

AG/RES. 2607 (XL-O/10)

MODEL INTER-AMERICAN LAW ON ACCESS TO PUBLIC INFORMATION

(Adopted at the fourth plenary session, held on June 8, 2010)

THE GENERAL ASSEMBLY,

RECALLING resolution AG/RES. 2514 (XXXIX-O/09), "Access to Public Information: Strengthening Democracy," which called for the drafting of a model law on access to public information and a guide for its implementation, in keeping with international standards in this field;

RECALLING ALSO that the Plan of Action of the Third Summit of the Americas, held in Quebec City in 2001, indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information by all citizens;

RECALLING FURTHER that, in the Declaration of Nuevo León of the Special Summit of the Americas, held in Monterrey in 2004, the Heads of State and Government expressed their commitment to providing the legal and regulatory framework and the structures and conditions required to guarantee the right to access to public information;

TAKING INTO ACCOUNT that, in order to carry out the mandate contained in resolution AG/RES. 2514 (XXXIX-O/09), the General Secretariat established a group of experts, in which representatives of the Inter-American Juridical Committee, the Office of the Special Rapporteur for Freedom of Expression, the Department for State Modernization and Governance [now: Department for Effective Public Management], and the Department of International Law participated, along with experts in access to information from a number of countries and civil society; and

WELCOMING the presentation made to the Committee on Juridical and Political Affairs of the Permanent Council on April 29, 2010, on the Model Inter-American Law on Access to Public Information and its Implementation Guide,

RESOLVES:

1. To take note of the Model Inter-American Law on Access to Information (document CP/CAJP-2840/10), which is part of this resolution; as well as its Implementation Guide, contained in document CP/CAJP-2841/10.

2. To reaffirm, as applicable, the mandates contained in resolution AG/RES. 2514 (XXXIX-O/09) "Access to Public Information: Strengthening Democracy." In this regard, to establish that the special meeting scheduled for the second half of 2010 take into account the Model Inter-American Law on Access to Public Information and any observations on it that member states may present.

3. To instruct the General Secretariat to provide support to the member states that so request in the design, execution, and evaluation of their regulations and policies on access to public information by citizens.

4. To thank the General Secretariat and the experts for preparing the Model Inter-American Law on Access to Public Information and its Implementation Guide.

5. Execution of the activities envisaged in this resolution shall be subject to the financial resources available in the program-budget of the Organization and other resources.

MODEL INTER-AMERICAN LAW ON ACCESS TO INFORMATION

[Document presented by the Group of Experts on Access to Information coordinated by the Department of International Law, of the Secretariat for Legal Affairs, pursuant to General Assembly Resolution AG/RES. 2514 (XXXIX-O/09)]

RECALLING:

That the Heads of States and Governments of the Americas, in the Declaration of Nuevo Leon, made a commitment to provide the legal and regulatory frameworks necessary to guarantee the right of access to information;

That the Organization of American States (OAS) General Assembly instructed the Department of International Law, in resolution AG/RES. 2514 (XXXIX-O/09), to draft a Model Law on Access to Information and Guide for its Implementation, in cooperation with the Inter-American Juridical Committee, the Special Rapporteurship for Freedom of Expression, and the Department of State Modernization and Good Governance, with the cooperation of the member states, civil society, and other experts, to serve as a model for reform in the hemisphere; and

REAFFIRMING:

The American Convention on Human Rights, in particular Article 13 on Freedom of Thought and Expression;

The Inter-American Commission on Human Rights' Inter-American Declaration of Principles on Freedom of Expression;

The Inter-American Court of Human Rights' decision in *Claude Reyes v. Chile*, which formally recognized the right of access to information as part of the fundamental right to freedom of expression;

The Inter-American Juridical Committee's Principles on the Right of Access to Information;

The "Recommendations on Access to Information" drafted by the OAS Department of International Law, in coordination with the organs, agencies, and entities of the inter-American system, civil society, State experts, and the Permanent Council's Committee on Juridical and Political Affairs;

The Annual Reports of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights;

The Carter Center's Atlanta Declaration and American Regional Findings and Plan of Action for the Advancement of the Right of Access to Information, and

UNDERSCORING:

That access to information is a fundamental human right and an essential condition for all democratic societies;

