
- (b) any extended period if the period referred to in paragraph (a) has been extended in accordance with section 39.

#### **Deferral of access to information**

**42.** (1) An information officer who grants the request for access to information

requested in accordance with section 37 may defer the actual access to information if -

- (a) the information has been prepared for tabling in the National Assembly within a period not exceeding five sitting days of the Assembly from the date the request was granted; or
- (b) the information constitutes a report or part of a report that has been prepared for the purpose of presenting it -
  - (i) to any public or private entity; or
  - (ii) to a person acting in his or her capacity as an officer of the State,

but only until the report has been tabled, presented or made available to the public or private entity or person or on the expiration of 21 days from the date of the request, whichever is the earlier.

(2) If an information officer determines to defer actual access to information under subsection (1), the information officer must, as soon as possible but not later than 21 days after receipt of the request, notify the requester in writing of the decision to defer, including -

- (a) the reasons and provisions of this Act relied on;
- (b) the period for which access is to be deferred; and
- (c) his or her right to make written or oral representations to the information officer, within 14 days of receipt of the notice, as to why access should not be deferred.

(3) On receipt of any representations made under subsection (2)(c), the information officer must -

- (a) in the case of oral representations, reduce to writing and provide a copy of the written representations to the requester; and
- (b) within seven days of receipt, consider the representations and must -
  - (i) accept the representations if there are reasonable grounds for believing that the requester will suffer prejudice; or
  - (ii) dismiss the representations if there are no reasonable grounds for believing that the requester will suffer prejudice,if access to the information is deferred for the period contemplated in subsection (1).

**Information that cannot be found or does not exist**

**43.** (1) An information officer must, within 21 days of the receipt of a request for access to information, notify the requester in writing that the information cannot be found or does not exist if the information officer -

- (a) has taken all reasonable steps to find the information; and
- (b) has concluded that the information -
  - (i) is in the possession of the information holder but cannot be found; or
  - (ii) does not exist.

(2) The notice referred to in subsection (1) must include a prescribed affidavit by the information officer stating the substantive details of all steps taken to find the information or to determine whether the information exists, including details of -

- (a) all locations searched for the information and the person or persons that conducted the searches;
- (b) any communications with any person that the information officer contacted in searching for the information or attempting to establish the existence of the information; and
- (c) any evidence relating to the existence of the information, including -
  - (i) any evidence that the information was destroyed; and
  - (ii) the location in which the information was last known to be held.

(3) If the information is found after notice is given to a requester under subsection (1), the information officer must immediately notify the requester in writing, and must, within 14 days of the finding of the information -

- (a) consider the request for access to information; and
- (b) continue, apply and complete the process and procedures of request for access to information as set out in section 37 and other applicable provisions regarding reviews and appeals.

#### **Form of access to information**

- 44.** (1) Access to information may be granted to a requester in a form of -
- (a) a reasonable opportunity to inspect the information;
  - (b) a copy of the information; or

- (c) in the case of information -
- (i) that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear, view, record or copy the sounds or visual images;
  - (ii) by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, a written transcript;
  - (iii) which is held in a computer, or in electronic or machine-readable form, and from which the information holder is capable of producing a printed copy of the information or part of it, a printed copy; or
  - (iv) available or capable of being made available in computer readable form, a copy in that form.

(2) Subject to subsection (4), if the requester has requested access to information in a particular form, the information officer must grant access in such form if possible.

(3) A requester may amend his or her preferred form of access on receipt of notice of the reproduction fees, translation fees or transcription fees payable if access is not granted in the form initially requested.

(4) An information officer may not grant a request for access to information in the form as requested under subsection (2) if giving access in the form so requested is likely to -

- (a) unreasonably interfere with the operations of the information holder;
- (b) be detrimental to the preservation of the information;

- (c) be inappropriate, having regard to the physical nature of the information; or
- (d) endanger national security or defence; or
- (e) to jeopardise a criminal investigation,

but access may be granted in another form authorised by subsection (1) as it may be appropriate, subject to any modification relating to the fees payable.

- (5) If a requester with a disability -
  - (a) requests access to information and the information holder grants access; and
  - (b) is prevented by the disability from reading, viewing or listening to, the information,

in the form in which it is held, the information officer must take reasonable steps to make the information available in a form in which the requester can read, view or listen, if the requester so requests.

