

FREEDOM OF INFORMATION

INTRODUCTION

Freedom of information legislation, also described as open records or sunshine laws, are laws which set rules on access to information or records held by government bodies. In general, such laws define a legal process by which government information is required to be available to the public. In many countries, there are constitutional guarantees for the right of access to information, but usually these are unused if specific legislation to support them does not exist.

A basic principle behind most freedom of information legislation is that the burden of proof falls on the body being asked for the information, not the person asking for it. The individual does not usually have to give an explanation for his request, but if the information is not disclosed a valid reason has to be proffered.

The Legislation makes official information more freely available, provides for proper access by each person to official information, protects official information to the extent consistent with the public interest, preserves personal privacy, and establishes procedures for the achievement of those purposes.

The legal principle behind the law requires that information shall be made available unless there is good reason for withholding it. Conclusive reasons for withholding information include national security or international relations; that it was supplied by another government in confidence; maintenance of the law; personal safety; or severe economic damage.

The Freedom of Information Bill is being circulated as widely as possible in order to provide opportunities for all persons to become familiar with the proposals therein and, to obtain their meaningful feedback and inputs.

Copies of the Bill are being provided, electronically and in hard copy, to the various Public and Private Sector bodies and special interests groups.

The Bill can be accessed online at www.gov.bb. Persons providing electronic feedback should do so at freedomofinfobill@barbados.gov.bb. Copies of the Bill are also being placed at Post Offices islandwide.

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Responses to the Bill, whether electronic or hard copy, should be **forwarded no later than Friday, 31st October 2008** to:

(i) freedomofinfobill@barbados.gov.bb

or

(ii) *Permanent Secretary (Special Assignments)*
Prime Minister's Office
Government Headquarters
Bay Street
St. Michael

or

(iii) *Fax Number: 228-8234*

The following Town Hall Meetings are also being held in order to provide additional opportunities for persons to provide feedback and inputs.

Wednesday, 15th October 2008 Michael	The Combermere School, Waterford, St.
Wednesday, 22nd October 2008	The Alexandra School, Queen Street, St. Peter
Wednesday, 29th October 2008 Church	The Deighton Griffith School, Kingsland, Christ
Wednesday, 5th November 2008 Philip	The Princess Margaret School, Six Roads, St.

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The Bill would

- (a) give effect to the broad provisions of section 20 of the Constitution which gives to every person the right and freedom to receive ideas and information without interference, including information held by public authorities, so as to enhance good governance through knowledge, transparency and accountability; and
- (b) make provision for public access to public information about the operations of public authorities and, in particular, ensure that the authorizations, policies, rules and practices affecting members of the public are readily available to persons affected by those authorizations, policies, rules and practices; and
- (c) create a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests in a democratic society and the private or business affairs of persons in respect of whom information is held by public authorities;
- (d) establish the Office of the Information Commissioner and specify the functions of that office.

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BARBADOS:

A Bill entitled

Freedom of Information

An Act to

- (a) give effect to the broad provisions of section 12 of the Constitution which gives to every person the right and freedom to receive ideas and information without interference, including information held by public authorities, so as to enhance good governance through knowledge, transparency and accountability; and
- (b) make provision for public access to public information about the operations of public authorities and, in particular, ensure that the authorizations, policies, rules and practices affecting members of the public are readily available to persons affected by those authorizations, policies, rules and practices; and
- (c) create a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests in a democratic society and the private or business affairs of persons in respect of whom information is held by public authorities.
- (d) establish the Office of the Information Commissioner and specify the functions of that office.