That right of access to information applies broadly to all information in possession of public authorities, including all information which is held or recorded in any format or medium;

That the right of access to information is based on the principle of maximum disclosure;

That exceptions to the right of access should be clearly and narrowly established by law;

That even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable;

That the process of requesting information should be regulated by clear, fair and non-discriminatory rules which set clear and reasonable timelines, provide for assistance to those requesting information, assure that access is free or limited to the cost of reproduction of records and require specific grounds for the refusal of access;

That individuals should be afforded the right to bring an appeal against any refusal or obstruction to provide access to information before an administrative body, and to bring an appeal against the decisions of such administrative body before the courts;

That sanctions should be imposed against any individual who willfully denies or obstructs access to information in breach of the rules set forth in this law;

That measures should be taken to promote, implement and enforce the right of access to information in the Americas,

[Member State] agrees to the provisions of the following:

MODEL INTER-AMERICAN LAW ON ACCESS TO INFORMATION

I. DEFINITIONS, SCOPE, AND PURPOSE, RIGHT OF ACCESS AND INTERPRETATION

Definitions

1. In this Law, unless the context otherwise requires:
  - a. “Information” refers to any type of data in custody or control of a public authority;
  - b. “Information Officer” refers to the individual or individuals appointed by a public authority pursuant to Articles 30 and 31 of this Law;
  - c. “Record” refers to any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it, and whether or not it is classified;
  - d. “Publish” refers to the act of making information available in a form generally accessible to members of the public and includes all print, broadcast and electronic forms of dissemination;
  - e. “Public Authority” refers to any governmental authority or private organization falling under Article 3 of this Law;
  - f. “Interested Third Parties” refers to persons who may have a direct interest in non-disclosure of information they provided voluntarily to a public authority, because it will affect their privacy or their commercial interests;
  - g. “Personal Information” means information which relates to a living individual who can be identified from that information; and
  - h. “Senior Official” means any public official whose salary whom exceeds [USD\$100,000].

Scope and Purpose

2. This Law establishes a broad right of access to information, in possession, custody or control of any public authority, based on the principle of maximum disclosure, so that all information held by public bodies is complete, timely and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society based on the standards and jurisprudence of the Inter-American system.
3. This Law applies to all public authorities, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory authorities, non-state bodies which are owned or controlled by government, and private organizations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services insofar as it applies to those funds or to the public services

or functions they undertake. All of these bodies are required to make information available pursuant to the provisions of this Law.

*Comment: The term benefits should not be construed broadly so as to include any financial benefit received from the government.*

4. To the extent of any inconsistency, this Law shall prevail over any other statute.

*Comment: While the model law does not contain a provision whereby private information that is required for the exercise or protection of internationally recognized human rights would be brought under the scope of the law, some states, including South Africa, have adopted this approach.*

#### Right of Access

5. Any person making a request for information to any public authority covered by this Law shall be entitled, subject only to the provisions of Part IV of this Law:
  - a. to be informed whether or not the public authority in question holds a record containing that information or from which that information may be derived;
  - b. if the public authority does hold such a record, to have that information communicated to the requester in a timely manner;
  - c. to an appeal where access to the information is denied;
  - d. to make an anonymous request for information;
  - e. to make a request without providing justifications for why the information is requested;
  - f. to be free from discrimination based on the nature of the request; and
  - g. to be provided with the information free of charge or at a cost limited to the cost of reproduction.
6. The requester shall not be sanctioned, punished or prosecuted in response to the exercise of the right of access to information.
7.
  - (1) The Information Officer must make reasonable efforts to assist the requester in connection with the request, respond to the request accurately and completely, and subject to the regulations, provide timely access to the records in the format requested.
  - (2) The Information Commission must make reasonable efforts to assist the requester in connection with the appeal.

#### Interpretation

8. When interpreting a provision of this Law, everyone tasked with interpreting this Law, or any other legislation or regulatory instrument that may affect the right to information,

must adopt any reasonable interpretation of the provision that best gives effect to the right to information.

## II. MEASURES TO PROMOTE OPENNESS

### Adoption of Publication Schemes

9. (1) Every public authority shall adopt and disseminate widely, including on its website, a publication scheme approved by the Information Commission, within [six] months of:
  - a) the coming into force of this Law; or
  - b) its establishment.
- (2) 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.
- (3) 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 minimize the need for individuals to make requests for information.
- (4) Every public authority shall publish information in accordance with its approved publication scheme.

