

Laws of South Sudan

RIGHT OF ACCESS TO INFORMATION BILL, 2012

Bill No. 54

Juba, March 26th, 2012

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Right of Access to Information Act, 2011

In accordance with the provisions of Articles 110 (n) and 55 (3)(b) read together with Article 85 (1) of the Transitional Constitution of the Republic of South Sudan, 2011, the National Legislature with assent of the President of the Republic of South Sudan hereby enacts the following:

Chapter I

Preliminary Provisions

1. Title and Commencement

This Act may be cited as the “**Right of Access to Information Act, 2012**” and shall come into force on the date of its assent and signature by the President.

2. Repeal and Saving

Any provisions of existing legislation which are governed by this Act are hereby repealed or cease to operate in South Sudan; provided that, all proceedings, orders and regulations taken or made thereunder, except to the extent they are revoked by or are otherwise inconsistent with provisions of this Act, shall remain in force or effect until they are repealed or amended in accordance with the provisions of this Act.

3. Purpose

The purpose of this Act is to give effect to the constitutional right of access to information; to promote maximum disclosure of information in the public interest; to establish effective mechanisms to secure that right; and to provide for incidental matters.

4. Authority and Application

- (1) This Act is drafted under the powers granted in Schedule (A) (45) and Article 24 (2) and of the Transitional Constitution of the Republic of South Sudan, 2011 which grant the National Government of South Sudan powers to legislate on matters of Telecommunication, national information, publications and mass media and to regulate freedom of the press and other media.
- (2) This Act acknowledges that Freedom of Information is fundamental to the fulfilment of human rights and essential in the fight against corruption
- (3) The Act provides for the Right of Access to Information held by Public Bodies in accordance with the principles that such information shall be available to the public, that necessary exceptions to the Right of access to Information shall be limited and specific, and the decisions on the disclosure of such information under this provision shall be reviewed independently of government

- (4) The Right of Access to Information held by Private Bodies where this is necessary for the exercise or protection of any right shall be subject only to limited and specific exceptions as set forth in this Act.
- (5) This Act shall apply throughout the territory of South Sudan on matters related to the right of access to information and related matters.

5. Interpretations

In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

<i>“Assembly”</i>	means the National Legislative Assembly;
<i>“Commissioner”</i>	means the person holding the office of Information Commissioner, established in Chapter V of this Act, or the office thereof, as the context may require;
<i>“Constitution”</i>	means the Transitional Constitution of South Sudan, 2011;
<i>“Government”</i>	means the Government of South Sudan;
<i>“Holds a Record”</i>	means with respect to a public or Private Body: <ul style="list-style-type: none"> (a) the public or Private Body that has possession of the Record, other than on behalf of another person; or (b) another person has possession of the Record, on behalf of the Public or Private Body.
<i>“Information Officer”</i>	means an individual with specific responsibilities under this Act, required to be appointed by every Public Body pursuant to the provisions of section 16(1) of this Act,
<i>“Minister”</i>	means the minister responsible for information and broadcasting;
<i>“Ministry”</i>	means the ministry responsible for information and broadcasting;
<i>“Official”</i>	means any person employed by the relevant body, whether permanently or temporarily or part-time;
<i>“Personal Information”</i>	means information which relates to a living individual who can be identified with that information;

“President”	means the President of the Republic of South Sudan;
“Private Body”	means anybody, excluding a Public Body, that: <ul style="list-style-type: none"> (a) carries on any trade, business or profession, but only in that capacity; or, (b) has legal personality;
“Public Body”	means anybody: <ul style="list-style-type: none"> (a) established by or under the Constitution; (b) established by law; (c) which forms part of any level or branch of Government in South Sudan; (d) which is owned, controlled or substantially financed by funds provided by the Government or a State government; or, (e) carrying out a statutory or public function, <i>provided that</i> such bodies are public bodies only to the extent of their statutory or public functions; and, (f) that carries out a public function, which is designated as a Public Body by the Minister;
“Publish”	means to make available in a form generally accessible to member of the public and includes print, broadcast and electronic forms of dissemination;
“Record”	means any recorded information; regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it.

Chapter II

The Right of Access to Information

6. Right to Information

- (1) Every citizen shall have the right to freedom of information, including the right to access information and Records held by Public or Private Bodies, including electronic Records in the possession of any level of government in South Sudan or any organ or agency thereof, subject only to the provisions of this Act, except where the release of such information is likely to cause serious prejudice to public security or the right to privacy of any person, in accordance with exceptions provided for in this Act.