(Gazetted..., 2008)

BE IT ENACTED by the Parliament of Barbados as follows:

PART I *Preliminary*

- | | |
|-----------------|---|
| Short title. | 1. This Act may be cited as the
<i>Freedom of Information Act, 2008.</i> |
| Commencement | 2. This Act shall come into operation on a day to be appointed by the Minister by Order published in the <i>Gazette</i> . |
| Interpretation. | 3. (1) In this Act, unless the context otherwise requires-
“applicant” means a person who has made a request; |

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“Atlanta Declaration” means the Atlanta Declaration And Plan Of Action For The Advancement Of The Right Of Access To Information” signed at Atlanta, Georgia, in the United States of America on 29 February, 2008;

“Commissioner” means the Information Commissioner appointed under section 8;

“ Department” means a Department of the Government of Barbados;

“document” includes public contracts, grants or leases of land, letters, e-mails, written decisions, policy papers, information recorded in any form, or any written or printed matter, map, diagram, plan, photograph, film or micro film, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;

“enactment” means an Act or an instrument (including rules, regulations or bylaws) made under an Act;

“exempt document” means a document which, by virtue of a provision of Part VI, is an exempt document;

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

“information officer” means a senior officer of a Ministry or prescribed authority appointed pursuant to section 14;

“Minister” or “Minister administering this Act” means the Minister of Government to whom is assigned responsibility under the Constitution for information;

“Ministry” means a Ministry of the Government;

“Ombudsman” means the Ombudsman established under the Ombudsman Act;

“personal information” means information about an individual, including-

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

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- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, telephone number, finger-prints or blood type of the individual;
- (e) the personal opinions or views of the individual except where they relate to another individual;
- (f) correspondence sent to a public authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual; and
- (h) the individual's name where it appears with other personal information relating to the individual where the disclosure of the name would reveal other personal information about the individual;

“prescribed authority” means –

- (a) a local authority;
- (b) a public statutory corporation or body; or
- (c) a body corporate or an unincorporated body established for a public purpose, which may be prescribed by the Minister by Order published in the *Gazette*;

“principal officer” means–

- (a) in relation to a Ministry, the Permanent Secretary of that Ministry,
- (b) in relation to a Department, the Head of that Department, and
- (c) in relation to a prescribed authority, the chief executive officer, general manager or other similar officer of that authority;

“regulations” means regulations made under this Act;

“record” shall have the same meaning as assigned to the term “document”;

“request” means a request for access to a document made in accordance with this Act;

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“responsible Minister” means –

- (a) in relation to a Ministry, the Minister who has been assigned responsibility under the Constitution for that Ministry; or
- (b) in relation to a prescribed authority, the Minister who has been assigned responsibility under the Constitution for the subject-matter of that authority.

(2) References in this Act to a Ministry shall include a reference to a Department of Government following under that Ministry.

Act not to apply to courts and registries, etc.

4. This Act shall not apply to

- (a) a court, or the holder of a judicial office or other office pertaining to a court, in his capacity as the holder of that office;
- (b) a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff;
- (c) a Commission of Inquiry and the members and staff of a Commission of Inquiry;
- (d) the internal proceedings of Parliament which are subject to parliamentary privilege;
- (e) the office of the Governor-General.

Act binds the Crown.

5. This Act binds the Crown.

Construction of Act in relation to other laws, etc.

6. (1) Within the broad objectives of section 20 of the Constitution, every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by a Ministry or prescribed authority (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.

(2) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.

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

(4) Every Ministry and prescribed authority shall, within the broad objectives of section 20 of the Constitution, give effect to the principles and objectives of the Atlanta Declaration in the implementation of this Act.

PART II

Measures To Promote Openness

Guide to
using the Act.

7. (1) Every information officer of a Ministry or prescribed authority appointed under section 14 shall, within three months of the commencement of this Act, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in electronic form at the Ministry's website, and in any other accessible form.

(2) The guide published under this section shall be updated on a regular basis by the information officer and in any case once every year if necessary.

(3) Every public authority shall designate one of its officers of as an information officer and ensure that members of the public authorities public have easy access to the information officer, including his or her name, function and contact details.

(4) The information officer shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities –

(a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to the provision of information pursuant to this Act.

(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal.

PART III

Information Commissioner And Employees, Etc.

Appointment
of Information
Commissioner

8. (1) The Governor-General, acting on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution, shall appoint an Information Commissioner for the purposes of this Act, on such terms and conditions as may be specified in the instrument of his appointment.