### Approval of Publication Schemes

10. (1) When approving a publication scheme, the Information Commission may provide that the approval will expire at a certain point.
- (2) When refusing to approve a publication scheme, the Information 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 Information Commission may, upon giving [six] months notice with reasons, withdraw its approval of any publication scheme.
- (4) The Information Commission shall take into account the need to comply with Article 11 (2) when approving or refusing to approve a publication scheme.

### Model Publication Schemes

11. (1) The Information 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 Information Commission, provided that it shall inform the Information Commission that it is applying that model publication scheme.
- (3) The Information 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.

#### Key Classes of Information

12. (1) The following are the key classes of information subject to proactive disclosure by a public authority:
  - a) a description of its organizational structure, functions, duties, locations of its departments and agencies, operating hours, and names of its officials;
  - b) the qualifications and salaries of senior officials;
  - c) the internal and external oversight, reporting and monitoring mechanisms relevant to the public authority including its strategic plans, corporate governance codes and key performance indicators, including any audit reports;
  - d) its budget and its expenditure plans for the current fiscal year, and past years, and any annual reports on the manner in which the budget is executed;
  - e) its procurement procedures, guidelines and policies, contracts granted, and contract execution and performance monitoring data;
  - f) the salary scales, including all components and sub-components of actual salary, relevant to all employee and consultant categories within the public authority (including all data related to current reclassification of posts);
  - g) relevant details concerning any services it provides directly to members of the public, including customer service standards, charters and protocols;
  - h) any direct request or complaints mechanisms available to members of the public regarding acts, or a failure to act, by that public authority;
  - i) a description of the powers and duties of its senior officers, and the procedure they follow to make decisions;
  - j) any statutes, policies, decisions, rules, guidelines, manuals or other records containing interpretations, practices or precedents regarding the



discharge by that public authority of its functions, that affect the general public;

- k) 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 public authority;
  - l) 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 and an internal appeal;
  - m) its Disclosure Log, in accordance with Article 18, containing a list of requests received and records released under this Law, which shall be automatically available, and its Information Asset Register, in accordance with Article 17;
  - n) a complete list of subsidies provided by the public authority;
  - o) frequently requested information; and
  - p) any additional information deemed appropriate by the public authority.
- (2) The publication schemes adopted by every public authority shall, within [seven] years of the adoption of the first publication scheme by that public authority in accordance with Article 8 (1), cover all of the key classes of information set out in paragraph 11 (1).
- (3) The public authority must create and archive a digital image of its website, complete with information required by its approved publication scheme, on a yearly basis.

*Comment: The list of elements subject to proactive disclosure is, of course, subject to the exceptions in Section IV of the Law. However, it is the sole power of the Information Commission (not the public authority) to determine the application of Section IV in the formulation and approval of the publication scheme.*

#### Policy Documents and Specific Populations

13. (1) Public authorities must make copies of each of its policy documents available for inspection. In order for policy documents to be publicly available:
- (2) No one shall be subject to any prejudice because of the application of a policy that is not disclosed pursuant to paragraph (1).
14. Public authorities shall release public information which affects a specific population in a manner and form that is accessible to that population, unless there is a good legal, policy, administrative or public interest reason not to.

#### Other Laws & Mechanisms Providing for Disclosure of Information

15. This Law does not limit the operation of another Law or administrative scheme that:
  - a) requires information concerning records 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 records in the possession, custody or control of government; or
  - c) requires the publication of information concerning government operations.
16. Whenever an individual makes a request for information, it should be treated at least as favorably as a request under this Law.

#### Information Asset Registers

17. (1) Every public authority shall create and maintain an updated Information Asset Register listing:
  - a) every category of information published by the public agency;
  - b) every published record; and
  - c) every record available for purchase by members of the public.
- (2) The Information Commission may set standards regarding information asset registers.
- (3) Every public authority shall ensure that its Information Asset Register complies with any standard set by the Information Commission.