### **Information to be provided in official or other languages**

**45.** (1) Information must be provided to a requester in English or in a language which the requester prefers or best understands.

(2) If the information holder does not hold the information in the language the requester prefers, the information officer -

- (a) may cause the information to be translated, decoded, transformed or converted into the preferred language of the requester; and



- (b) may recover the prescribed translation fees from the requester.

### **Reproduction, translation and transcription fees**

**46.** (1) A requester is not required to pay any fee -

- (a) on lodging a request; or

- (b) in relation to time spent by an information holder -

- (i) searching for the information requested; or

- (ii) examining the information to determine whether it contains exempted information or severing the exempted part of the information from the information granted.

(2) Subject to subsection (3), an information holder may charge the requester a reproduction fee consisting of the reasonable reproduction costs incurred by the information holder.

(2) A reproduction fee is not payable -

- (a) for reproduction of personal information of the requester;

- (b) if the request is made on behalf of another person, for the personal information of the person on whose behalf the request is made;

- (c) for reproduction of information which is in the public interest;

- (d) if an information holder fails to respond to a request within -

- (i) the period required under section 37; or
  - (ii) the extended period, where an extension of the period has been made under section 39; or
- (e) if the requester is indigent as may be prescribed.

(4) An information holder may recover the prescribed translation fee or transcription fee from a requester if the requester makes a request to the information holder that -

- (a) the information released under this Act be made available in a language other than the official language in which it is held; or
- (b) a written transcription of information released under this Act be produced.

## PART 6 INTERNAL REVIEWS

### **Right to internal review**

**47.** (1) If a requester is not satisfied with the decision of the information officer, the requester may apply for internal review of the decision.

(2) If a third party is not satisfied with the decision of the information officer granting access to information containing third party information, the third party may apply for internal review of the decision.

### **Application for internal review**

**48.** (1) An application for internal review of the decision of an information officer must -

- (a) be lodged within 14 days of receipt of the decision;
- (b) be lodged in writing or orally with the information officer;
- (c) set out particulars of the decision and the grounds for review; and
- (d) be determined by the head of the information holder or any staff member designated in writing by the information holder.

(2) If a requester or a third party orally applies for internal review, the information officer must reduce the oral application to writing and provide a copy of the application to the applicant.

(3) An information officer, within five days of receipt of the application for internal review, must submit to the head of the information holder -

- (a) the application for internal review;
- (b) the reasons for his or her decision; and
- (c) all forms of proof,

and notify the applicant in writing that the application together with all documentation have been so submitted.

(4) If an application for internal review is lodged after the expiry of 14 days, the information officer may, on good cause shown, allow the late lodging of the application.

**Determination of matters on internal review**

**49.** (1) The power to determine a matter brought on internal review in terms of section 48 is to be exercised by -

- (a) the head of the information holder; or
- (b) a staff member designated in writing by the information holder.

(2) The head of the information holder or staff member referred to in subparagraph (1)(b) must, within 14 days of receipt of the application for internal review, consider the review of the decision of the information officer, and must -

- (a) refuse the application and confirm the decision; or
- (b) grant the application and set aside or amend the decision;

and must notify the requester or third party in writing.

(3) If the head of the information holder or staff member decides to grant access to information, the notice to the requester referred to in subsection (2) must state -

- (a) the reproduction fee, translation fee or transcription fee payable, if any;
- (b) the form in which access is to be given; and
- (c) that the requester may appeal to the Information Commissioner under section 59 against the decision in respect of the reproduction fee, translation fee or transcription fee payable or the form of access, and the process for lodging the appeal.

(4) The notice to the third party referred to in subsection (2) must state -

(a) the reasons for the decision; and

(b) that the third party may appeal to the Information Commissioner against the decision in accordance with section 52, and the process for lodging the appeal.

(5) Subject to subsection (6), if a requester has been given notice that access to information has been granted, the head of the information holder or the staff member must immediately give the requester access to the information -

(a) if a reproduction fee, translation fee or transcription fee is payable, on payment of the fee; or

(b) if no reproduction fee, translation fee or transcription fee is payable.

(6) If the head of the information holder or the staff member has on internal review decided to release information containing third party information the requester may not be granted access to the information until such time -

(a) any right of the third party to appeal against the decision to release the information under section 52 has expired; or

(b) any appeal lodged by the third party has been finally determined.