- (2) No limitations may be put on the use of information obtained under this Act except in accordance with the law.

7. Right of Access to Information

- (1) Any person making a request for information to a Public Body shall be entitled, subject to the provisions of Chapters II and IV of this Act:
 - (a) to be informed whether or not the Public Body holds a Record containing that information or from which that information may be derived; and,
 - (b) if the Public Body holds such a Record, to have that information communicated to him or her.
- (2) Any person making a request for information to a Private Body which holds information necessary for the exercise or protection of any right shall, subject to the relevant provisions of Chapters II and IV of this Act, be entitled to have that information communicated to him or her.

8. Legislation Prohibiting or Restricting Disclosure

- (1) The provisions of this Act shall apply without prejudice to the provisions of any other legislation that prohibits or restricts the disclosure of information by a Public or Private Body.
- (2) Nothing in this Act shall limit or otherwise restrict the disclosure of information pursuant to any other legislation, policy or practice.

9. Request for Information

- (1) For purposes of section 7 of this Act, a request for information is a request in writing to any official of a Public or Private Body that is in sufficient detail to enable an official to identify, with reasonable effort, whether or not the body holds a Record with that information.
- (2) Where a request for information pursuant to section 7 of this Act does not comply with the provisions of subsection (1) of this section, the official who receives such a request shall, subject to the provisions of subsection (5) of this section and without charge, render such assistance as may be necessary to enable the request to comply with the provisions of subsection (1) of this section.
- (3) An individual who, because of illiteracy, disability or lack of knowledge of a relevant language is unable to make a written request for information pursuant to the provisions of section 7 of this Act may make an oral request and the official who receives this oral request shall, subject to the provisions of subsection (5) of this section, reduce it to writing, include his name and position within the body, and give a copy to the person who made the request.

- (4) A request for information under section 7(2) of this Act shall identify the right which the person making the request seeks to exercise or protect and the reasons why the information requested will aid the exercise or protection of that right.
- (5) An official who receives a request for information may convey that request through the Information Officer for purposes of complying with the provisions of subsections (2) or (3) of this section.
- (6) A Public or Private Body may prescribe a form for requests for information, provided that such a form shall not unreasonably delay requests or place an undue burden upon those making requests.
- (7) A Public or Private Body which receives a request for information shall issue, to the person who made the request, a receipt documenting the request.

10. Time Limits for Responding to Requests

- (1) Subject to the provisions of subsection (3) of this section, a Public or Private Body shall respond to the request for information pursuant to the provisions of section 7 of this Act, as soon as possible and in any event not later than twenty (20) working days from the date of receipt of the request.
- (2) Where a request for information relates to information which appears to be necessary to safeguard the life or liberty of the person applying to access information, the response shall be provided promptly and in any event not later than forty-eight hours from the date of receipt of the request.
- (3) A Public or Private Body may, by notice in writing within the initial twenty day period extend the period prescribed in subsection (1) of this section but only, to the extent strictly necessary, and in any event not exceeding forty working days or, where the request is for a large number of Records or requires a search through a large number of Records and where compliance within twenty working days would unreasonably interfere with the activities of the body.
- (4) Failure by the Public or Private Body to comply with the provisions of this section shall be deemed to be a rejection of the request.

11. Notice of Response

- (1) The response under section 10 of this Act to a request for information pursuant to the provisions of section 7 shall be in writing and shall state:
 - (a) the applicable fee, if any, pursuant to section 12 of this Act, in relation to any part of the request which is granted, and the form in which the information shall be communicated;
 - (b) sufficient reasons for the rejection in relation to any part of the request which is not granted, subject only to the provisions of Chapter IV of this Act;

- (c) in relation to any rejection, indicate whether or not the Public Body holds a Record containing the relevant information, the fact of such rejection and adequate reasons for it; and,
 - (d) any right of appeal the person who made the request may have.
- (2) The response under section 10 of this Act to a request for information pursuant to section 7 subsection (2) shall be by notice in writing and shall state:
 - (a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 12 of this Act, and the form in which the information shall be communicated; and,
 - (b) in relation to any part of the request which is not granted, adequate reasons for the refusal.
 - (3) In relation to any part of a request that is granted, communication of the information shall, subject to the provisions of section 12 of this Act, take place immediately.

