

**Draft Inter-American Model Law on Access to Information**

AG/RES. 2514 (XXXIX-O/09)

Department of International Law -- Secretariat for Legal Affairs  
Organization of American States

## **Chapter 1: Scope**

### 1. Scope of Law

The intent is to provide the broadest application of the “right of access” to information possessed by the government in its various forms.

- A. This model law applies to all governmental authorities and public bodies as well as to any non-governmental entities acting for the government or otherwise vested with public or administrative functions. It applies to governmental authorities, public bodies and non-governmental entities at all levels of the national governmental structure (central or federal, regional or provincial, local, etc.).
- B. This law applies to all branches of the government (including all executive, judicial and legislative bodies), as well as to independent or autonomous organs or entities owned or controlled by the government, whether acting on the basis of constitutional or statutory authority.
- C. This law also applies to non-governmental bodies which receive public funds or benefits (directly or indirectly) or which perform public functions, including provision of public services on behalf of or subject to the direction of the government
- D. The provisions of this law extend to privately-owned corporations to the extent that information is required for the exercise or protection of any human right.
- E. [Application to entities engaged in exploiting public resources]

## **Chapter 2: Presumption of Publicity**

### **I. Proactive Disclosure of Public Sector Information Statement**

The Access to Information Act should be seen as a key component of the comprehensive Strategic Information Policy of Government.

The Access to Information Act is only one (1) of a number of measures to be adopted by Government to increase the flow of information in the Government's custody, possession or control to members of the public.

Public Authorities shall release public information which it holds administratively as a matter of course in a range of languages and alternative user-friendly formats, unless there is a good legal, policy, administrative or public interest reason not to, with applications under the Access to Information Act being necessary only as a last resort.

### **II. Presumption of Publicity Legislative Provisions**

#### **1. Duty to Publish**

- A. Every public authority shall, in the public interest, publish and disseminate in an accessible form an approved Publication Scheme within twelve months of-
  - a) the commencement of this Act;
  - b) its establishment;
  - c) the designation of application of this Act to its operations or parts thereof by provisions exercised under this Act
- B. Every Public authority shall ensure that there is approved annually and contains the following key information including but not limited to:-
  - a) a description of its organizational structure, functions, duties and the locations of its departments and agencies and their opening hours;
  - b) relevant details concerning any services it provides directly to members of the public;
  - c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;

- d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- f) any regulations, policies, rules, guidelines or manuals or other documents containing interpretations, practices or precedents regarding the discharge by that body of its functions;
- g) the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

## 2. Guidance on Duty to Publish

### A. The Responsible Authority/Commissioner for Access to Information shall: -

- a) publish a guide on minimum standards and best practices (including Model Publication Schemes) regarding the duty of public authorities to publish pursuant to Section 17; and
- b) upon request, provide advice to a public body regarding the duty to publish;
- c) approve the Publication Schemes of all public authorities and/or classes of public authorities.

### B. The Responsible Authority/ Commissioner may revoke the approval of any Publication Scheme or class of Publication Scheme within six months of approval taking into account-

- a) the duty of every public authority to publish and implement a publication scheme;
- b) requests for information that may not have been anticipated initially; and
- c) the public interest in access to information it holds.

- C. This Act does not affect the operation of another Act or administrative scheme that:
  - a) Requires information concerning documents in the possession, custody or control, of government to be made available to members of the public;
  - b) Enables a member of the public to access documents in the possession, custody or control of government;
  - c) Requires the publication of information concerning government operations;

Whether or not on payment of a charge.

### 3. Maintenance of Records

- A. Every public authority is under an obligation to maintain its records in a manner which facilitates access to information, as provided for in this Act, and in accordance with the Access to Information Code of Practice on Records Management stipulated in subsection (C)
- B. Every public authority shall ensure that adequate procedures are in place for the correction of personal information.
- C. The Responsible Authority/Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Access to Information Code of Practice on records Management relating to the keeping, management and disposal of records, as well as the transfer of records to the [insert relevant archiving body, such as the Public Archives].

### 4. Information Asset Registers

- A. Every Public Authority shall-
  - a) Create and maintain an updated Information Asset Register (including published material or material available for purchase) accessible by members of the public under approved administrative arrangements.
  - b) Ensure that all information contained in the Information Asset Register is appropriately classified and indexed based on approved government classification and index schemes relevant to the public authority.