(7) If the head of the information holder or the staff member has on internal review refused to grant access to information, the notice to the requester referred to in subsection (2) must state -

(a) the reasons for the refusal, based on the contents and substance of the request and the information considered by the head;

- (b) the specific provisions of this Act on which the refusal is based; and
- (c) that the requester may appeal to the Information Commissioner against the decision in accordance with section 52, and the process of lodging the appeal.

### **Deemed refusal of application for internal review**

**50.** If the head of an information holder or the staff member referred to in section 49(1)(b) fails to make a determination on an internal review within 14 days as required by section 49, the application for review is deemed to have been refused, unless the determination could not be made due to a reason provided and agreed to by the requester at least three days before the expiry of that period.

### **No appeals before exhaustion of internal review process**

**51.** (1) Subject to subsection (2), a person may not appeal to the Information Commissioner against the decision of an information holder under section 52 if the person has not exhausted the internal review process under this Part.

(2) A person may directly appeal to the Information Commissioner against the decision or failure to make a decision without exhausting the internal review process under this Part if -

- (a) the information officer refused to grant -
  - (i) the personal information of the requester; and
  - (ii) access to the information which was previously in the public domain and has never been withdrawn;

- (b) the head of the information holder is also the information officer of the information holder; or
- (c) the requester reasonably believes that access to the information requested is necessary to safeguard the life or liberty or rights of a person and to be granted in 48 hours of the request, and -
  - (i) no notice of decision on the request for access to information is received in the 48 hours; or
  - (ii) the request for access to information is refused.

PART 7  
APPEAL AND JUDICIAL REVIEW

**Appeals to Information Commissioner**

- 52.** (1) If a requester is not satisfied with -
- (a) the decision of -
    - (i) the head of an information holder or a staff member taken on internal review in terms of section 49; or
    - (ii) the information officer made under section 37; or
  - (b) the failure to make a decision as contemplated in section 41 or 50,

the requester may appeal to the Information Commissioner against the decision or the failure to make a decision in accordance with section 53.

(2) A third party who is not satisfied with the decision of the head of an information holder or a staff member taken on internal review in terms of section 49 granting a requester access to information containing the third party information may appeal to the Information Commissioner against the decision in accordance with section 53.

### **Appeals**

**53.** (1) An appeal to the Information Commissioner under section 52 -

(a) must be lodged within 14 days of receipt of the decision of -

(i) the head of the information holder or a staff member; or

(ii) the information officer in terms of section 51(2);

(b) must be lodged in writing or orally with Information Commissioner;

(c) must set out particulars of the decision and the grounds for appeal in the prescribed manner; and

(d) must be decided by the Information Commissioner or a Deputy Information Commissioner acting as the Information Commissioner or such other person in that acting capacity.

(2) If an appeal is lodged orally, the Information Commissioner must ensure that the oral appeal is reduced to writing and provide a copy of the appeal to the requester or third party, if applicable.

### **Decisions on appeals**



**54.** (1) The Information Commissioner must, within 14 days of receipt of the appeal under section 53, consider the appeal, and he or she must -

- (a) accept the appeal and set aside the decision;
- (b) vary the decision or the type of access granted; or
- (c) refuse the appeal and confirm the decision,

and must notify the requester or third party in writing.

(2) If the Information Commissioner decides to grant access to information, the notice to the requester must state -

- (a) the reproduction fee, translation fee or transcription fee payable, if any;
- (b) the form in which access is to be given; and
- (c) that the requester or third party may apply to the High Court for review under section 55 against the decision or any order in respect of the reproduction fee, translation fee or transcription fee payable or the form of access and the process for lodging the appeal.

(3) Subject to subsection (4), if the Information Commissioner has given notice to the requester that access to information has been granted, the Information Commissioner must immediately give the requester actual access to the information -

- (a) if a reproduction fee, translation fee or transcription fee is payable, on payment of the fee; or
- (b) if no reproduction fee, translation fee or transcription fee is payable.

(4) If the Information Commissioner has on appeal decided to release information containing third party information -

(a) the requester may not be granted actual access to the information until such time -

(i) any right of the third party to judicial review under section 55 against the decision to release the information has expired; or

(ii) any judicial review lodged by the third party has been determined; and

(b) the notice to the third party referred to in subsection (1) must state -

(i) the reasons for the decision;

(ii) that the third party may apply to the High Court in accordance with section 55 for a review of the decision; and

(iii) the procedure for lodging the review.

