

(3) For the purposes of subsection (2), a disclosure which is made to the police or to an appropriate public authority shall be deemed to be made in the public interest.

(4) For the purposes of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of any reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided; and the imposition of any penalty in contravention of this section shall be actionable in tort.

(5) Any term of a settlement arising from a claim under this section, in-so-far as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is not inaccurate and which was or was proposed to be disclosed, shall be unenforceable.

(6) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information it shall be a defence to show that in the circumstances the disclosure was in the public interest, and where the offence is alleged to have been committed by an official or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, that the defendant had before making the disclosure, complied with subsection (2).

Protection of
bona fide
actions.

51. No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under or pursuant to this Act.

Passed in Parliament this *29th* day of *October*, in the year of our Lord two thousand and thirteen.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.

ACT

Supplement to the Sierra Leone Gazette Vol. CXLIV, No. 62
dated 31st October, 2013

THE RIGHT TO ACCESS INFORMATION ACT, 2013

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1. Interpretation.

PART II—THE RIGHT TO INFORMATION

2. Access to information.
3. Submission and forms of request.
4. Time limit for compliance.
5. Transfer of application.
6. Fees.
7. Communication of request.
8. Proactive publication.
9. Approval of publication schemes.
10. Model publication schemes
11. Other proactive obligations.

PART III—EXEMPT INFORMATION

12. Exempt information.
13. Refusal of request.
14. Information accessible by other means.
15. National security and defence.
16. International relations.
17. Economic interests.
18. Investigations and law enforcement.
19. Third party information.
20. Client professional privilege.
21. Personal matters.
22. Commercial interests.
23. Public economic interests.

24. Historical records.
25. Customary rites and usages.
26. Severability.

PART IV—MEASURES TO PROMOTE OPENNESS

27. Maintenance of records.
28. Appointment and training of public information officers.
29. Development of information communication facilities.

PART V—ADMINISTRATIVE PROVISIONS

30. Establishment of Commission.
31. Composition of Information Commission.
32. Functions and powers of Commission.
33. Powers relating to investigation.
34. Other staff.
35. Duties of Executive Secretary.
36. Protection of officers.
37. Independence of Commission etc.

PART VI—FINANCIAL PROVISIONS

38. Funds of Commission.
39. Accounts and audit.
40. Financial year.
41. Annual report of Commission.

PART VII—APPEALS

42. Complaint.
43. Review by Commission.
44. Burden of proof.
45. Review of decision.
46. Appeal to High Court

PART VIII—OFFENCES AND PENALTIES

47. Offences.
48. Other Offences.

PART IX—MISCELLANEOUS PROVISIONS

49. Regulations.
50. Whistleblower protection.
51. Protection of bona fide actions.

SIGNED this 31st day of October, 2013.

DR. ERNEST BAI KOROMA,
President.

LS

No. 2



Sierra Leone

2013

The Right to Access Information Act, 2013.

Short title.

Being an Act to provide for the disclosure of information held by public authorities or by persons providing services for them and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“Commission” means the Information Commission established by section 30;

“fees notice” means a notice in writing stating that a fee of an amount specified in the notice is to be charged by the public authority for complying with section 2.

“historical record” means a record which was created twenty or more years before the coming into operation of this Act;

“information” includes any material regardless of its physical form or characteristics, such as a book, plan, map, drawing, film, microfiche, diagram, pictorial or graphic work, data, photograph, recording, audio or video-tape, machine-readable material or any other information held in electronic form, and also includes any sample, work, model or copy thereof;

“Minister” means the Minister responsible for information;

“official” means any person employed by a public authority, whether permanently or temporarily and whether part-time or full-time, and includes consultants working directly as individuals for the authority;

“personal information” means information about an identifiable individual which contains intimate details in respect of which that individual has a reasonable expectation of privacy;

“private body” means a natural person who carries on a trade, business or profession, but only in such capacity or a partnership or juristic person which carries on a trade, business or profession, but does not include a public authority;

“public information officer” means a person appointed under section 28-

“public authority” includes any body—

- Act No. 6 of 1991.
- (a) established by or under the Constitution of Sierra Leone 1991;
 - (b) established by statute;
 - (c) which forms part of any level or branch of Government;
 - (d) owned, controlled or substantially financed by funds provided by Government;
 - (e) carrying out a statutory or public function; or
 - (f) a body or organisation that receives monies on behalf of the people of Sierra Leone;

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

PART II—THE RIGHT TO INFORMATION

2. (1) Every person has the right to access information held by or is under the control of a public authority. Access to information.