- c) Ensure that Information Asset Registers are responsive to the demand for better access by members of the public and organizations to public sector information consistent with government policy.

## 5. Disclosure Logs

- A. Public Authorities shall create, maintain and publish a Disclosure Log of all documents released in response to a request made under this Act on its website and in the reception area of all its offices accessible by members of the public subject to protections provided by this Act (e.g the protection of privacy).

## 6. Training of Officials

- A. Every public authority shall ensure the provision of appropriate training for its officials on access to information and the effective implementation of this Act.

## 7. Reports to the Responsible Authority/Information Commissioner

- A. The Access to Information Officer of every public authority shall submit to the Responsible Authority/Commissioner Quarterly Reports on the activities of the public authority pursuant to this Act, or to promote compliance with this Act in the format advised by the Responsible Authority/Commissioner, which shall include information about: -
  - a) the number of requests for information received, granted in full or in part, and refused;
  - b) how often and which exemption provisions of the Act were relied upon to refuse, in part or in full, requests for information;
  - c) appeals from refusals to disclose information;
  - d) deferrals of access;
  - e) breaches of statutory timelines for processing requests
  - f) fees charged for requests for information and waivers granted;
  - g) its activities pursuant to Section 1 (Duty to publish), Section 4 (Information Asset Register) Section 5 (Disclosure Logs) including information on steps taken to ensure

that equal access to information released administratively for those unable to readily access information through electronic means;

- h) its activities pursuant to Section 3 (Maintenance of records); and
- i) its activities pursuant to Section 6 (Training of Officials).

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## **Chapter 3: Making a Request**

### 1. Request for information

- A. The exercise of the right to access to information shall bear no cost and shall not condition nor generate sanctions, punishment or prosecution of any kind.
- B. The request for information shall not require a statement or justification of any sort. The filing of the request, by any means, implies severe liability on the officer in charge.
- C. The request for information may also be filed in writing, by electronic means, orally in person, by phone, or by any alternative means.

### 2. Means and requirements for the request for information

- A. The request for information filed in writing shall comply with the following requirements:
  - a) Full name (surname and last name) of the petitioner or its representative.
  - b) Home/Office and/or Electronic address of the petitioner for the receipt of notices.
  - c) A clear and precise description of the information requested
  - d) An indication of the delivery means for the information requested

### 3. Cost of reproduction.

- A. The petitioner shall only pay for the cost of reproduction of the information requested and, if applicable, the cost of the delivery, if so was requested.
- B. The costs of reproduction and delivery shall not exceed the referential value of the same service in the market.

### 4. Access to information of original data

- A. The different entities of the Public Administration shall respond the requests of exhibition of their own original documents in the premises of said public entities, trying to adjust facilities for said purpose. The exhibition shall be carried out at no cost and, in the event that a copy was requested, the petitioner shall only pay for the cost of reproduction.



5. Other means of request for information by specific Act

- A. If any specific Norm regulating other means to request information existed, it shall not limit the right to access to information granted within the scope of action of this model Act.

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## **Chapter 4: Answering a Request**

### **I. Obligations of Public or Private Bodies**

#### **1. Information Office**

- A. Each public and private body responsible for responding to requests must establish an Information Office to assist requesters in making requests. The contact information for each such Information Office must be posted electronically and made readily available to the public.

#### **2. Logging, Interpreting, and Tracking the Request:**

- A. The public or private body in receipt of a request must reasonably interpret the scope and nature of the request.
- B. In the event the receiving body is uncertain as to the scope and nature of a request it must contact the requester to clarify what is being requested. The receiving body must make reasonable efforts to assist the requester in formulating the request.
- C. If the receiving public or private body reasonably determines that it is not the proper authority to handle the request, it must, within ten working days, forward the request to the proper body for processing. The receiving body must also notify the requester that his/her request has been routed to another public or private body for processing. The forwarding body must provide the requester with a point of contact at the public or private body where the request has been routed.