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(2) A person shall not be qualified to hold office as Commissioner if that person-

- (a) is a member of the House of Assembly or a member of the Senate;
- (b) holds or is acting in a public office;
- (c) is an undischarged bankrupt, having been declared bankrupt under any law;
- (d) has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or
- (e) holds office in, or is an employee of, a political party or is a political activist.

(3) The Commissioner shall hold office for a term of five years and may be re-appointed for a further term of three years, but shall not hold office for more than two consecutive terms.

(4) The Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.

Appointment of Staff.

9. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.

Functions of Commissioner.

10. In addition to any other functions under this Act, the functions of the Commissioner shall be-

- (a) to monitor and report to Parliament on the compliance by Ministries and prescribed authorities with their obligations;
- (b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;
- (c) to undertake or promote the training of officials of Ministries and prescribed authorities and other persons on the right to information and the effective implementation of this Act;
- (d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences; and

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- (e) to publicize the requirements of this Act and the rights and obligations under the Act.

Independence of
Commissioner and
employees of
Commissioner's
Office.

11. (1) In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority.

(2) All officers and employees of the office of the Commissioner and any other persons authorised to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.

Annual reports.

12. (1) The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the Office of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.

(2) The Minister shall cause a copy of each annual report submitted pursuant to subsection (1) to be laid before both Houses of Parliament as soon as practicable after he has received the report.

Exemption from
personal
liability.

13. (1) The Commissioner, any officer or employee of his Office or any other person acting on behalf of or under the direction of the Commissioner shall not be personally liable in criminal or civil proceedings for any act done in good faith pursuant to this Act.

(2) For the purposes of proceedings for defamation, any information provided, whether orally or in writing, pursuant to an investigation by or on behalf of the Commissioner under this Act shall be treated as privileged information unless it is shown that that information was not provided in good faith.

Information
officers of
Ministries and
prescribed
authorities.

14. (1) Every Ministry and prescribed authority shall designate one of its officers as an information officer and ensure that members of the public have easy access to the information officer, including his name, functions and contact details.

(2) The information officer shall, in addition to any obligations of a Ministry or prescribed authority specifically provided for in other provisions of this Act or any other law, have the following responsibilities-

- (a) to serve as a central contact within the Ministry or prescribed authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints

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regarding the performance of the public authority relating to the provision of information pursuant to this Act.

- (b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal.

(3) The Information Commissioner shall be responsible for the training of information officers in each year to better enable them to discharge their duties under this Act.

PART IV

Publication of Certain Documents and Information

Publication of information concerning functions of Ministries and prescribed authorities.

15. (1) Every Ministry or prescribed authority shall, in the public interest, publish and disseminate in an accessible form, updated annually, basic information, clearly dated including-

- (a) an accurate and sufficiently detailed description of its structure, functions, duties and finances;
- (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 Ministry or prescribed authority, together with a summary of any requests, complaints or other direct actions by members of the public and that Ministry or prescribed authority's responses;
- (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, guides or manuals regarding the discharge by that authority of its functions;
- (g) the content of all decisions and 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

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- (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 Ministry or prescribed authority.

(2) The information to be published in accordance with this section shall be published in the *Gazette* and on the internet at each Ministry's website.

(3) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

(4) Subsection (1) applies in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

Certain documents to be available for inspection and purchase.

16. (1) This section applies to documents that are provided by the Ministry or prescribed authority for the use of, or are used by the Ministry or prescribed authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the Ministry or prescribed authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being –

- (a) manuals or other documents containing interpretations, rules of procedure, letters of advice to persons outside the Ministry or prescribed authority, guidelines, practices, precedents, policies, records of decisions or similar documents;
- (b) documents containing particulars of such a scheme, not being particulars contained in an enactment or published under this Act,

but not including documents that are available to the public as published otherwise than by a Ministry or prescribed authority.

(2) The principal officer shall –

- (a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) not later than 12 months after the commencement of this Act, cause to be published in the *Gazette*, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, so available and the

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place or places where copies may be inspected and may be purchased; and

- (c) within 12 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 12 months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt matter to be made available in accordance with subsection (2), but, if such a document is not so made available, the principal officer shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with subsection (2).