#### Request and Disclosure Logs

18. (1) Public authorities shall create, maintain and publish a Request and Disclosure Log of all information released in response to a request made under this Law on its website and in the reception area of all its offices accessible by members of the public, subject to protection of privacy of the original requesting party.
- (2) The Information Commission may set standards regarding information Request and Disclosure Logs.
- (3) Every public authority shall ensure that its Request and Disclosure Logs comply with any standard set by the Information Commission.

#### Previously Released Information

19. (1) Public authorities must ensure and facilitate access to all records previously released, in the most convenient way possible, to persons requesting such information.

- (2) Requests for records contained in Request and Disclosure Logs shall be made available as soon as practicable if they are in electronic form and no later than [three] working days after the records are sought if they are not in electronic form.
- (3) Where a response to a request for information has been provided in electronic form, it shall proactively be made available on the public authority's website.
- (4) If a second request is made for the same information, it shall proactively be made available on the public authority's website.

### III. ACCESSING INFORMATION HELD BY PUBLIC AUTHORITIES

#### Request for Information

20. The request for information may be filed in writing, by electronic means, orally in person, by phone, or by any alternative means, with the relevant Information Officer. In all cases, the request shall be properly logged pursuant to Article 21 of this Law.
21. Unless the information can be provided immediately, all requests shall be registered and assigned a tracking number, which shall be provided to the requester along with contact information for the Information Officer assigned to the request.
22. No fee shall be charged for making a request.
23. Requests for information shall be registered in the order in which they are received and handled in a fair and non-discriminatory manner.
24. (1) A request for information shall contain the following information:
  - a) contact information for the receipt of notices and delivery of the information requested;
  - b) a sufficiently precise description of the information requested, in order to allow the information to be found; and
  - c) the preferred form in which the information should be provided.
- (2) If the form in which the information should be provided is not indicated, the information requested shall be provided in the most efficient and cost-effective manner for the public authority.

*Comment: The requester need not provide their name on the request for information. However, insofar as the request concerns personal information, the requester's name may be required.*

25. (1) The public authority in receipt of a request must reasonably interpret the scope and nature of the request.

- (2) In the event the receiving authority is uncertain as to the scope and nature of a request, it must contact the requester to clarify what is being requested. The receiving authority must make reasonable efforts to assist the requester in connection to the request, and respond accurately and completely.
26. (1) If the receiving authority reasonably determines that it is not the proper authority to handle the request, it must, as soon as possible and in any case within [five] working days, forward the request to the proper authority for processing.
- (2) The receiving authority must also notify the requester that his/her request has been routed to another public authority for processing.
- (3) The forwarding authority must provide the requester with contact information for the Information Officer at the public authority where the request has been routed.<sup>1/</sup>

#### Third Party Response to Notification

27. Interested third parties shall be informed within [5] days of a request being received, and given [10] days to make written representations to the relevant authority either: -
  - a) consenting to disclosure of the information; or
  - b) stating reasons why the information should not be disclosed.

#### Cost of Reproduction

28. (1) The requester shall only pay for the cost of reproduction of the information requested and, if applicable, the cost of the delivery, if requested. Information provided electronically shall be free of charge.
- (2) The costs of reproduction shall not exceed the actual cost of the material in which it is reproduced; delivery shall not exceed the actual cost of the same service in the market. The costs, for this purpose, shall be set periodically by the Information Commission.
- (3) The public authorities shall provide information free of all charges, including reproduction and delivery, for any citizen below an income set by the Information Commission.
- (4) The Information Commission will set additional rules regarding fees, which may include the possibility that information will be provided for free if in the public interest and that no charge may be levied for a minimum number of pages.

#### Form of Access

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<sup>1</sup>. ALTERNATIVE: If the receiving public authority reasonably determines that it is not the proper authority to handle the request, it must, within [five] working days indicate the proper authority to the requester to the requester.

29. Public authorities shall facilitate access to inspection by making available facilities for such purpose.

#### Information Officer

30. The head of the public authority responsible for responding to requests must designate an Information Officer who shall be the focal point for implementing this law in that public authority. The contact information for each such Information Officer must be posted on the website of the public authority and made readily available to the public.
31. The Information Officer shall, in addition to any obligations specifically provided for in other sections of this Law, have the following responsibilities:
- a) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and
  - b) to serve as a central contact within the public authority for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public authority to inform disclosure.

#### Searching for Records

32. Upon receipt of a request for information, the public authority in receipt of the request must undertake a reasonable search for records which respond to the request.