*Comment: There should be a published list of addresses for requesters to use in making requests. The requirement to route a request could be limited to requests that are addressed to a proper body in the first instance.*

- D. All requests should be handled in the order in which they are received. Public and private bodies may establish multiple queues within which to place requests, based on the complexity of, and volume of material responsive to, the request. If a public or private body establishes a multi-track system for responding to requests, it shall process the requests in each queue in the order in which they were received. Requesters must be advised of the queue within which their request has been assigned and must be given an opportunity to narrow their request in order to be placed in a faster queue.

*Comment: Public and private bodies could establish queues by regulation. They could be mandatory, or optional.*

### 3. Searching for Records

- A. Upon receipt of a request for information that satisfies the requirements of Chapter 5, the public or private body in receipt of the request must undertake a reasonable search for records which are responsive to the request.

## II. Time Limits to Respond to Requests

### 1. Standard Response Period

- A. Each public or private body must respond to a request within thirty working days of its receipt.

*Comment: The model law can either suggest a standard response period, or leave that element blank, and have each country select a time period. Although there is generally a strong push to impose short response times, such as ten days, the experience in the U.S. in particular illustrate that often such time periods are not realistic. It is preferable to set a time period that is reasonably reachable by the majority of entities which will be responding to requests. I believe that thirty working days is a reasonable period.*

- B. In the event the request was routed to the public or private body from another body, the date of receipt shall be the date the proper body received the request, but in no event shall that date exceed ten working days from the date the request was first received by a public or private body designated to receive requests.

*Comment: As noted above, it is preferable to require that each body authorized to respond to requests publish the address for requesters to use to request records from that body. Any request made to a designated entity, but which is not itself the proper entity to process the request, would then be routed to the proper body by the receiving body.*

### 2. Extension of Response Period

- A. For any request involving: i) the need to search for or review voluminous records, or ii) the need to search offices physically separated from the receiving office, or iii) the need to consult with other public or private bodies prior to reaching a disclosure determination, the public or private body processing the request may extend the time period to respond to the request by another thirty working days. The requester must be notified that the extension is being taken by the responding body and given an opportunity to narrow or modify the scope of the request.
- B. If, for the reasons identified in Section 2(A) above, the public or private body anticipates that the time for responding to the request will exceed the period of time provided by the extension, the requester must be notified and given an estimated date for the completion

of the processing of the request and provided an opportunity to narrow or modify the scope of the request.

*Comment: In some circumstances an entity is unable to process the request even after taking an extension of time. The law should recognize that that might happen and require notification to the requester and an opportunity to modify the request.*

- C. In any event, the failure of the public or private body to complete the processing of the request within thirty working days, or, if the conditions specified in Section 2(A) are met, the failure to respond to the request within sixty working days, shall be deemed a denial of the request.

### III. Requirements for Responding to the Requester

#### 1. Acknowledging the Request, Providing Requester Status and Fee Information

- A. Upon receipt of a request which will take longer than ten working days to process, the public or private body must assign a tracking number to the request. For those requests, the public or private body must: i) advise the requester that the request has been received; ii) provide the requester with the assigned tracking number for the request; iii) advise the requester of the track to which the request has been assigned, if the public or private body utilizes a multi-track system for processing requests; and iv) provide the requester with a point of contact for making inquires about the status of the processing of the request.
- B. As soon as the public or private body determines that the processing of the request will involve assessment of any applicable fees, it shall notify the requester of the estimated fee to be assessed to obtain the agreement of the requester to pay the estimated fee. The requester must also be afforded the opportunity to narrow or modify their request to reduce the amount of the fees owed.

#### 2. Form or Format of Records

- A. Records shall be provided to the requester in the form or format that the requester specifies, provided the records are readily reproducible in that form or format with a reasonably amount of effort.
- B. If the public or private body receives two or more requests for the same information, or in any instance in which the public or private body determines that requested records would be of interest to the general public, the public or private body shall make the requested records available on the body's website.

#### 3. Providing Interim Responses

- A. After a request has been acknowledged and processing begun, the public or private body should provide the requester with interim responses to the request to the extent possible.

4. Explaining Grounds for any Denials and Providing Appeal Rights

- A. In the event that any record or portion of a record is withheld from a requester because it falls within an Exception to disclosure, the requester must be given a reasonable estimate of the volume of material that is being withheld, and the bases for the withholding.
- B. For any request which does not result in a full grant of access, the requester shall be notified of their right to file an administrative appeal.