(2) Every person has the right to access information held by or is under the control of a private body where that information is necessary for the enforcement or protection of any right.

(3) Nothing in this Act limits or otherwise restricts the disclosure of or the right to access, information pursuant to any other enactment, policy or practice.

(4) Any person making a request for information to a public authority shall be entitled—

- (a) to have the public authority confirm or deny whether it holds information of the description specified in the request; and
- (b) where the public authority holds information of the description specified in the request, to have the information communicated to that person

(5) A public authority shall be deemed to have complied with subsection (4) if it has communicated the information to the applicant.

(6) In this Act, the duty of a public authority to comply with paragraph (a) of subsection (4) shall be referred to as “the duty to confirm or deny”.

Submission
and form of
request.

3. (1) A request for information under section 2 shall—

- (a) be made in writing;
- (b) describe the information requested; and
- (c) provide an address, which may be an email, for purposes of correspondence.

(2) For the purposes of paragraph (a) of subsection (1), a request shall be deemed to be made in writing where the text of the request—

- (a) is transmitted by electronic means;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

(3) An application to access information shall be made in English or *Krio* by email, fax, post, telephone or by any other medium provided that the applicant provides—

- (a) contact details; and
- (b) sufficient particulars for the public information officer or any other official to understand what information is being requested.

(4) A public information officer who receives an oral request shall reduce the request to writing, including the public information officer’s name and designation and shall give a copy thereof to the applicant.

(5) Notwithstanding subsection (3), an application may, if the applicant is unable to communicate in English, be made in any other local language in use in Sierra Leone: and in that event the public information officer to whom the application is made shall arrange for a translation of the application into English.

(6) Where a request for information does not comply with subsection (3), the public information officer who receives the request shall render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with that subsection.

(7) A request referred to in subsection (6) shall not be deemed to have been rejected while assistance is being rendered.

(8) A public authority may determine the form for requests for information, but the form shall not be such as to unreasonably delay requests or place an undue burden upon applicants; and no application may be rejected on the ground only that the applicant has not used the prescribed form.

(9) A public authority which receives a request for information shall provide the applicant with a receipt documenting the request.

(10) A public authority shall record and maintain records of all requests for information and all public transactions in a manner that facilitates the right to information.

Time limit for compliance.

4. (1) Subject to subsection (2), section 2 shall be complied with as soon as possible, and in any event within fifteen working days of receipt of the application.

(2) Where the information sought concerns the life or liberty of a person, section 2 shall be complied with within forty-eight hours of receipt of the application.

(3) Where an application is especially complex or relates to a large volume of information, the public authority may request the Commission for an extension of not more than fifteen working days.

(4) Any failure to conform to the timelines set out in this section shall be deemed a refusal of the request, for purposes of complaints and appeals.

Transfer of application.

5. (1) Where a public authority does not hold information which is responsive to a request or part of a request, that request or any relevant part of it may, not later than three days from the date of its receipt, be transferred to another public authority if the information requested is held by that other public authority.

(2) Where an application is transferred under subsection (1), the applicant shall be informed of the transfer immediately, and in any event not later than three working days from the date of the transfer.

(3) A public authority to which an application is transferred under subsection (1) shall decide the request in accordance with the timelines set out in section 4, to run from the day upon which the public authority receives the transferred request.

Fees.

6. (1) A public authority to which a request for information is made may, within the time limit for compliance specified in section 5, give the applicant a fees notice, stating that a fee of an amount specified in the notice is to be charged by the public authority for complying with section 2.

(2) Where a fees notice has been given to the applicant, the public authority shall not be obliged to comply with section 2 unless the fee is paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section shall not exceed the reasonable, cost-based amount for reproducing and sending the information to the applicant, and shall be in accordance with any Regulations made by the Minister under this Act.

(4) Regulations made by the Minister under subsection (3) may, in particular, provide that no fee shall be payable under this section in the following cases:—

- (a) where the applicant falls below a certain income level;
- (b) where the request is for personal information relating to the applicant; or
- (c) where the request is in the public interest, for example because the applicant intends to make the information public.

(5) Subsection (3) shall not apply where provision is made in any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

7. (1) Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means:—

- (a) providing the applicant with a copy, certified or otherwise, of the information in permanent form or in another form acceptable to the applicant, such as an electronic form;

Communication of request.