#### Records Management

33. The [body responsible for archives] must develop, in coordination with the Information Commission, a records management system which will be binding on all public authorities.

#### Missing Information

34. When a public authority is unable to locate information responsive to a request, and records containing that information should have been maintained, it is required to make reasonable efforts to gather the missing information and provide it to the requester.

#### Time to Respond

35. (1) Each public authority must respond to a request as soon as possible and in any event, within [twenty] working days of its receipt.
- (2) In the event the request was routed to the public authority from another authority, the date of receipt shall be the date the proper authority 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 authority designated to receive requests.

#### Extension

36. (1) Where necessary because of a need to search for or review of voluminous records, or the need to search offices physically separated from the receiving office, or the need to consult with other public authorities prior to reaching a disclosure determination, the public authority processing the request may extend the time period to respond to the request by up to [twenty] working days.
- (2) In any event, the failure of the public authority to complete the processing of the request within [twenty] working days, or, if the conditions specified in paragraph 1 are met, the failure to respond to the request within [forty] working days, shall be deemed a denial of the request.
- (3) In highly exceptional cases, involving large amounts of information, the public authority may appeal to the Information Commission for an extension beyond [forty] working days.
- (4) Where a public authority fails to meet the standards of this article, no charge should be imposed for providing the information, and any denial or redaction must be specifically approved by the Information Commission.
37. Under no circumstances may a third party notification excuse the public authority from complying with the time periods established in this law.

#### Notice to the Requester

38. As soon as the public authority has reasonable grounds to believe that satisfaction of a request will either incur reproduction charges above a level set by the Information Commission or take longer than [twenty] working days, it shall inform the requester and give him/her the opportunity to narrow or modify the scope of the request.
39. (1) Public authorities shall provide access in the form requested, unless this would:
- a) harm the record;
  - b) breach copyright not held by public authority; or
  - c) be impractical because of the need to redact some information contained in the record, pursuant to Section IV of this Law.
- (2) Where information requested in electronic format is already available on the internet, the public authority may simply indicate to the requester the exact URL where the requester may access the information.
- (3) In cases where the requester requested the information in a non-electronic format, the public authority may not answer the request by making reference to a URL.
40. (1) Where information is provided to the requester, he/she shall be notified and informed of any relevant applicable fees and/or arrangements for access.
- (2) In the event that any information or part of the information is withheld from a requester because it falls under the exceptions to disclosure under Section IV of this Law, the requester must be given:

- a) a reasonable estimate of the volume of material that is being withheld;
- b) a description of the precise provisions of this Law used for the withholding; and
- c) notification of the right to appeal.

#### IV. EXCEPTIONS

##### Exceptions to Disclosure

41. Public authorities may deny access to information only in the following circumstances, when it is legitimate and strictly necessary in a democratic society, based on the standards and jurisprudence of the Inter-American system: -

- a) Allowing access would harm the following private interests:
  - 1. right to privacy, including life, health, or safety;
  - 2. legitimate commercial and economic interests; or,
  - 3. patents, copyrights and trade secrets.

Exceptions in this sub-paragraph do not apply when the individual has consented to its disclosure or where it was clear when the information was provided that it was part of a class of information that was subject to disclosure.

The exception under sub-paragraph (a) 1 does not apply to matters related to the functions of public officials or in cases where the individual in question has been deceased in excess of [20] years.

*Commentary: In cases where information on legitimate commercial and economic interests was provided to the public authority in confidence, such information shall be exempt from disclosure.*

- b) Allowing access would create a clear, probable and specific risk of substantial harm, [which should be further defined by law] to the following public interests:
  - 1. public safety;
  - 2. national security;
  - 3. the future provision of free and open advice within and among public authorities;
  - 4. effective formulation or development of policy;
  - 5. international or intergovernmental relations;

6. law enforcement, prevention, investigation and prosecution of crime;
7. ability of the State to manage the economy;
8. legitimate financial interest of a public authority; and
9. tests and audits, and testing and auditing procedures.

The exceptions under sub-paragraphs (b) 3, 4 and 9, do not apply to facts, analysis of facts, technical data or statistical information.

The exception under sub-paragraph (b) 4 does not apply once the policy has been enacted.