(5) If the Information Commissioner has on appeal refused to grant access to information, the notice to the requester must state -

(a) the reasons for the refusal, based on the contents and substance of the request and the information considered by the Information Commissioner;

(b) the specific provisions of this Act on which the refusal is based; and

(c) that the requester may apply to the High Court under section 55 for a review of the decision.

### **Applications for judicial review**

**55.** A requester or third party who is not satisfied with the decision of the Information Commissioner made under this Act may apply to the High Court for a review of the decision in terms of rule 119 of the Rules of the High Court of Namibia.

## **PART 8**

### **NOTICES, INVESTIGATIONS AND HEARINGS**

#### **Notice of intention to investigate and hear matters**

**56.** Before the Information Commissioner commences an investigation or hearing of any matter under this Act, he or she must, at least seven days before the start of the investigation or hearing, notify the head of the information holder concerned of -

- (a) his or her intention to investigate or hear a matter; and
- (b) the substance of the investigation or hearing.

#### **Notice to third parties**

**57.** (1) On receipt of a notice of investigation or hearing from the Information Commissioner under section 56, the head of the information holder must, within two days, inform the Information Commissioner of all the third parties involved if their particulars have not been provided already.

(2) Subject to subsection (1), on receipt of the particulars of the third parties, the Information Commissioner must immediately notify the third parties of the investigation or hearing of a matter.

#### **Right to make representations**

**58.** In any matter before the Information Commissioner, the following persons are entitled to a reasonable opportunity to make representations -

- (a) the person who made the application, and the requester, if he or she did not make the application;
- (b) the head of the information holder concerned;
- (c) a third party, if the information requested contains third party information and the third party can reasonably be located.

#### **Holding of hearing open to public**

**59.** The holding of a hearing before the Information Commissioner is open to the public, except -

- (a) when, in the view of the Information Commissioner, the circumstances dictate the holding of a hearing in camera; or
- (b) on good cause shown, a request to hold the hearing in camera is made to the Information Commissioner by any of the parties prior to the hearing and has been so approved by the Commissioner.

#### **Powers regarding matters before Information Commissioner**

**60.** The Information Commissioner, with regard to any matter before him or her, has the powers -

- (a) to summon, in the prescribed form and manner, heads of organs of State, heads of offices, ministries and agencies of Government, members of board of directors

and any other persons as witnesses;

- (b) to summon expert witnesses where appropriate;
- (c) to allow interested parties on application to join proceedings;
- (d) to provide assistance to applicants, where appropriate;
- (e) to allow parties and witnesses to participate in investigations and hearings through the medium of their choice;
- (f) to compel any witness or evidence he or she considers necessary for the resolution of a matter; and
- (g) to administer oaths and receive any such evidence under oath or on affidavit he or she considers necessary.

### **Burden of proof**

**61.** (1) An information holder bears the burden of proof in all proceedings relating to investigations and hearings, except where subsection (3) applies.

(3) An information holder who refuses to grant access to information as requested has the burden of proving that -

- (a) such information is exempt from disclosure under this Act; and
  - (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest.
- (4) The requester bears the onus of proof if -

- (a) a request to a private entity is refused on the basis that the information requested does not assist in the exercise or protection of any right; or
- (b) he or she asserts that no reproduction fee is payable on the basis that -
  - (i) the information requested is in the public interest in terms of section 46(3)(c); or
  - (ii) he or she is indigent in terms of section 46(3)(e).

### **Notices of findings and referrals**

**62.** (1) The Information Commissioner must serve, within 14 days of his or her findings or decision, on all parties to a matter notice of -

- (a) the findings of an investigation;
- (b) the decision on a hearing; or
- (c) any referral to an appropriate court on questions of law or such other matters it considers appropriate, including any rights of appeal for judicial review that the party has.

(2) If in the view of the Information Commissioner, service of a notice of a finding will cause prejudice due to the sensitive nature of exempt information, the Information Commissioner must amend such finding in a manner he or she considers appropriate.

(3) The Information Commissioner may decide to dispense with notification in terms of subsection (1) if the Information Commissioner is of the view that it may -

- (a) prejudice the conduct of an investigation of any contravention or possible contravention of the law;
- (b) prejudice the enforcement or administration of the law;
- (c) endanger the life or physical safety of a person;
- (d) cause prejudice to the commercial interests of a private business or private individual; or
- (e) impair relations between States.