(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.

(6) Subsections (2), (3), (4) and (5) apply in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

(7) If a document required to be made available in accordance with this section, being a document containing a rule, guideline or practice relating to a function of a Ministry or prescribed authority, was not made available and included in a statement in the *Gazette*, as referred to in this section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

Statement of possession of certain documents to be published.

17. (1) This section applies, in respect of a Ministry or prescribed authority, to any document that is-

- (a) a report, or statement containing the advice or recommendations, of a body or entity established within the Ministry or prescribed authority;

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- (b) a report, or statement containing the advice or recommendations, of a body or entity established outside the Ministry or prescribed authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the Ministry or prescribed authority or to the responsible Minister of that public authority;
- (c) a report, or a statement containing the advice or recommendations, of an inter-departmental Committee whose membership includes an officer of the Ministry or prescribed authority;
- (d) a report, or a statement containing the advice or recommendations, of a committee established within the Ministry or prescribed authority;
- (e) a report (including a report concerning the results of studies, surveys or tests) prepared for the Ministry or prescribed authority by a scientific or technical expert, whether employed within the public service or not, including a report expressing the opinion of such an expert on scientific or technical matters;
- (f) a report prepared for the Ministry or prescribed authority by a consultant who was paid for preparing the report;
- (g) a report prepared within the Ministry or prescribed authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;
- (h) a report on the performance or efficiency of the Ministry or prescribed authority, or of an office, division or branch of the Ministry or prescribed authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the Minister or prescribed authority;
- (i) a report containing final plans for the re-organisation of the functions of the Ministry or prescribed authority, the establishment of a new policy, programme or project to be administered by the Ministry or prescribed authority, or Cabinet;
- (j) a statement prepared within the Ministry or public authority and containing policy directions for the drafting of legislation;

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- (k) a report of a test carried out within the Ministry or prescribed authority on a product for the purpose of purchasing equipment;
- (l) an environmental impact statement prepared within the Ministry or prescribed authority; and
- (m) a valuation report prepared for the Ministry or prescribed authority by a valuator whether or not the valuator is a public officer.

(3) This section does not require a document of the kind referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.

(4) A Ministry or prescribed authority that comes into existence on or after the commencement of this Act shall comply-

- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the Ministry or prescribed authority comes into existence and not later than 12 months after that day; and
- (b) with the provisions of subsection (2)(b) as if the reference to :first publication: in that subsection were a reference to first publication in compliance with this subsection.

PART V

Access to Documents

Right to access.

18. Subject to this Act, every person shall have a right to obtain access in accordance with this Act to a document of a Ministry or prescribed authority, other than an exempt document.

Procedure for obtaining access to certain documents.

19. Where –

- (a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or
- (b) a document is available for purchase by the public in accordance with arrangements made by a Ministry or prescribed authority,

the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

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Access to documents apart from this Act.

20. Nothing in this Act is intended to prevent or discourage Ministries and prescribed authorities from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

Requests for access.

21. (1) A person who wishes to obtain access to a document of a Ministry or prescribed authority shall make a request in writing to the Ministry or prescribed authority for access to the document.

(2) Subject to subsection (3), a request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the Ministry or prescribed authority, as the case may be, to identify the document.

(3) Where a request is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating documents containing relevant information within the filing system of the Ministry or prescribed authority.

(4) It is the duty of a Ministry or prescribed authority, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate Ministry or prescribed authority, to make a request in a manner that complies with this section or to direct a request to the appropriate Ministry or specified authority.

(5) Where a request in writing is made to a Ministry or prescribed authority for access to a document, the Ministry or prescribed authority, as the case may be, shall not refuse to comply with the request on the ground –

- (a) that the request does not comply with subsection (2); or
- (b) that, in the case of a request of the kind referred to in subsection (3), compliance with the request would interfere unreasonably with the operations of the Ministry or prescribed authority, as the case may be, without first giving the applicant a reasonable opportunity of consultation with the Ministry or prescribed authority with a view to the making of a request in a form that would remove the ground for refusal.