- (b) giving the applicant a reasonable opportunity to inspect a record containing the information;
- (c) providing the applicant with a digest or summary of the information in permanent form or in another form acceptable to the applicant; or
- (d) allowing the applicant to take notes, extracts and samples of any materials,

the public authority shall so far as is reasonable, give effect to that preference.

(2) A public authority shall not be required to comply with subsection (1) where to do so would—

- (a) be detrimental to the preservation of the record;
- (b) unduly divert the resources of the public authority; or
- (c) breach a copyright not held by the public authority.

(3) Where a public authority does not, pursuant to subsection (2), comply with any preference expressed by the applicant in communicating the information, it shall—

- (a) notify the applicant of the reasons for this; and
- (b) communicate the information to the applicant by any means reasonable in the circumstances.

Proactive publication.

8. (1) The following classes of information form the core proactive publication obligations for every public authority:—

- (a) the particulars of its organization, functions and duties;
- (b) the powers and duties of its officers and employees;
- (c) the procedure followed in the decision making process, including channels of supervision and accountability;
- (d) the norms set by it for the discharge of its functions;
- (e) any guidance used by the authority in relation to its dealings with the public or with corporate bodies, including the rules, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (f) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate or the location of any indexes to be consulted by any person;
- (g) the particulars of any arrangement that exists for consultation with or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (h) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of advising it with information as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of the meetings are accessible to the public;

- (i) a directory of its officers and employees;
- (j) the monthly remuneration received by each of its officers and employees, including the system of compensation;
- (k) the budget allocated to each of its agencies, including the particulars of all plans, proposed expenditures and reports on disbursements made;
- (l) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (m) particulars of concessions, permits or authorizations granted by it;
- (n) details in respect of the information available to or held by it, in an electronic form;
- (o) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (p) the names, designation, contact details of its public information officers, appellate authorities and the particulars and contact details of the Commission;
- (q) a list of all applications under this Act received by the public authority, including an indexed register containing copies of records released in response to requests made under this Act other than records relating to the personal affairs of the applicant.

(2) Every public authority shall adopt and disseminate widely, including on its website, a publication scheme which has been approved by the Commission, within six months of the coming into operation of this Act or its approval, whichever comes later.

(3) The publication scheme shall set out–

- (a) the classes of records that the authority will publish on a proactive basis; and
- (b) the manner in which it will publish these records.

(4) In adopting a publication scheme, a public authority shall have regard to the public interest–

- (a) in allowing access to the information it holds; and
- (b) in making information available proactively so as to minimise the need for individuals to make requests for information.

(5) Every public authority shall publish information in accordance with its publication scheme.

(6) Every publication scheme shall, within seven years of the adoption of the first publication scheme by a public authority, cover all of the core proactive publication obligations set out in subsection (1).

(7) Any person may institute proceedings in a court to compel the head of a public authority, to comply with this section.

9. (1) When approving a publication scheme, the Commission may provide that the approval will expire at a certain time. Approval of publication schemes.

(2) When refusing to approve a publication scheme, the Commission shall give reasons and provide reasonable direction to the public authority as to how it may amend the scheme so as to obtain approval.

(3) The Commission may, upon giving six months notice with reasons, withdraw its approval of any publication scheme.

Model
publication
schemes.

10. (1) The Commission may adopt or approve model publication schemes for different classes of public authorities.

(2) Where a public authority in a certain class adopts a model publication scheme which applies to that class of public authorities, it shall not require further approval from the Commission, but it shall inform the Commission that it is applying that model publication scheme.

(3) The Commission may put a time limit on the validity of a model publication scheme or, upon giving six months notice to all public authorities using it, terminate the validity of any publication scheme.

Other
proactive
obligations.

11. (1) In addition to the items listed in its publication scheme, a public authority shall also—

- (a) publish all relevant facts while formulating important policies or announcing the decisions which affect the public;
- (b) provide to any person the reasons for any decision taken by it in relation to that person;
- (c) before initiating any project or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected by it in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles;

(d) unless there are good reasons to the contrary, allow members of the public to attend its meetings at which decisions affecting them are made and shall give adequate notice of the meetings;

(e) upon signing a contract shall publish it in the *Gazette*, detailing at a minimum for each contract—

(i) the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;

(ii) the contract sum;

(iii) the name of the provider, contractor or individual to whom the contract has been granted;

(iv) the periods within which the contract shall be completed.