The exception under sub-paragraph (b) 9 does not apply to the results of a particular test or audit once it is concluded.

- c) Allowing access would constitute an actionable breach of confidence in communication, including legally privileged information.

*Comment: Although the Inter-American system provides for a potential exemption for the protection of “public order” it is explicitly rejected as a grounds for refusing access in the present Model Law as it is overly vague and provides for an overbroad application as an exemption.*

*Comment: In order to meet the standards of the Inter-American system for clear and specific exceptions, the bracketed language in paragraph (b) “further defined by law” should be understood to include both legislation and/or jurisprudence, from which the definition of the exceptions shall emanate. Moreover, although this bracketed language allows further definition by law, these additional definitions are limited in operation by the principles and provisions of this Law. To this effect, the Law establishes a broad right of access to information based on the principle of maximum disclosure (Article 2); establishes that this law prevails over any other law, in cases of inconsistency (Article 4); and requires that anyone interpreting this law, or any other law or instrument that may affect the right to information, must adopt any reasonable interpretation in favors disclosure (Article 8).*

#### Partial Disclosure

42. For circumstances in which the totality of the information contained in a record is not exempted from disclosure by an exception in Article 41, protected information may be redacted. Information not exempted from disclosure in a same record, however, must be delivered to the requesting party and made available to the public.

#### Historical Disclosure

43. The exceptions under Article 41 (b) do not apply to a record that is more than [12] years old. Where a public authority wishes to reserve the information from disclosure, this period can be extended for another [12] years only by approval by the Information Commission.



### Public Interest Override

44. Public Authorities may not refuse to indicate whether or not it holds a record, or refuse to disclose that record, pursuant to the exceptions contained in Article 41, unless the harm to the interest protected by the relevant exception outweighs the general public interest in disclosure.
45. The exceptions in Article 41 do not apply in cases of serious violations of human rights or crimes against humanity.

## V. APPEALS

### Internal Appeal

46. (1) A requester may, within [60] working days of a refusal to respond, or of any other breach of rules in this Law for responding to a request, lodge an internal appeal with the head of the public authority.
- (2) The head of the public authority must issue a written decision stating adequate reasons, within [10] working days from receipt of the notice of appeal, and deliver a copy of that decision to the requester.
- (3) If the requester decides to present an internal appeal, he/she must wait the full term of the timelines in this provision prior to lodging an external appeal.

*Comment: An internal appeal should not be mandatory, but instead optional for the requester before proceeding to the external appeals process.*

### External Appeal

47. (1) Any requester who believes that his or her request for information has not been processed in accordance with the provisions of this Law, whether or not he or she has lodged an internal appeal, has the right to file an appeal with the Information Commission.
- (2) Such an appeal shall be filed within [60] working days of a decision being appealed against, or the expiration of the timelines for responding to the request or an internal appeal established by this Law.
- (3) Such an appeal shall contain:
  - a) the public authority with which the request was filed;
  - b) the contact information of the requester;
  - c) the grounds upon which the appeal is based; and
  - d) any other information that the requester considers relevant.

48. Upon receiving an appeal, the Information Commission may attempt to mediate between the parties with a view toward disclosure of the information without going through a formal appeal process.
49. (1) The Information Commission shall log the appeal in a centralized tracking system and inform all interested parties, including interested third parties, about the appeal and their rights to make representations.
- (2) The Information Commission shall set fair and nondiscriminatory rules regarding the processing of appeals which ensure that all parties have an appropriate opportunity to make representations.
- (3) In the event the Information Commission is uncertain as to the scope and/or nature of a request and/or appeal, it must contact the appellant to clarify what is being requested and/or appealed.
50. (1) The Information Commission shall decide appeals, including attempts to mediate, within [60] working days and may, in exceptional circumstances, extend this timeline by another [60] working days.
- (2) The Information Commission, 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, such as, but not limited to, providing the information and/or reducing the fee;
- (3) The Information Commission shall serve notice of its decision to the requester, the public authority and any interested party. Where the decision is unfavorable to the requester, he or she shall be informed of his or her right to appeal.
- (4) If a public authority does not comply with the Information Commission's decision within the time limits established in that decision, the Information Commission or the requester may file a petition with the [proper] court in order to compel compliance.