Transfer of requests.

22. (1) Where –

- (a) a request is made to a Ministry or prescribed authority for access to a document; and

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- (b) the document is not in the possession of that Ministry or prescribed authority but is in the possession of another Ministry or prescribed authority or the subject-matter of the document is more closely connected with the functions of another Ministry or prescribed authority than with those of the Ministry or prescribed authority to which the request is made,

the Ministry or prescribed authority to which the request is made may transfer the request to the other Ministry or prescribed authority and inform the person making the request in writing accordingly and, if it is necessary to do so in order to enable the other Ministry or prescribed authority to deal with the request, send any document in its possession to the other Ministry or prescribed authority.

(2) Where a request is transferred to a Ministry or prescribed authority in accordance with this section, it shall be deemed to be a request made to that Ministry or prescribed authority and received at the time at which it was originally received.

Requests
involving use of
computers, etc

23. (1) Where –
- (a) a request (including a request of the kind described in subsection 21(3) is duly made to a Ministry or prescribed authority; and
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the Ministry or prescribed authority; and
 - (c) the Ministry or prescribed authority could produce a written document containing the information in discrete form by –
 - (i) the use of a computer or other equipment that is ordinarily available to the Ministry or prescribed authority for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the Ministry or prescribed authority,

the Ministry or prescribed authority shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the Ministry or prescribed authority had such a document in its possession.

(2) A Ministry or prescribed authority is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the Ministry or prescribed authority.

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Access to documents to be given on request.

24. (1) Where a request for access to a document is duly made, and payment is made of any charge or fee that is required to be paid before access is granted, access to the document shall be given promptly in accordance with this Act.

(2) Where a document already exists in paper form at the time of the making of a request, no fee shall be paid by the applicant to have access to such document, where the document exists electronically, on film, or otherwise, the applicant shall pay a fee to be prescribed by the Minister in Regulations made under this section.

(3) The expression “duly made” occurring in subsection (1) means that the request shall be in writing.

Time within which formal requests to be decided.

25. If a request to a Ministry or prescribed authority –

- (a) is made in writing and is expressed to be in pursuance of this Act; and
- (b) is sent by post to the Ministry or prescribed authority, or delivered to the appropriate officer of the Ministry or prescribed authority, at an address of the Ministry or prescribed authority, as the case may be, to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,

the Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than three working days where the document already exists at the time of making the request and two weeks after the day on which the request is received by or on behalf of the Ministry or prescribed authority, where the document does not yet exist or is not readily available.

Forms of access.

26. (1) Access to a document may be given to a person in one or more of the following forms:

- (a) a reasonable opportunity to inspect the document;
- (b) provision by the Ministry or prescribed authority of a copy of the document;
- (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
- (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form

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of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the Ministry or prescribed authority of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 19, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant –

- (a) would interfere unreasonably with the operations of the Ministry or prescribed authority; or
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the document,

access in that form may be refused and access given in another form.

Deferment of
access.

27. (1) A Ministry or prescribed authority which receives a request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the Ministry or prescribed authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

Deletion of
exempt matter

28. (1) Where –

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document; and
- (b) it is practicable for the Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy with deletions,

the Ministry or prescribed authority shall grant access to such a copy of the document.

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(2) Where access is granted to a copy of a document in accordance with subsection (1) –

- (a) the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 30 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the Ministry or prescribed authority to furnish him with a notice in writing in accordance with that section.

Decision to be made by authorized persons.

29. A decision in respect of a request made to a Ministry or prescribed authority may be made on behalf of the Ministry or prescribed authority by the responsible Minister or the principal officer of the Ministry or prescribed authority or, subject to the Regulations, by an officer of the Ministry or prescribed authority acting within the scope of authority exercisable by him in accordance with the arrangements approved by the responsible Minister or the principal officer of the Ministry or prescribed authority.