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**Chapter 5: Exceptions**

*Reception Pending*

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## **Chapter 6: Oversight and Appeals**

### **I. Internal Appeal**

#### **1. Grounds for Internal Appeal**

- A. A requester may lodge an internal appeal of (i) a decision of a public authority to refuse a request, or (ii) the failure of a public authority to respond to a request within the time period set forth in section xx.

#### **2. Process for Filing Internal Appeal**

##### A. An internal appeal:

- a) Must be filed with the relevant authority, and a copy must be sent to the information officer or other responsible agent of the public authority appealed against within xx [*recommend 60*]<sup>1</sup> days, or if notice to a third party is required by section xx, then within 30 days after notice is given.
- b) must identify the subject of the internal appeal and state the reasons for the internal appeal.
- c) if applicable, must be accompanied by the prescribed appeal fee.

#### **3. Late Appeals**

- A. If an internal appeal is lodged after the expiry of the period referred to in subsection 2(a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.

#### **4. Notification of Decision**

- A. As soon as reasonably possible, but in any event within xx [*10 is recommended*] days after receipt of notice of an internal appeal, the public authority must submit to the relevant authority:
  - a) the reasons for the public authority's decision or failure to act; and

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<sup>1</sup> This is the amount of time allotted in the South African law.

- b) the name, postal address, phone and electronic mail address, whichever is available, of any third party that must be notified.

#### 5. Third Party Response to Notification

- A. A third party that is informed of an internal appeal may within xx [*21 is recommended*] days after receiving notice, make written representations to the relevant authority either (i) consenting to disclosure of the information, or (ii) stating reasons why the information should not be disclosed.
- B. A third party that does not receive timely official notice may submit written representations as soon as practicable stating (i) the nature of the party's interest and (ii) any reasons why the information should not be disclosed.

#### 6. Decision on Internal Appeal

- A. When deciding on an internal appeal, the relevant authority may confirm the decision appealed or substitute a new decision for it.
- B. The relevant authority must issue a written decision stating adequate reasons for the decision, including the provisions of the Act relied upon, and how they apply to each item of information or document requested.
- C. The relevant authority must decide the appeal (i) as soon as reasonably possible, but in any event within xx days [*30 is recommended*] from receipt of the notice of appeal.
- D. The relevant authority must transmit its decision to the appellant, the public authority, and any interested third party as soon as possible but in any event within xx [*5 is recommended*] days, and must notify them of their right to seek review of the decision by [a court] [ombudsman or information commission/er].

## II. External Appeal and Oversight

### 1. Type of Mechanism:

The type of external appeal mechanism should be chosen based on consideration of the specific political, legal and bureaucratic contexts in which the system must function.<sup>2</sup>

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<sup>2</sup> This section draws extensively on Laura Neuman, "Enforcement Models: Content and Context," (World Bank Institute Access to Information Working Paper Series 2009).



There are four main models that may, if sufficiently independent and resourced, comply with Inter-American and international standards:

- A. A commission/er or ombudsman with order-making powers, whose decisions are subject to some form of judicial review, and which may have other functions (e.g., data protection), hereafter referred to as an “information commission/er”;
  - B. A commission/er or ombudsman with powers that do not include order-making (e.g. Canada federal level, Hungary, New Zealand, Sweden), whose decisions are subject to some form of judicial review, and which may have other functions (e.g., data protection, general ombuds functions), hereafter referred to as an “ombudsman”;
  - C. Judicial review by a court of general jurisdiction (e.g., South Africa, U.S. federal level) or an administrative appeals court (e.g., Bulgaria), without the intermediate step of an independent body.
  - D. The option (1) to appeal to a commission/er or ombudsman, and thereafter if desired to the courts; or else (2) to appeal directly to the courts.
- A. Commission/er with order-making powers, whose decisions are subject to some form of judicial review (as in Antigua and Barbados, Chile, Honduras, Jamaica, Mexico, Nicaragua, India, Scotland)

*Advantages: affordable, legal representation not needed, can be speedy, can motivate agency compliance without needing to seek court order, body can develop expertise and can be highly independent, written decisions can create body of precedent.*

*Disadvantages: can be more formalistic and more expensive than a body without order-making powers (because process must comply with basic rule of law standards).*