(2) It is the duty of every public authority to take steps in accordance with its publication scheme and the requirements of subsection (1) to provide information proactively to the public at regular intervals through various media of communication.

(3) All materials shall be disseminated taking into consideration the need to reach persons with disability, the cost, local language and the most effective method of communication in that local area; and the information should be easily accessible and be available free or at cost, taking into account the medium used.

(4) At a minimum, the material referred to in subsection (1) shall be made available—

- (a) for inspection by any person without charge;
- (b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of copying and supplying them may be made; and
- (c) on the internet, provided that the materials are held by the authority in electronic format.

PART III—EXEMPT INFORMATION

Exempt information.

12. (1) Information is exempt information if its disclosure by a public authority is exempted under this Act.

(2) Notwithstanding subsection (1), information shall not be exempt where the public interest in accessing the information outweighs the harm which the exemption in subsection (1) seeks to prevent.

Refusal of request.

13. A public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information shall, within the time limits for complying with section 2, notify the applicant in writing stating—

- (a) that the information is exempt;
- (b) the specific exemption in question; and
- (c) why the exemption applies.

Information accessible by other means.

14. (1) The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would involve the disclosure of any information which is reasonably accessible to the applicant.

(2) For the purposes of subsection (1)—

- (a) information is reasonably accessible even though it is accessible only on payment, as long as the payment does not exceed the fees that would be applicable under this Act;

- (b) information is reasonably accessible if it is information which the public authority or any other person is bound by law to communicate;
- (c) information which is held by a public authority shall not be regarded as reasonably accessible merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the publication scheme referred to in section 8.

15. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would or could reasonably be expected to seriously prejudice national security and the defence of Sierra Leone.

National security and defence.

16. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would, or could reasonably be expected to seriously prejudice relations between Sierra Leone and any other state or inter-governmental body.

International relations.

17. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would, or could reasonably be expected to seriously prejudice the ability of the Government to manage the economy.

Economic interests.

18. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would, or could reasonably be expected to cause serious prejudice to—

Investigations and law enforcement.

- (a) the prevention and detection of crime;
- (b) the apprehension and prosecution of offenders; or
- (c) matters that are *subjudice*.

Third party
informatuion.

19. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would, in relation to information obtained by the public authority from a third party, would or could reasonably be expected to constitute a breach of confidence actionable by that third party.

Client
professional
privilege.

20. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would involve a breach of the rules governing legally privileged information.

Personal
matters.

21. (1) The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would involve the unreasonable disclosure of personal information concerning an individual.

(2) For the purposes of this section disclosure is not unreasonable if–

- (a) the individual to whom the information relates gives prior consent;
- (b) the disclosure is required to promote public health or public safety;
- (c) the disclosure is necessary in order to subject public authorities and private bodies to public scrutiny;
- (d) the disclosure is made to the individual to whom the information relates;
- (e) the disclosure can reasonably be expected not to have an adverse effect on the affairs of any person or prejudice the future supply of the information;
- (f) the information is already available to the public;
- (g) the individual to whom the information relates was informed or made aware prior to supplying the information that the information belongs to a class of information

that will or might be made available to the public;

(h) in the case of a deceased person, the applicant is the next-of-kin or represents the next-of-kin of the deceased;

(i) the third party has been deceased for more than twenty years.

22. The duty to disclose information shall not apply if, or to the extent that, in relation to information obtained by the public authority from a third party, compliance with section 2 would divulge a trade secret or would or could really be expected to seriously prejudice the commercial interests of that third party. Commercial interest.

23. The duty to disclose information shall not apply if, or to the extent that, compliance with section 2 would or could reasonably be expected to seriously prejudice the commercial interests of a public authority. Public economic interests.

24. (1) Access to a historical record shall not be denied under this Part unless the Commission certifies that there is an ongoing need for it to be kept confidential. Historical records.

25. The duty to disclose information shall not apply if the information requested relates to any matter concerning the traditional rites or customary usages of a group of people in Sierra Leone. Customary rites and usages.

26. If a request for information relates to a record containing information which falls within the scope of an exception in this Part, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be provided to the applicant. Severability.

PART IV—MEASURES TO PROMOTE OPENNESS

Maintenance
of records.

27. (1) Every public authority shall record and maintain records of its activities in a manner that facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice referred to in subsection (2).