*Comment: The manner of enforcing the Information Commission's decisions in accordance with paragraph 4 will vary from country to country.*

#### Court Review

51. A requester may file a case with the court only to challenge a decision of the Information Commission, within [60] days of an adverse decision or the expiration of the term provided in the law.
52. The court shall come to a final decision on all procedural and substantive aspects of the case as early as possible.

*Comment: These rules are based on the assumption that in many countries courts have all of the inherent powers needed to process these types of cases, including for example imposing sanctions on public authorities. Where this is not the case, these powers may need to be explicitly given to them through the access to information law.*

#### Burden of Proof

53. (1) The burden of proof shall lie with the public authority to establish that the information requested is subject to one of the exceptions contained in Article 41. In particular, the public authority must establish:
- a) that the exception is legitimate and strictly necessary in a democratic society based on the standards and jurisprudence of the Inter-American system;
  - b) that disclosure will cause substantial harm to an interest protected by this Law; and
  - c) that the likelihood and gravity of that harm outweighs the public interest in disclosure of the information.
- (2) The burden of proof shall also lie with the public authority to defend any other decision that has been challenged as a failure to comply with the Law.

## VI. INFORMATION COMMISSION

#### Establishment of the Information Commission

54. (1) An Information Commission is hereby established, which shall be in charge of promoting the effective implementation of this Law;
- (2) The Information Commission shall have full legal personality, including the power to acquire, hold, and dispose of property, and the power to sue and be sued;
- (3) The Information Commission shall have operative, budgetary and decision-making autonomy and shall report to the legislature;
- (4) The legislature shall approve the budget of the Information Commission, which shall be sufficient to enable the Commission to perform its duties adequately.
55. (1) The Information Commission shall be comprised of [three or more] commissioners, reflecting a diversity of skills and backgrounds.
- (2) The Commissioners shall appoint a Chair from among themselves.

*Commentary: It is preferable for the Commission to be comprised of five Commissioners. In contrast to a collegiate body of five members, a body of three can more easily isolate and render inoperable the advice and participation of one of the Commissioners in cases*

*where the other two are closely associated philosophically, personally or politically – a dynamic that proves more difficult in a body of five.*

56. No one shall be appointed Commissioner unless he/she:
- a) is a citizen;
  - b) is a person of high moral character;
  - c) has not held a [high-ranking] position in government or with a political party within the past [2] years; and,
  - d) has not been convicted of a violent crime or a crime of dishonesty, within the last [five] years, for which he or she has not been pardoned.
57. The Commissioners will be appointed by the [Executive Official] after nomination by a two-thirds majority vote of the [legislative body] and in a process in accordance with the following principles:
- a) participation by the public in the nomination process;
  - b) transparency and openness; and
  - c) publication of a short list of candidates.

*Comment: In order to increase confidence in the institution, it is desirable that both the executive and legislature be involved in the selection process; that any decision by the legislature be by a supermajority (e.g. 60 percent or two thirds) sufficient to ensure bi- or multi-partisan support; that the public have an opportunity to participate in the nomination process; and that the process be transparent. There are two main approaches: executive appointment, with nomination or approval by the legislature; and legislative appointment, with nomination or approval by the executive.*

58. (1) The Commissioners shall serve full-time and be paid the same salary as a [high court judge].
- (2) The Commissioners shall not hold another job, position or commission, except in educational, scientific or charitable institutions.

*Comment: It is strongly recommended that the Information Commissioners should serve full-time, and that their salaries should be linked to an externally established rate to enhance Commissioner's independence.*

59. The Commissioners hold office for a period of [5] years, which may be renewed once.

*Commentary: In order to ensure continuity of service, it is necessary to stagger the terms of the Commissioners, when the Commission is first created, so that no more than two thirds of the Commissioners' terms expire in any given year.*

60. (1) The Commissioners may not be removed or suspended from office, except in accordance with the procedure by which he or she was appointed and only for

reasons of incapacity or behavior that renders him/her unfit to discharge his/her duties. Such behavior includes:

- a) conviction for 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;
  - d) refusal to comply with any objective disclosure requirements, such as regarding salary or benefits.
- (2) Any Commissioner that has been removed or suspended has the right to appeal that removal or suspension to a court of law.