*May be most appropriate if:*

- a) *there exists decisive political support for a body with strong powers and adequate resources, for instance because of strong civil society coalition (e.g., Mexico) and/or desire to have a mechanism that is at least as strong as other countries which are looked to as comparable (e.g., Scotland, looking to UK and Ireland models), or*
- b) *there exists both strong political support for overbroad exemptions and strong (e.g., civil society) support for effective implementation, and the strong powers are seen as a trade off for broad exemptions (e.g., Scotland), or*
- c) *no or poor experience with ombudsmen (e.g., UK),*

- d) *bureaucratic culture in which public authorities will comply with orders but not recommendations (Scotland, many countries in Latin America), and may even require threat of penalties (e.g., India)*
- e) *history of one-party rule and mistrust of bureaucracy and the courts (e.g., Mexico).*
- f) *Court system that is overwhelmed and slow (e.g., India)*

B. Ombudsman with powers that do not include order-making (e.g. Canada federal level, Hungary, New Zealand, Sweden), whose decisions are subject to some form of judicial review.

*Advantages: Emphasizes negotiation and mediation, less confrontational than a body with order-making powers, can be speedy and inexpensive because investigations not as rigorous (e.g., generally do not require sworn statements), if set up by the legislature (as is often the case) may be seen as more independent than a body created by the executive (as are most information bodies with order-making powers).*

*Disadvantages: Recommendations may not be followed, does not lead to body of decisions that can provide guidance, less rule-based and more ad hoc than bodies with binding powers.*

*May be most appropriate where:*

- a) *strong culture of adherence to the rule of law (e.g., Canada, New Zealand), and where an inexpensive non-adversarial mechanism is sufficient to motivate compliance.*
- b) *advocates of ATI law are not sufficiently powerful to be able to win stronger powers or more resources for the body, or*
- c) *support exists for guarantees of independence, and trade off is to limit powers to advisory (e.g., Hungary).*

C. Judicial review by a court of general jurisdiction (e.g., South Africa, U.S. federal level) or an administrative appeals court (e.g., Bulgaria) without the intermediate step of an independent body

*Advantages: Courts have the power to order the release of information, possess wide-ranging powers of investigation, have clearly established mechanisms for punishing agency non-compliance, and may determine procedural and substantive matters de novo; cheaper for the government in the short term (can be accomplished without outlay of funds needed to create a new body or expand powers of an existing body)*

*Disadvantages: Costly for requesters (requires legal representation); often slow, although decision by administrative courts can be relatively quick especially in civil law countries*

*Not appropriate where the public does not have confidence in the independence of the judiciary, as found in many new democracies*

*May be most appropriate where:*

- a) no legal framework or tradition for ombudsmen;*
- b) no consensus to establish an information body that would be independent of the executive, and/or no agreement as to where to locate the body;*
- c) desire not to incur upfront costs of creating a new body or expanding powers of an existing body.*

## 2. Establishment of Oversight/Appeals Body:

- A. The Oversight and Appeals Body [e.g., Information Commissioner, Commission, Transparency Council or Ombudsman] shall be in charge of promoting and disseminating the use of the right of access to information; monitor and promote effective implementation of this law; and adjudicate appeals under this law of decisions, or failures to make decisions, of public authorities.
- B. The [Oversight and Appeals Body] shall have operative, budgetary and decision-making autonomy; shall have the human and material resources needed for the performance of its duties.

## 3. Composition:

*This section is appropriate if the Oversight and Appeals Body is comprised of more than one member.*

- A. The Information Commission [or Council] shall be comprised of \_\_ commissioners.

*Three or four commissioners are recommended, as is the case in Chile (four) and Mexico (four).*

- B. The Commission [or Council] shall be chaired by a Commissioner, who shall be its legal representative, and who shall be elected by the Commissioners. *[As in Chile and Mexico]* He or she shall remain in the position of Chair for xx years *[two years in both Chile and Mexico]*, and may be re-elected once.

4. Qualifications:

A. [The] [Each] [Commissioner][Ombudsman] shall

- a) be a citizen;
- b) be at least \_\_ years of age [35 recommended, see, e.g., Mexico law]
- c) be a person of high moral character and recognized competence in the field of transparency and the right to information,
- d) not have held a [high-ranking] position in government or with a political party within the past xx years [*recommend at least two years; Mexico's law provides for one year*]
- e) not have been convicted of a violent crime or a crime of dishonesty for which he or she has not been pardoned.