12. Fees payable

- (1) The communication of information pursuant to a request under section 7 of this Act by a Public or Private Body may, subject to the provisions of subsections (2) and (3) of this section, be made conditional upon payment by the person making the request of a reasonable fee which shall not exceed the cost of searching for, preparing and communicating the information.
- (2) Payment of a fee shall not be required for requests for Personal Information about the person making the request and requests in the public interest.
- (3) The Commissioner, after consultation with the Minister and the Ministry of Finance and Economic Planning, shall make regulations providing:
 - (a) for the manner in which fees are to be calculated;
 - (b) waiver or exemption of fees in prescribed cases; and,
 - (c) that any fee cannot exceed a certain maximum amount.
- (4) A Public Body shall not require payment of a fee under subsection (1), of this section where the cost of collecting that fee would exceed the amount of the fee.

13. Means of Communicating Information

- (1) Where a request indicates a preference as to the form of communication of information contained in subsection (2) of this section, a Public or Private Body communicating information pursuant to a request for information under section 7 of this Act shall, subject to the provisions of subsection (3) of this section, do so in accordance with that preference.
- (2) The request may indicate the following preferences as to the form of communication of information:
 - (a) a true copy of the Record in permanent or other form;
 - (b) an opportunity to inspect the Record, where necessary, using equipment normally available to the Public or Private Body;

- (c) an opportunity to copy the Record using the requestor's own equipment;
 - (d) a written transcript of the words contained in a sound or visual form;
 - (e) a transcript of the content of a Record, in print, sound or visual form, where such transcript is can be produced using equipment normally available to the body; or,
 - (f) a transcript of the Record from shorthand or other codified form.
- (3) The Public or Private Body shall not be required to communicate information in the form indicated by the person making the request where to do so would:
 - (a) unreasonably interfere with the effective operation of that body; or,
 - (b) be detrimental to the preservation of the Record.
 - (4) Where a Record exists in more than one language, communication of the Record shall be given in accordance with the language preference by the person making the request, from among those languages.

14. Where Information is unavailable

- (1) Where an official who receives a request pursuant to section 7 of this Act believes that the request relates to information that is not contained in any Record held by the Public Body, the official may refer the request to the Information Officer for purposes of compliance with the provisions of this section.
- (2) Where an Information Officer receives a request pursuant to subsection (1) of this section, he or she shall confirm whether or not the Public Body holds that information but where it does not and if the Information Officer knows of another Public Body which holds the relevant information, he or she shall, as soon as practicable, either:
 - (a) refer the request to that Public Body and inform the person making the request of such referral; or,
 - (b) indicate to the person making the request which Public Body holds the relevant Record, which ever would be likely to ensure more rapid access to the information.
- (3) Where a request is referred to another Public Body pursuant to subsection (2) (a) of this section, the time limit for responding to requests under section 10 of this Act shall begin to run from the date of its receipt by that Public Body.
- (4) A Private Body which receives a request pursuant to Section 7(2), relating to information that is not contained in any Record held by the Private Body, shall notify the requester that it does not hold such information.

Chapter III

Measures to Promote Transparency

15. Guide to Usage of the Act

- (1) The Commissioner shall, as soon as practicable, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Act, and shall disseminate the guide widely in an accessible form.
- (2) The guide in subsection (1) of this section shall regularly be updated as necessary.

16. Information Officer

- (1) Every Public Body shall establish an information office, designate an Information Officer and ensure that members of the public have easy access to information concerning the Information Officer, including his or her name, function and contact details pursuant to provisions of this Act.
- (2) The Information Officer shall, in addition to any obligations specifically provided for in this Act, have the following responsibilities:
 - (a) to promote within the Public Body the best possible practices in relation to Record maintenance, archiving and disposal; and,
 - (b) to serve as a central contact within the Public Body for receiving requests to information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the Public Body relating to information disclosure.

17. Duty to Publish Information

Every Public Body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to:

- (a) a description of its structure, functions and duties;
- (b) relevant details concerning any services it provides directly to members of the public;
- (c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;
- (d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- (e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- (f) any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;

- (g) the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and,
- (h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

18. Regulations on Duty to Publish Information

The Commissioner shall:

- (a) issue regulations on minimum standards and best practices regarding the duty of Public Bodies to publish pursuant to section 17 of this Act; and
- (b) ensure that the minimum standards and best practices issued pursuant to paragraph (a) of this section, are adhered to by a Public Body.

19. Maintenance of Records

- (1) Every Public Body shall be under an obligation to maintain its Records in a manner which facilitates the right to information as provided for in this Act and in accordance with the Code of Practice stipulated in subsection (3) of this section.
- (2) Every Public Body shall ensure that adequate procedures are in place for the correction of Personal Information.
- (3) The Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of Records, and, when appropriate, the transfer of Records to the responsible public archives, and from time to time update the same.