Reasons and other particulars of decisions to be given.

30. (1) Where, in relation to a request for access to a document of a Ministry or prescribed authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred, the Ministry or prescribed authority shall cause the applicant to be given notice in writing of the decision, and the notice shall –

- (a) state the findings on any material questions of fact, referring to the material on which those findings are based, and the reasons for the decision;
- (b) where the decision relates to a document of any Ministry or prescribed authority, state the name and designation of the person giving the decision; and
- (c) inform the applicant of his right to apply for judicial review of the decision.

(2) A Ministry or prescribed authority is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

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PART VI *Exempt Documents*

Documents affecting national security, defence, and international relations.

31. (1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure –

- (a) would prejudice the security, defence or international relations of Barbados; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Barbados.

(2) Where a Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where a Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) The responsible Minister may delegate his powers under this section to the principal officer of the Ministry or the prescribed authority, as the case may be.

Cabinet documents.

32. (1) A document is an exempt document if it is –

- (a) a document that has been submitted to the Cabinet for its consideration or is proposed to be submitted; or
- (b) an official record of the Cabinet; or
- (c) a document that is a copy of, or of a part of, a document referred to in paragraph (a) or (b); or
- (d) a document the disclosure of which would involve disclosure of any deliberation or advice of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

(2) For the purposes of this Act, a certificate signed by the Secretary to the Cabinet or a person performing the duties of the Secretary, certifying that a document is one of a kind referred to in a paragraph of subsection (1), establishes conclusively that it is an exempt document of that kind.

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(3) Where a document is a document referred to in subsection (1) (d) by reason only of matter contained in a particular part or particular parts of the document, a certificate under subsection (2) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) A reference in this section to the Cabinet shall be read as including a reference to a committee or subcommittee of the Cabinet.

Documents affecting enforcement and administration of the law.

33. A document is an exempt document if its disclosure under this Act would, or would be reasonably likely to –

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain the identity of, a confidential source of information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (e) endanger the lives or physical safety of persons (including prosecution witnesses) engaged in or in connection with law enforcement.

Documents to which secrecy provisions of enactments apply.

34. A document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the document or of information or other matter contained in the document, applies.

Certain documents concerning operations of Ministries, etc.

35. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the financial, property or staff management interests of the Government or a prescribed authority or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of a Ministry or prescribed authority.

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Documents
affecting
personal privacy.

36. (1) A document is an exempt document if it contains personal information and its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

(2) Subject to subsection (3), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request is made to a Ministry or prescribed authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the principal officer that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the principal officer may direct that the document containing that information, that would otherwise be given to that person, is not to be given to him but is to be given instead to a medical practitioner to be nominated by the person requesting the document.

Documents
affecting legal
proceedings or
subject to legal
professional
privilege.

37. (1) A document is an exempt document if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Government or of a prescribed authority in, or in relation to, pending or likely legal proceedings.

(2) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(3) A document of the kind referred to in section 16(1) is not an exempt document by virtue of subsection (2) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 16(1).

Documents
relating to trade
secrets, etc.

38. (1) A document is an exempt document if its disclosure under this Act would disclose information concerning a person in respect of his business or professional affairs or concerning a business, commercial or financial undertaking, and –

(a) the information relates to trade secrets or to other confidential business matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or

(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or a prescribed authority to obtain similar information in the future.

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(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information concerning that person in respect of his business or professional affairs or of information concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor

Documents affecting national economy.

39. A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

Documents containing material obtained in confidence.

40. A document is an exempt document if its disclosure would constitute a breach of confidence.

Documents the disclosure of which would be contempt of Parliament or contempt of court.

41. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown –

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of Parliament.

Crown privileges in judicial proceedings not affected.

42. Nothing in this Act shall affect any rule of law which authorises the withholding of any document by the Crown in or in relation to a judicial proceeding on the ground that the publication or disclosure of the document would be injurious to the public interest.

Duty of authorities to act in good faith.