5. Selection:

*Commissioners/Ombudsmen should be selected in a non-partisan manner in order to increase confidence in the institution. Involvement of both the executive and legislature is desirable. There are two main approaches: executive appointment, with nomination or approval by the legislature; and legislative appointment, with nomination or approval by the executive.*

Option A: Executive Appointment

The [Commissioner(s)] [Ombudsman] shall be appointed by the Head of State/President or Head of Government (e.g., Japan):

- a) upon the nomination or recommendation of the legislature (Jamaica, Japan, New Zealand, Scotland), or
- b) subject to veto by the legislature (e.g., in Mexico, by a majority vote of either the Senate or the Permanent Commission), or
- c) upon recommendation of a committee that includes majority and significant minority legislative leadership (e.g., in India, the Prime Minister, leader of the opposition and a cabinet minister chosen by the PM), or
- d) following consultation with the leader of every recognized party and approval by the House and Senate (Canada), or
- e) following consultation with the Prime Minister and leader of the opposition (Jamaica).

or

The Legislature, or a special nominating committee thereof, shall present the President with a list of xx candidates [recommend 3 for each position], and the President shall select the Commissioner/s from that list.

Option B: Legislative Selection

The [Commissioner(s)] [Ombudsman] shall be selected by a supermajority [recommend 60% or 2/3] of the Legislature,

- a) upon recommendation of the President (e.g., Hungary), or
- b) based on nominations from a committee that includes as balanced representation as politically possible (in Honduras, comprised of the President, the Attorney General, the Human Rights Commission, the National Convergence Forum, and the Superior Court of Accounts).

6. Salary:

- A. The \_\_\_ shall serve full-time and be paid the same salary as ... a judge of the [court of first instance] [court of second instance] [Supreme Court].

*It is strongly recommended that the Ombudsman, Information Commissioner, or Chair of the Information Commission should serve full-time, and that his/her salary should at least be commensurate with that of a judge of a court of first instance, in order to strengthen respect for the office, attract candidates of high calibre, and ensure that the leadership of the body is able to devote her/ his full attention to its work.*

7. Staff:

- A. The [Commissioner(s)] [Ombudsman] may appoint such employees as are necessary to accomplish its/ his / her duties, as set forth in section \_\_, below.

8. Term of Office:

- A. Subject to subsection xx re dismissal, the [Commissioner(s)] [Ombudsman] is to hold office for a period of \_\_\_\_\_ [5 to 7 years recommended], which term may be renewed once.
- B. The [Commissioner/s] [Ombudsman] shall not hold another job, position or commission, except in educational scientific or charitable institutions.

*See, e.g., Mexico's Federal Law on Transparency and Access to Public Government Information (FLTAPI), art. 34.*

9. Procedure for Dismissal from Office:

*The power to dismiss or suspend should not be in control of a single individual (President alone should not have power to dismiss or suspend) and the [Commissioner(s)] [Ombudsman] should have a right to appeal.*

- A. The [Commissioner(s)] [Ombudsman] may be removed or suspended from office by [the official who appointed him/her] [with approval of the legislature] only for reasons of incapacity or behavior that renders him/her unfit to discharge his/her duties.<sup>3</sup>

Such behavior includes:

- a) conviction of a criminal offense,
- b) infirmity that affects the individual's capacity to discharge his duties,
- c) severe breach of the provisions of the Constitution or this law, or
- d) refusal to comply with any objective disclosure requirements, such as re salary or benefits.

[right to a due process hearing]  
[right to appeal]

10. Duties and Powers:

- A. The [Commission/er)] [Ombudsman] shall have the following duties:

- a) To interpret this law,
- b) To monitor and promote compliance with this law, including by (a) training public servants, (b) providing guidance concerning this law's implementation, (c) helping the National Archives in the creation and use of the criteria for cataloguing and conserving documents (*e.g., Mexico*); (d) helping other authorities to catalog and conserve their documents (*e.g., Mexico*).

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<sup>3</sup> Basic Principles on the Independence of the Judiciary, Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 Aug to 6 Sept 1985 and endorsed by G.A. res 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec 1985.