#### Duties and Powers of the Information Commission

61. The Information Commission shall, in addition to any other specific powers established by this Law, have all the necessary powers to discharge its duties, including:
- a) to review any information held by a public authority, including through on-site inspection;
  - b) *sua sponte* authorization to monitor, investigate, and enforce compliance with the law;
  - c) to compel witnesses and evidence in the context of an appeal;
  - d) to adopt such internal rules as may be necessary to conduct its business;
  - e) to issue recommendations to public authorities; and
  - f) to mediate disputes between parties in an appeal.
62. The Commissioners shall, in addition to other duties specifically established by this Law, have the following duties:
- a) to interpret this Law;
  - b) to provide support and guidance, upon request, to public authorities concerning the implementation of this Law;
  - c) to promote awareness and understanding of the Law and its provisions among the public, including through publishing and disseminating a guide on the right of access to information;
  - d) to make recommendations on existing and proposed legislation;
  - e) to refer cases of suspected administrative and criminal wrongdoing; and

- f) to cooperate with civil society.

#### Reporting

63. (1) Public authorities shall report annually to the Information Commission on the activities of the public authority pursuant to, or to promote compliance with this Law. This report shall include, at least information about:
- a) the number of requests for information received, granted in full or in part, and refused;
  - b) how often and which sections of the Law were relied upon to refuse, in part or in full, requests for information;
  - c) appeals from refusals to communicate information;
  - d) fees charged for requests for information;
  - e) its activities pursuant to Article 12 (duty to publish);
  - f) its activities pursuant to Article 33 (maintenance of records);
  - g) its activities pursuant to Article 68 (training of officials);
  - h) information on the number of requests responded to within the timeframe provided by this Law;
  - i) information on the number of requests responded to outside the timeframes provided by this Law, including statistics on any time delays in responding; and
  - j) any other information useful to assess compliance of public authorities with the obligations under the Law.
- (2) The Information Commission shall report annually on the Commission's operation and the functions of the Law. This report shall include, at a minimum, all information it receives from public authorities in compliance with the right of access, the number of appeals filed with the commission, including a break-down of the number of appeals from various public authorities, and results and status of these appeals.

#### Criminal and Civil Responsibility

64. No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Law, as long as they acted reasonably and in good faith.
65. It is a criminal offense to willfully destroy or alter records after they have been the subject of a request for information.

66. (1) It is an administrative offense to willfully:
- a) obstruct access to any record contrary to Sections II and III of this Law;
  - b) obstruct the performance by a public authority of a duty under Sections II and III of this Law;
  - c) interfere with the work of the Commission;
  - d) fail to comply with provisions of this Law;
  - e) fail to create a record either in breach of applicable regulations and policies or with the intent to impede access to information; and
  - f) destroy records without authorization.
- (2) Anyone may make a complaint about an administrative offense as defined above.
- (3) Administrative sanctions shall follow the administrative law of the state and may include a fine [of up to x minimum salaries], a suspension of a period for [x] months/years, termination, or a restriction of service for [x] months/years].
- (4) Any sanctions ordered shall be posted on the website of the Commission and the respective public authority within five days of their having been ordered.

## VII. PROMOTIONAL AND COMPLIANCE MEASURES

### Monitoring and Compliance

67. The [relevant legislative body] should regularly monitor the operation of this Law, in order to determine whether changes and improvements are necessary to ensure all public authorities comply with the text and spirit of the Law, and to ensure that the government is transparent, remains open and accessible to its citizens, and complies with the fundamental right of access to information.

### Training

68. The Information Officer shall ensure the provision of appropriate training for the officials of the public authority on the application of this Law.
69. The Information Commission shall assist public authorities in providing training to officials on the application of this law.

### Formal Education

70. The [Ministry of Education] shall ensure that core education modules on the right to information are provided to students in each year of primary and secondary education.

VIII. TRANSITORY MEASURES

Short Title and Commencement

71. This Law may be cited as the Access to Information Law [insert relevant year].
72. This Law shall come into effect on a date proclaimed by [insert relevant individual, such as president, prime minister or minister] provided that it shall automatically come into effect [six] months after its passage into law if no proclamation is forthcoming.

Regulation

73. This Law shall be followed by the adoption of an administrative regulation within [1] year after the adoption of the Law, which shall be drafted with the active participation of the Information Commission.