(2) The Commission shall, after consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to public archives.

(3) The Commission shall cause to be established a documentation centre to reflect and promote the history and culture of the State.

Appointment
and training
of public
information
officers.

28. (1) Subject to subsections (3) and (4), a public authority shall appoint as many public information officers in all offices or units as they have at the local, district, provincial and national levels as is necessary to enable it to provide information to persons requesting information under this Act.

(2) Where for any reason, a public authority has not appointed a public information officer, the head of the public authority shall for purposes of this Act, be deemed to be the public information officer of that public authority.

(3) A public information officer shall be the principal contact person within a public authority to deal with requests from persons seeking information from the public authority.

(4) A public information officer shall be of sufficient rank within the public authority to be empowered to make binding decisions in relation to information disclosure under this Act.

(5) Notwithstanding subsection (3), it is the duty of every official to provide reasonable assistance to a person seeking information under this Act and no official may refuse to receive a request for information on the ground only that the official is not a public information officer.

(6) An official other than a public information officer to whom a request for information is made under subsection (5), shall refer the person seeking information to a public information officer and, if no officer is immediately available, the official shall receive the request and shall ensure that it is forwarded to the appropriate public information officer, who shall also issue a receipt for the request, indicating on it the official's name, date and designation of receiving the request.

(7) A public information officer may seek the assistance of any other official that the officer considers necessary for the proper discharge of the officer's duties, and the other official shall render the required assistance.

29. Public authorities shall develop, for the purposes of this Act, information communication technology units in accordance with the national information communication technology policy of Sierra Leone, to—

Development
of informa-
tion com-
munication
facilities.

- (a) facilitate access to information;
- (b) ensure transparency and accountability;
- (c) improve record keeping;

PART V—ADMINISTRATIVE PROVISIONS

30. (1) There is hereby established a body to be known as the Commission.

Establishment
of Com-
mission.

(2) The Commission shall be a body corporate having perpetual succession, capable of acquiring, holding and disposing of property, being sued in its corporate name and subject to this Act of performing all functions as bodies corporate may by law perform.

(3) The Commission shall have a common seal the use of which shall be authenticated by the signatures of the Chairperson and any other member of the Commission generally or specifically authorised by the Commission for that purpose.

(4) Every document purporting to be an instrument executed or issued by or on behalf of the Commission and to be sealed with the common seal of the Commission in the manner stated in subsection (1) shall be deemed to be so executed or issued without further proof unless the contrary is proved.

(5) In appropriate cases the seal may be affixed to documents outside Sierra Leone.

Composition
of
Commission.

31. (1) The Commission shall consist of the Information Commissioner who shall be the Chairperson of the Commission and four other Commissioners representing each of the Provinces and the Western Area.

(2) Members of the Commission shall be appointed by the President on the recommendation of the Minister and approved by Parliament.

(3) No person shall be appointed as a member of the Commission if that person—

- (a) is an employee of a political party or holds an elected or appointed position in central or local government; or
- (b) has been convicted of an offence involving fraud or dishonesty.

(4) The information Commissioner and the other members of the Commission shall hold office for a term of five years and shall be eligible for re-appointment to a further term of five years only.

Functions and
powers of
Commission.

32. (1) The Commission shall have all powers direct or incidental, as are necessary to undertake its functions under this Act, including the power to acquire, hold and dispose of property.

(2) Notwithstanding the generality of subsection (1), the Commission shall have power to—

- (a) monitor and report on the compliance by public authorities with their obligations under this Act;
- (b) make recommendations for reform both of a general nature and specific public authorities;
- (c) co-operate with or undertake training activities for public authorities on the right to access information and the effective implementation of this Act;
- (d) refer to the appropriate public authority, cases which reasonably disclose evidence of criminal offences under this Act; and
- (e) publicise the requirements of this Act and the rights of individuals under it.

(3) In the performance of its functions under this Act, the Commission shall have the powers of a High Court to—

- (a) issue summons or other orders requiring the attendance of any person before the Commission to give oral or written evidence and the production of any document or record relevant to any investigation by the Commission;
- (b) administer oaths;
- (c) examine any person in respect of any subject matter under investigation before the Commission;
- (d) require any person to disclose any information within the person's knowledge relevant to any investigation by the Commission; and
- (e) enter any premises occupied by a public authority to carry out any investigation.