- c) To promote awareness and understanding of the law and its provisions among the public;
  - d) To make recommendations on existing and proposed legislation;
  - e) To consider and decide appeals under this law from decisions, or failures to act, by public authorities;
  - f) To enact and publish its internal regulations and other operational standards.
  - g) to collect and publish statistics and other data annually regarding compliance with this law.
- B. The [Commission/er] [Ombudsman] shall have the following powers in order to discharge its above-stated duties:
- a) To review information a public authority seeks to withhold;
  - b) To consult widely, including with public officials and members of civil society, in assessing harm of, and public interest in, disclosure;
  - c) To inspect the records of public authorities on-site;
  - d) To have such other powers as are necessary to discharge its/ his or her duties, including full legal personality, and the power to acquire, hold and dispose of property.
- Recommended powers*
- e) To order the release of information.
  - f) To establish and review the classification, declassification and custody criteria to be used for privileged and confidential information (e.g., Mexico).

11. Budget and Reporting:

*[language needed re source of the body's budget, and whether it is to be wholly autonomous or whether it is to be housed within another public authority]*

- A. The [Commissioner(s)] [Ombudsman] shall report annually on its/his/her operation. This report shall include, at least, the number of appeals filed with the body, including a breakdown of the number of appeals from various public authorities; and results and status of these appeals.

*In order to build confidence in the [Commissioner(s)] [Ombudsman], it/he/she should enjoy the greatest degree of autonomy – both budgetary and operational - from any other person or entity that is politically possible to arrange.*

12. Procedures for Filing an Appeal with the Commission/er/Ombudsman:

A. Time in which to File:

- a) Any person who has been denied information, or who has requested information and not received a reply, and has properly filed an internal appeal and either received an adverse decision, or no decision within the time specified in section \_\_\_\_, may file, on his or her own behalf or through a representative, an appeal with the Commission/er/Ombudsman.
- b) Unless good cause be shown, an appeal must be filed within \_\_\_\_ days of (i) the receipt of denial of an internal appeal or (ii) the expiry of the period in which an internal appeal must be decided.

*A length of time should be set that enables the appellant to review the decision of the internal appeal process and to secure counsel if so desired, but which does not allow the facts to grow stale: 30 days is recommended.*

B. Contents of Appeal Document:

The appeal document should clearly state:

- a) The public authority with which the request was filed;
- b) The name and contact information of the requester;
- c) The name and contact information of any third party;
- d) The date of the decision of the internal appeal, and the appeal decision, or the date of the expiry of time in which the authority was obliged to issue a decision;
- e) The withholding of information that is being contested;
- f) Whether or not the requester/appellant requests an oral hearing;
- g) Any other information that the requester considers relevant.

C. Response of the Public Authority and any Third Party:

- a) Any written response of the public authority must be filed with the Commission/er and received by the requester/appellant within 15 days, or within 30 days if good cause be shown.



- b) Any interested third party must file its written response within 15 days of receipt of notice of the appeal, or within 30 days if good cause be shown.

13. Decision:

- A. The Commission/er shall decide the appeal within \_\_ days of receipt of a response from the public authority and/or third party, or within 30 days of the filing of the appeal, if no response is received.
- B. The Commission/er may summarily reject applications:
  - a) which are frivolous, vexatious or clearly unwarranted; or
  - b) where the applicant has failed to use any effective internal appeals mechanism.
- C. The Commission/er, in deciding the case, may:
  - a) reject the appeal;
  - b) require the public authority to take such steps as may be necessary to comply with its obligations under this law;
  - c) in cases of egregious or willful failures to comply with this law, impose a fine on the public authority.
- D. The Commissioner shall serve notice of its/ his / her decision, including any rights of appeal on both the requester/appellant and the public authority.

*This section is based in substantial part on the Model law developed by Article 19.*

14. Burden of Proof, Harm and Public Interest Tests:

- A. The burden of proof shall lie with the public authority to establish why the information needs to be withheld. In particular, the public authority must establish that the likelihood and gravity of the harm to a legitimate protected interest from disclosure outweighs the public interest in the information.

15. Compliance: [to be completed]

- A. Right to appeal from Decision of the Commission/er/Ombudsman [to be completed]