## PART 9 EXEMPT INFORMATION

### **Prohibition of access to exempt information**

**63.** A public or private entity may not grant access to information that falls within the scope of exempt information set out in this Part, unless otherwise provided in this Part.

### **Public interest overriding other interests**

**64.** Despite any exempt information set out in this Part, an information officer from whom access to information has been requested under this Act must grant such access, if -

- (a) the disclosure of the information would reveal evidence of -
  - (i) a corrupt activity or any serious contravention of law;
  - (ii) an imminent and serious public health or safety risk; or

- (iii) an imminent and serious environmental risk; and
- (b) the public interest demonstrably outweighs the resulting harm to the interest protected under the relevant exemption should the disclosure of the information be granted.

### **Classified information**

**65.** (1) Classified information -

- (a) is exempt from disclosure under this Act merely on the basis of its classification status under the relevant law; and
- (b) remains classified until -
  - (i) declassified under the relevant law;
  - (ii) its classification period expires in terms of the relevant law; or
  - (iii) disclosed under this Act or any other law.

(2) A person may not request access to classified information under this Act until such time the information is declassified or its classification period expires, unless the request for access to information is based on section 64.

### **Personal and other information of third parties**

**66.** (1) Subject to subsection (2), an information officer may not grant a request for access to information if the disclosure of the information -

- (a) would involve the disclosure of personal information about a natural third party,



including a deceased individual;

(b) would constitute a breach of duty of confidence owed to a third party in terms of an agreement; or

(c) contains information that was supplied in confidence by a third party the disclosure of which could reasonably be expected to prejudice the future supply of

-

(i) similar information; or

(ii) any information from the same source,

and it is in the public interest that similar information or information from the same source should continue to be supplied.

(2) An information officer must grant a request for access to information contemplated in subsection (1) if -

(a) the third party does not make a representation under section 38(3) stating why access to the information should not be granted;

(b) the third party consents to the disclosure;

(c) the information relates to the physical or mental wellbeing of an individual who is under the care of the requester and who is -

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request,

and giving access would be in the interest of the individual;

- (d) the information is about a deceased and the requester is -
  - (i) the next of kin or legal representative of the deceased;
  - (ii) making the request with the written consent of the next of kin or legal representative of the deceased;
  - (iii) the executor of the estate of the deceased; or
  - (iv) the trustee of a trust which can benefit from the estate of the deceased;
- (e) the information relates to the position or functions of an individual who is or was an official of the information holder or any other public or private entity; or
- (f) the information was supplied to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it was given that the information belongs to a class of information that would or might be made available to the public.

### **Commercial and economic information of information holders and third parties**

**67.** (1) Subject to subsection (2), an information officer may not grant a request for access to information if the information contains -

- (a) trade secrets or confidential financial, commercial, scientific or technical information of an information holder or third party and the disclosure of which would likely cause harm to the commercial or financial interests of the information holder or third party;

- (b) information of which the disclosure could reasonably be expected to prejudice the competitive position of an information holder or third party or to interfere with contractual or other negotiations of the information holder or third party;
  - (c) scientific or technical information obtained through research by a staff member of a public or private entity, the disclosure of which could reasonably be expected to deprive the staff member of priority of publication;
  - (d) information of which the disclosure could reasonably be expected to be materially prejudicial to -
    - (i) the financial interests of a public or private entity; or
    - (ii) the ability of the Government to manage the economy of Namibia; or
  - (e) information of which the disclosure could reasonably be expected to result in an undue economic benefit to any person.
- (2) An information officer must grant a request for access to information contemplated in subsection (1), if -
- (a) the disclosure of the information would -
    - (i) facilitate accountability and transparency of decisions taken by the information holder; or
    - (ii) reveal misconduct or deception;
  - (b) the information relates to the expenditure of public funds;
  - (c) the third party consents to the disclosure; or

- (d) the information is in the public domain.

### **Protection of life, health and safety of individuals and of properties**

**68.** An information officer may not grant a request for access to information if the release of the information -

- (a) is likely to endanger the life, health or safety of an individual; or
- (b) is likely to prejudice or impair -
  - (i) the security of a building, building plans, structure or system, including, a computer or communication system, a means of transport, or any other property; or
  - (ii) methods, systems, plans or procedures for the protection of an individual, the safety of the public or the security of property.

### **National security and defence**

**69.** (1) An information officer may not grant access to information if the granting of access would cause prejudice to the national security or defence of the State.