(4) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order—

- (a) the release of any unlawfully withheld information;
- (b) the payment of compensation; or
- (c) any other lawful remedy or redress.

(5) A person or authority dissatisfied with an order made by the Commission under subsection (4) may appeal to the High Court within twenty-one days of the order.

(6) An order of the Commission under subsection (4) may be filed in the High Court by any party thereto in such manner as the Commission may, after consultation with the Chief Justice, prescribe and the party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(7) If no appeal is filed under subsection (5), the party in favour of whom the order is made by the Commission may apply *ex parte* by summons for leave to enforce such order as a decree and the order may be executed in the same manner as an order of the High Court to the like effect.

(8) A person who—

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection (3) or (4);
- (b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any information;
- (c) knowingly gives any false or misleading information to the Commission; or
- (d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and is liable on conviction in the case of an individual to a fine not exceeding ten million leones or in the case of a corporate body to a fine not exceeding one hundred million leones or a term of imprisonment not exceeding one year or to both the fine and imprisonment.

33. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilise the services of any official or investigation agency of the Government and where an official is so utilised under this subsection, the Commission shall pay the official or agency for the service rendered. ^{Powers relating to investigation.}

(2) For the purpose of investigating any matter pertaining to an inquiry, an official or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission—

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any information; and
- (c) subject to this Act, requisition any public record or copy of the public record from any official.

(3) Paragraph (c) of subsection (8) of section 32 shall apply in relation to any information given by a person before any official or agency whose services are utilised under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The official or agency whose services are utilised under subsection (1) shall investigate any matter pertaining to the inquiry and submit a report on it to the Commission.

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry, including the examination of any person or persons who conducts or assists in the investigation as it thinks fit.

Other staff.

34. (1) The Commission shall be assisted by a secretariat consisting of the Executive Secretary, Finance Officer, Administrative Officer and such other additional technical and administrative staff, as may be required for the efficient performance of its functions under this Act.

(2) The Executive Secretary, Finance Officer, Administrative Officer and such other technical and administrative staff, shall be appointed by the Commission, on such terms and conditions as the Commission shall determine.

Duties of Executive Secretary.

35. Subject to the general control of the Commission, the Executive Secretary shall—

- (a) be responsible for the carrying out of the policy decisions of the Commission, the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and
- (b) perform such other duties as may be assigned by the Commission.

(3) The Executive Secretary shall, unless in any particular case the Information Commissioner otherwise directs in writing, attend all meetings of the Commission.

Protection of officers.

36. No criminal or civil proceedings shall lie against the Commission or other staff in respect of any matter or thing done in good faith in the performance of its or their functions under this Act.

Independence of Commission.

37. The Commission and its authorised agents shall not in the performance of their functions under this Act be subject to the directions or control of any person or authority.

PART VI—FINANCIAL PROVISIONS

Funds of Commission.

38. The activities of the Commission shall be financed from funds consisting of—

- (a) moneys appropriated by Parliament for the purposes of the Commission;

- (b) grants, gifts or donations for the purposes of the Commission.

39. (1) The Commission shall keep proper books of account and proper records in relation to the accounts and shall prepare within the period of three months after the end of each financial year, a statement of its accounts in a form approved by the Auditor-General. Accounts and audit.

(2) The books and accounts of the Commission shall each year be audited by the Auditor-General or by an auditor appointed by the Auditor-General and a report of the audit which shall include a copy of the audited accounts shall be submitted to the Commission.

(3) For the purposes of subsection (2), the Auditor-General or the auditor appointed by Auditor-General shall be entitled to have access to all books of accounts, vouchers and other financial records of the Commission and to require such information and explanation on them as the Auditor-General may think fit.

(4) The Auditor-General shall submit to the Commission a report on the audited accounts and shall, in the report draw attention to—

- (a) any irregularities in the accounts;
- (b) any matters that are likely to adversely affect the operations of the Commission; and
- (c) any other matter which, in the Auditor-General's opinion, ought to be brought to the notice of the Commission.

40. The financial year of the Commission shall be the same as the financial year of the Government. Financial year.

41. (1) The Commission shall, within three months after the end of the financial year, submit to the Minister a report on the performance of its functions during that year and on its policies and programmes. Annual report of Commission.

(2) The annual report shall include the accounts and annual financial statement prepared under section 39 and the report of the audit on the accounts.

(3) The annual report shall also include an overview of the performance of all public authorities in implementing this Act.