20. Training of Officials

Every Public Body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of the provisions of this Act.

21. Reports to the Commissioner

The Information Officer of every Public Body shall annually submit to the Commissioner a report on the activities of the Public Body showing compliance with or, actions taken to promote compliance with the provisions of this Act, which shall include information about:

- (a) the number of requests for information received, granted in full or in part and rejected;
- (b) how often and which sections of the Act were relied upon to reject, in part or in full, requests for information;
- (c) appeals from rejections to communicate information;
- (d) fees charged for requests to information;

- (e) its activities pursuant to sections 18 and 19 of this Act, and;
- (f) its activities pursuant to section 20 of this Act.

Chapter IV

Exceptions

22. Public Interest

Notwithstanding the provisions of this Chapter, a Public or Private Body may not refuse to indicate whether or not it holds a Record, or refuse to communicate information, unless in disclosure the harm to the protected public interest outweighs the public interest.

23. Information Already available to the Public.

Notwithstanding any provision in this chapter, a Public or Private Body may not refuse to communicate information where the said information is already available to the public.

24. Severability

If a request for information relates to Record containing information which, subject to this chapter, falls within the scope of an exception, any information in the Record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the person who made the request.

25. Personal Information

- (1) A Public or Private Body may refuse to indicate whether or not it Holds a Record, or refuse to communicate information, where to do so would involve unreasonable disclosure of Personal Information about a third party.
- (2) The provisions of subsection (1) of this section, shall not apply if:
 - (a) the third party has effectively consented to the disclosure of the information;
 - (b) the person making the request is the guardian of the third party, or the executor of the will of a deceased third party;
 - (c) the third party died more than 20 years ago;
 - (d) the individual is or was an official of a Public Body and the information relates to his function as a public official; or
 - (e) the Commissioner, Minister or the President for good cause permits the release of Personal Information; or
 - (f) a court upon application with notice to the Commissioner orders the release of such information.

- (3) Requests to a Private Body to release Records of Personal Information, and without prejudice to any other provision in this Act, shall also be permitted upon order of the court if the court determines that the disclosure of such Personal Information or Records is in the public interest.

26. Legal Privilege

A Public or Private Body may refuse to indicate whether or not it holds a Record, or refuse to communicate information, where the information is privileged from production in legal proceedings or in the public interest unless the person entitled to the privilege has waived it.

27. Commercial and Confidential Information

A Public or Private Body may refuse to communicate information if:

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
- (b) the information was obtained in confidence from a third party and:
 - (i) it contains a trade secret; or,
 - (ii) to communicate it is likely to prejudice the commercial or financial interests of that third party; or,
- (c) the information was obtained in confidence from another state or international organisation and to communicate it is likely to prejudice relations with that state or international organisation.

28. Health and Safety

A Public or Private Body may refuse to indicate whether or not it holds a Record or refuse to communicate information where to do so would likely endanger the life, health or safety of any individual.

29. Law Enforcement

A Public or Private Body may refuse to indicate whether or not it holds a Record or refuse to communicate information where to do so would likely cause serious prejudice to:

- (a) prevention or detection of crime;
- (b) apprehension or prosecution of offenders;
- (c) administration of justice;
- (d) assessment or collection of any tax or duty;
- (e) operation of immigration controls; or,
- (f) assessment by a Public Body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

30. Defence and Security

A Public Body may refuse to indicate whether or not it holds a Record or refuse to communicate information, where to do so would likely cause serious prejudice to national defence and security.

31. Public Economic Interest

- (1) A Public Body may refuse to indicate whether or not it holds a Record or refuse to communicate information where to do so would likely prejudice the ability of Government to manage its economy.
- (2) A Public Body may refuse to indicate whether or not it holds a Record or refuse to communicate information where to do so would likely prejudice legitimate commercial or financial interests of a Public or Private Body.
- (3) The provisions of subsections (1) and (2) of this section shall not apply where the request relates to the results of any product or environmental testing and the information concerned reveals a serious public safety or environmental risk.

32. Policy Making and Operations of Public Bodies

- (1) A Public Body may refuse to indicate whether or not it holds a Record or refuse to communicate information where to do so would likely:
 - (a) prejudice effective formulation or development of government policy;
 - (b) frustrate the success of a policy by premature disclosure of that policy;
 - (c) undermine the deliberative process in a Public Body by inhibiting free and frank provision of advice or exchange of views; or,
 - (d) undermine the effectiveness of a testing or auditing procedure used by a Public Body.
- (2) The provisions of subsection (1) of this section shall not apply to facts, analyses of facts, technical data or statistical information.