43. In considering whether or not to claim exemption under this Part, the principal officer of a Ministry or prescribed authority shall act in good faith and use his best endeavours to achieve the object of this Act to afford to members of the public maximum access to documents consistent with the public interest.

PART VII *Review of Decisions*

Applications to Ombudsman.

44. (1) Application may be made to the Ombudsman for review of a decision refusing to grant access to a document in accordance with a request or deferring the provision of access to a document.

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(2) Subject to subsection (3), in proceedings under this Part, the Ombudsman has power, in addition to any other power, to review any decision that has been made by a Ministry or prescribed authority in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by a Ministry or prescribed authority, and any decision of the Ombudsman under this section has the same effect as a decision of the Ministry or prescribed authority.

(3) Where, in proceedings under this section, it is established that a document is an exempt document, the Ombudsman does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.

(4) Where, under a provision of Part VI, it is provided that a certificate of a specified kind establishes conclusively, for the purposes of this Act, that a document is an exempt document and such a certificate has been given in respect of a document, the powers of the Ombudsman extend to reviewing the decision to give the certificate and the existence of proper grounds for the giving of the certificate.

(5) The powers of the Ombudsman under this section extend to matters relating to fees and charges payable under this Act in relation to a request.

Internal review.

45. (1) Where a decision has been made, in relation to a request to a Ministry or prescribed authority, otherwise than by the responsible Minister or principal officer (not being a decision on a review under this section), the applicant may, within 28 days after the day on which notice of the decision was given to the applicant in accordance with section 30, apply to the responsible Minister or principal officer concerned for a review of the decision in accordance with this section.

(2) A person is not entitled to apply to the Ombudsman for a review of a decision in relation to which subsection (1) applies unless –

- (a) he has already made an application under that subsection in relation to the decision; and
- (b) he has been informed of the result of the review or a period of 14 days has elapsed since the day on which he made that application.

(3) Where an application for a review of a decision is made to the responsible Minister or the principal officer in accordance with subsection (1), he shall forthwith arrange for himself or a person (not being the person who made the decision) authorized by him to conduct such reviews to review the decision and to make a fresh decision on the original application.

Time for application to Ombudsman.

46. (1) Where –

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- (a) an application for review of a decision has been made in accordance with section 45; and
- (b) the application for review is refused or the applicant has not been informed of the result of the review within 14 days after the day on which he made that application,

the applicant may apply to the Ombudsman for review of the decision refusing to grant access to a document, within 21 days of the date on which he is notified of the decision refusing the review or within 21 days after the expiry of the period of 14 days mentioned in paragraph (b) of subsection (1) above.

(2) Where –

- (a) a request has been made to a Ministry or prescribed authority in accordance with section 25; and
- (b) a period of 14 days has elapsed since the day on which the request was received by or on behalf of the Ministry or prescribed authority; and
- (c) notice of a decision on the request has not been received by the applicant,

the principal officer shall, for the purpose of enabling an application to be made to the Ombudsman under section 44, be deemed to have made on the last day of that period, a decision refusing to grant access to the document, and the applicant may apply to the Ombudsman to grant access to the document in question within 21 days of the expiry of the said period of 14 days.

(3) Before dealing further with an application made by virtue of this section, the Ombudsman may, on the application of the Ministry or prescribed authority concerned, allow further time to the Ministry or prescribed authority to deal with the request.

(4) Notwithstanding the period of limitation mentioned in this section, the Ombudsman may, in his discretion, grant further time to the applicant if he is of the opinion that there has been no unreasonable delay in making the application.

Burden of proof.

47. In proceedings under this Part, the Ministry or prescribed authority to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Ombudsman should give a decision adverse to the applicant.

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Powers of
Ombudsman to
make orders.

48. In proceedings under this Part, the Ombudsman shall make such order as he thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of exempt matter.

Production of
exempt
documents.

49. (1) Where there are proceedings before the Ombudsman under this Act in relation to a document that is claimed to be an exempt document, and the Ombudsman is not satisfied, by evidence on affidavit or otherwise, that the document is an exempt document, he may require the document to be produced for inspection by him only and if, upon the inspection, he is satisfied that the document is an exempt document, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document or disclosing the contents of the document to any other person.