- (2) For the purpose of this section, “national security or defence”, includes -
  - (a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities or terrorism;
  - (b) intelligence relating to -

- (i) the defence of the State; or
  - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);
- (d) the non-disclosure of the identity of a confidential source; and
- (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear, chemical or biological weapons.
- (3) For the purpose of this section, “subversive or hostile activities” means -
- (a) an attack against the State by a foreign element;
  - (b) acts of sabotage or terrorism aimed at the people or a strategic asset of the State, whether inside or outside the State; or
  - (c) a foreign or hostile intelligence operation.

### **International relations**

- 70.** An information officer may not grant access to information -
- (a) supplied by or on behalf of the State to another State or an international organisation in terms of an international agreement with that State or organisation which requires the information to be held in confidence;

- (b) required to be held in confidence under international law;
- (c) on the positions adopted or to be adopted by the State, another state or an international organisation for the purpose of present or future international negotiations; or
- (d) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of a country,

if the release of the information would cause prejudice to the international relations of the State.

### **Law enforcement**

**71.** An information officer may not grant access to information if the release of the information would cause prejudice or disadvantage to -

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice; or
- (d) the assessment or collection of any tax or duty, unless in so far as it consists of personal information about the requester or the person on whose behalf the request is made.

### **Legally-privileged documents**

**72.** An information officer may not grant a request for access to information if the information would otherwise be privileged from production in legal proceedings or if the information contains confidential communication between -

- (a) a medical practitioner and his or her patient;
- (b) a legal practitioner and his or her client;
- (c) a journalist and his or her source; or
- (d) spouses,

unless the patient, client, source, spouse or person entitled to the privilege, consents to the release of the information or has waived the privilege.

### **Academic and professional examinations and recruitment processes**

**73.** (1) An information officer may not grant a request for access to information relating to -

- (a) an academic or a professional examination; or
- (b) a recruitment or selection process,

prior to the completion of such examination or process, if the release of the information is likely to jeopardise the integrity of such examination or process.

(2) The information referred to in subsection (1) may be released on request after the academic or professional examination or recruitment or selection process has been completed.

### **Manifestly frivolous or vexatious requests**

**74.** (1) An information officer may not grant a request for information if the request is manifestly frivolous or vexatious.

(2) A request is regarded as manifestly frivolous or vexatious if such a request is done for -

- (a) no serious purpose or value; or
- (b) malicious reasons or is clearly aimed at causing nuisance.

(3) If an information officer refuses a request on the basis of subsection (1), the notice referred to in section 37(2) must include an affidavit signed by him or her stating the facts proving the grounds contemplated in subsection (2).

#### **Facilitating of commission of offences**

**75.** An information officer may not grant a request for access to information that contains information that could reasonably be expected to facilitate the commission of an offence including such -

- (a) methods and techniques on commission of criminal acts;
- (b) technical information relating to weapons or potential weapons; and
- (c) information on the vulnerability of particular security buildings, other structures and systems, computer and communication systems, and methods employed to protect such buildings, other structures and systems.

#### **Information about to be published**

**76.** An information officer may not grant a request for information or any part of the



information if the information officer believes on reasonable grounds that the information being requested or a part of that information is about to be published -

- (a) within 21 days of the request; or
- (b) within such extended period not exceeding 35 days as may be necessary for printing or translating the material for the purpose of publishing it.

### **Severance of exempted portion of requested information**

**77.** If a requester requests access to information, but a portion of a record or document containing requested information is exempted from release under this Part, the information officer if he or she decides to grant access, must -

- (a) sever or redact the exempt portion of the information from the record or document;
- (b) grant the requester access to the remainder of the information; and
- (c) indicate the length or amount of information severed or redacted.

### **Information granted becomes public information**

**78.** (1) Subject to subsection (2), information to which a requester is granted access under this Act becomes information in the public domain, irrespective of whether the information is published or not.

- (2) If a requester is granted access to -
  - (a) his or her personal information;

- (b) personal information of his or her next of kin; or
- (c) personal information of a person for whom he or she is the legal representative,

such information does not become information in the public domain only by reason of that granting of access.

### **Burden of proof on exempt information**

**79.** An information officer who refuses to grant a request for access to information has the burden of proving, on a balance of probabilities, that -

- (a) such information is exempt from disclosure under this Part; and
- (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest.