(4) To enable the Commission to comply with subsection (3), every public authority shall report annually to the Commission on the steps it has taken to implement this Act, including a report on the requests for information it has received and how these have been dealt with.

(5) The Minister shall lay copies of the annual report before Parliament within two months after receiving the report.

(6) The Commission shall make copies of the report available to all stakeholders once it has been laid before Parliament.

PART VII—APPEALS

Complaints.

42. (1) A public authority may create an internal appeal mechanism which requesters may use, if they wish to complain that they have not been provided with information in accordance with this Act.

(2) An internal appeals mechanism created by a public authority under subsection (1) shall be inexpensive, simple and shall require disposal of the appeal in not more than twenty-one days.

Review by Commission.

43. A person who has made a request for information to a public authority and which has been refused may apply to the Commission for a review of the decision of the public authority and to ascertain whether the public authority failed to comply with an obligation under this Act, including—

- (a) refusing to indicate whether or not it holds a record, or to provide access to information, contrary to section 2;
- (b) failing to respond to a request for information within the time limits established in section 4;

(c) failing to communicate information in the form requested under this Act;

(d) charging an excessive fee, contrary to section 6;

(e) refusing to accept an application requesting access to information; or

(f) any other matter relating to a request for or access to information under this Act.

44. In an application made under section 43, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Act, ^{Burden of proof.}

45. (1) The Commission shall, on the receipt of an application for review under section 43, as soon as is reasonably possible, and in any case not later than fifteen days after giving both the complainant and the relevant public authority an opportunity to respond in writing, make an order— ^{Review of decision.}

- (a) rejecting the application; or
- (b) requiring the public authority to take such steps as may be necessary to bring it into compliance with its obligations under this Act, including—
 - (i) providing access to information;
 - (ii) providing access to information in a particular form;
 - (iii) requiring a public or private body to compensate the complainant for any loss or other detriment suffered; or
 - (iv) imposing a fine on the public authority.

(2) The Commission shall serve a notice of its decision, including any rights of appeal, on both the complainant and the public authority.

Appeal to
High Court.

46. The complainant or the public authority may, within forty-five days, appeal to the High Court for a review of the decision of the Commission.

PART VIII—OFFENCES AND PENALTIES

Offences.

47. Any person who wilfully –

- (a) denies or obstructs the access of any other person to any record or information contrary to this Act;
- (b) obstructs compliance by a public authority of any of its obligations under this Act;
- (c) interferes with the work of the Commission or other officer of the Commission;
- (d) destroys a record with intent to deny access to a request made under this Act; or
- (e) deliberately conceals or falsifies records or provides false, misleading, incomplete or inaccurate information in response to a request made under this Act,

commits an offence and is liable on conviction to a fine not exceeding ten million Leones in the case of an individual and one hundred million leones in the case of a body corporate or to a term of imprisonment not exceeding one year to both the fine and imprisonment.

Other
offences.

48. (1) Any person who without reasonable excuse, fails to supply information requested under this Act, within the period specified in this Act, commits an offence and is liable on conviction to a fine not exceeding ten million Leones in the case of an individual and one hundred million leones in the case of a body corporate or to a term of imprisonment not exceeding six months or to both the fine and imprisonment.

(2) Any person who without reasonable excuse, refuses to accept an application for information requested under this Act, commits an offence and is liable on conviction to a fine not exceeding ten million Leones in the case of an individual and one hundred million leones in the case of a body corporate or to a term of imprisonment not exceeding six months or to both the fine and imprisonment.

PART IX—MISCELLANEOUS PROVISIONS

49. (1) The Minister may after consultation with the Commission by statutory instrument make Regulations for giving effect to this Act. ^{Regulations.}

(2) Without prejudice to the generality of subsection (1), the Minister may, after consultation with the Commission, make Regulations prescribing the following:–

- (a) the form of training of information officers;
- (b) the form of reports to the Commission under subsection (4) of section 41;
- (c) any notice required by this Act;
- (d) any administrative or procedural matter necessary to give effect to this Act;
- (e) the manner in which fees are to be calculated and the maximum fee under section 6; and
- (f) that no fee is to be charged in prescribed cases.

50. (1) No person shall be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of any office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity if the disclosure is one which is in the public interest. ^{Whistleblower protection.}

(2) Subject to subsection (3), subsection (1) shall only apply where the person believes on reasonable grounds that the information is accurate.