(2) The Ombudsman may require the production, for inspection by him only, of an exempt document for the purposes of determining whether it is practicable for a Ministry or prescribed authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document and, where an exempt document is produced by reason of such a requirement, he shall return the document to the person by whom it was produced without permitting any other person to have access to the document, or disclosing the contents of the document to any other person.

(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), the Ombudsman is not empowered in any proceedings to require the production of a document in respect of which there is in force a certificate under section 31 or 32.

(4) Where a certificate of a kind referred to in sub-section (3) identifies a part or parts of the document concerned in the manner provided in section 31(3) or 32(3), subsection (3) of this section does not prevent the Ombudsman from requiring the production, in proceedings before him under this Act in relation to the document, of a copy of so much of the document as is not included in the part or parts so identified.

Evidence of
certificates.

50. In proceedings before the Ombudsman under this Part, evidence of a certificate under section 31 or 33, including evidence of the identity or nature of the document to which the certificate relates, may be given by affidavit or otherwise and such evidence is admissible without production of the certificate or of the document to which it relates.

Powers of
Ombudsman in
relation to
witnesses, etc.

51. For the purposes of performing his functions under this Act, the Ombudsman shall have the same powers as a Magistrate in respect of the attendance and examination of witnesses.

Appeal against
Ombudsman's
decision.

52. Any party dissatisfied with a decision of the Ombudsman under this Act may appeal to the Supreme Court.

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PART VIII *Miscellaneous*

Protection against actions for defamation or breach of confidence.

53. (1) Where access has been given to a document and
- (a) the access was required by this Act to be given; or
 - (b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 29 or 45, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

no action for defamation or breach of confidence lies by reason of the authorizing or giving of the access, against the Government or a prescribed authority or against the Minister or officer who authorised the access or any person who gave the access.

(2) The giving of access to a document (including an exempt document) in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the document or of its contents by the person to whom the access was given.

Protection in respect of offences.

54. Where access has been given to a document and –
- (a) the access was required by this Act to be given; or
 - (b) the access was authorised by a Minister or by an officer having authority, in accordance with section 29 or 45, to make decisions in respect of requests, in the *bona fide* belief that the access was required by this Act to be given,

neither the person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving of the access.

Reports to Parliament

55. (1) The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31st December, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of Parliament.

(2) Each Ministry or prescribed authority shall furnish to the Minister administering this Act such information as he requires for the purposes of the preparation of reports under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

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56. (1) Where a Ministry or prescribed authority fails or refuses without reasonable excuse to comply with the provisions of sections 15, 16 and 17, the Minister commits an offence and shall be liable on summary conviction to a fine of twenty thousand dollars.

(2) Where a Ministry or prescribed authority fails or refuses without reasonable excuse to comply with the provisions of section 22(4) or (5) or section 23, the information officer of that Ministry or prescribed authority commits an offence and shall be liable on summary conviction to a fine of three thousand dollars.

(3) Where a Ministry or prescribed authority fails or refuses to comply with section 25 or section 26, the Permanent Secretary and the information officer of that Ministry or prescribed authority each commits an offence and shall be liable on summary conviction to a fine of five thousand dollars.

(4) Where a Ministry or prescribed authority fails or refuses to comply with any other provision of this Act for which no specific penalty is provided, the person in the Ministry or prescribed authority responsible for the failure commits an offence and shall be liable on summary conviction to a fine of not less than three thousand dollars and not more than twenty thousand dollars.

Regulations.

57. (1) The Minister may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to –

- (a) charges or fees for access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges or fees; and
- (b) the officers who may give decisions on behalf of a Ministry or prescribed authority.

(2) The Ombudsman may, with the approval of the Minister, make regulations for the better carrying out of his functions under this Act, and, in particular, in relation to the procedure to be followed for conducting reviews of the decisions refusing access to documents.

(3) All regulations made under this Act shall be laid before Parliament within two months after the making thereof and shall be subject to negative resolution.