## PART 10

### GENERAL PROVISIONS

#### **Authority on limitation of fundamental rights and freedoms**

**80.** In so far as any provision of this Act provides for a limitation of the fundamental rights and freedoms contemplated in Article 13 or 21 of the Namibian Constitution, in that it authorises limitation of or interference with -

- (a) the privacy of a person regarding personal information, correspondence, communications, or conducting of search and seizure; or
- (b) the right of a person to practise any profession, or carry on any occupation, trade or business,

such limitation is enacted on the authority of that Article.

## **Offences**

**81.** A person who -

- (a) destroys, damages or alters information required to be kept or requested in terms of this Act;
- (b) conceals information requested in terms of this Act;
- (c) falsifies or manipulates information or provides a false record or document as information requested in terms of this Act;
- (d) obstructs, interferes or hinders an information officer or any other staff member of a public or private entity in the exercise or performance of his or her powers or functions under or in terms of this Act;
- (e) obstructs, interferes or hinders the Information Commissioner, Deputy Information Commissioner or his or her staff member or any other person in the exercise or performance of the powers or functions of the Information Commissioner under or in terms of this Act;
- (f) accesses information exempt from disclosure in terms this Act without relevant authorisation; or
- (g) assists, directs, proposes, advises or causes any person in any manner to do any act referred to in paragraph (a), (b), (c), (d), (e) or (f),

commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or

imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

### **Administrative fines**

**82.** Subject to Part 8, If an information officer -

- (a) without a valid reason, refuses to receive a request for access to information;
- (b) fails to respond to a request within the period specified in section 37 or if that period has been extended in accordance with section 39 within such extended period;
- (c) fails to comply with an order of the Information Commissioner;
- (d) refuses to grant a request for access to information in a frivolous or vexatious conduct;
- (e) gives incorrect, incomplete or misleading information; or
- (f) obstructs in any manner the release of information granted,

the information officer is liable to an administrative fine of not less than N\$2 000 and not more than N\$30 000 as the Information Commissioner, subject to Part 8, or any court of law may impose for each day the request is not complied with.

### **Delegation of powers and assignment functions**

**83.** (1) The Information Commissioner, in writing and on such conditions as the Information Commissioner may determine, may delegate a power or assign a function conferred or imposed on the Information Commissioner by or under this Act to a Deputy

Information Commissioner.

(2) The head of an information holder, in writing and on such conditions as he or she may determine, may delegate or assign a power or function conferred or imposed on the head by or under this Act to the information officer, except the power to determine internal reviews under section 49.

(3) An information officer, in writing and on such conditions as he or she may determine, may delegate or assign a power or function conferred or imposed on the information officer by or under this Act to a deputy information officer.

(4) The Information Commissioner, the head of an information holder, or an information officer -

(a) is not divested of a power delegated or function assigned under this section; and

(b) may, at any time, without prejudice of a right, amend or withdraw a decision made by virtue of the power so delegated under this section.

### **Limitation of liability**

**84.** (1) A person is not personally liable for any loss or damages caused by the disclosure or authorisation of the disclosure of any information in good faith in the course of exercising or performing his or her powers or functions under this Act, unless the loss or damages was caused as a result of the gross negligence or unlawful conduct of the person.

(2) A staff member of a public or private entity may not be subjected to any detriment in the course of his or her employment by reason of the disclosure or authorisation of the disclosure in good faith of any information under this Act.

### **Regulations**

**85.** The Minister may make regulations relating to any or all of the following -

- (a) the form of any application, certificate, report, plan, review or appeal made, issued or lodged in terms of or under this Act, and any related procedure including internal review and appeal procedures;
- (b) the fees that may be charged under this Act;
- (c) the code of conduct for staff administering this Act;
- (d) the promotion of access to information;
- (e) the creation, keeping, organisation and management of information, including proactive disclosure of information, to facilitate transparency, accountability, good governance and access to information;
- (f) any entry, search and seizure procedures necessary for the exercise and performance of powers and functions under this Act;
- (g) any matter that is permitted or required to be prescribed in terms of this Act;
- (h) generally, any matter, not inconsistent with the powers of the Minister, which the Minister considers necessary or expedient to prescribe to achieve the objects of this Act.

#### **Short title and commencement**

**86.** (1) This Act is called the Access to Information Act, 2020, and commences, subject to subsection (2), on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for the commencement of different provisions of this Act.

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