33. Vexatious, Repetitive or Unreasonable Requests

- (1) A Public or Private Body shall not be required to comply with a request for information which is frivolous or vexatious or where it has recently complied with a substantially similar request from the same person.
- (2) A Public or Private Body shall not be required to comply with a request for information where to do so would be likely to result in diversion its resources.

34. Time Limit

- (1) The provisions of sections 26 and 31 of this section shall apply only in as much as the harm they envisage would be more likely to occur at or after the time at which the request is considered.
- (2) The provisions of sections 27(c), 29, 30 and 31 above, shall not apply to a Record which is held in custody for more than 30 years.

Chapter V

The Information Commissioner

35. Appointment of the Information Commissioner

- (1) The Commissioner shall be appointed by the President upon nomination by the Minister after due consideration as to merit, integrity, competence and moral standing.
- (2) A person shall be eligible for appointment to the office of Commissioner if she or he—
 - (a) is a South Sudanese citizen;
 - (b) does not hold a position in a political party;
 - (c) does not hold an elected position at any level of government;
 - (d) is not declared bankrupt or insolvent; or, has not been convicted of a crime involving violence, dishonesty or moral turpitude for which he has not been pardoned.
- (3) The Commissioner shall hold office for a term of three (3) years, and may be re-appointed for one additional term.
- (4) The Commissioner may be removed by the President, upon recommendation by the Minister.
- (5) To assume office, the Commissioner shall take the following oath of office before the President:

“I....., do hereby swear by the Almighty God/solemnly affirm that as the Information Commissioner for the Government of South Sudan, I shall be faithful to the people of South Sudan, defend and protect the Constitution, uphold the Right to freedom of Information as provided in the Constitution, the Right to Information Act, and the laws of South Sudan and that I shall faithfully discharge my functions and duties to the best of my ability, so help me God”

36. Independence and Powers

- (1) The office of the Information Commissioner shall enjoy operational and administrative autonomy and be free from control or direction of any other person or entity or any of their agencies except as specifically provided by law.
- (2) The office of the Commissioner shall have all powers, direct or incidental, as are necessary for the discharge of its functions and duties as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.

37. Status

The Information Commissioner shall enjoy the status of an Undersecretary and shall be accorded all the rights and privileges of this office.

38. Support Staff

- (1) The Commissioner shall recruit such administrative and technical staff as shall be necessary to enable him or her to perform his functions and duties.
- (2) All recruitment procedures and employment shall be in accordance with the Civil Service laws and regulations.

39. Functions of the Commissioner

In addition to any other powers, functions and duties provided for in this Act, the Commissioner shall:

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

40. Reporting

- (1) The Commissioner shall, within three months after the end of each financial year, submit to the Assembly an annual report on compliance by Public Bodies with this Act, the activities of his or her office and audited accounts of the office during that financial year.

- (2) The Commissioner may from time to time submit to the Office of the President or the Minister such other reports as he or she deems appropriate or as may be required.

Chapter VI

Enforcement by the Commissioner

41. Complaints

A person who has made a request for information may apply to the Commissioner for a decision that a Public or Private Body has failed to comply with an obligation under this Act, including by:

- (a) refusing to indicate whether or not it holds a Record, or to communicate information, contrary to section 7 of this Act;
- (b) failing to respond to a request for information within the time limits established in section 10 of this Act;
- (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 11 of this Act;
- (d) failing to communicate information forthwith, contrary to subsection 11(2) of this Act;
- (e) charging an excessive fee, contrary to section 12 of this Act;
- (f) failing to communicate information in the form requested, contrary to section 13 of this Act; or
- (g) wrongfully relying on one of the exceptions in Chapter IV of this Act.

42. Settlement of Complaints

- (1) The Commissioner shall, subject to the provisions of subsection (2) of this section, decide on an application under section 41 of this Act, as soon as possible, and in any case not later than thirty days, after giving both the complainant and the relevant Public Body or Private Body an opportunity to respond in writing.
- (2) The Commissioner may summarily reject applications:
 - (a) which are frivolous, vexatious or clearly unwarranted; or,
 - (b) where the applicant has failed to use any effective and timely internal appeal mechanisms provided by the relevant Public or Private Body.
- (3) In any application under Section 41 of this Act, the burden of proof shall be on the Public or Private Body to show that it acted in accordance with its obligations under this Act.
- (4) In his or her decision pursuant to subsection (1) of this Act, the Commissioner may:
 - (a) reject the application;
 - (b) require the Public or Private Body to take such steps as may be necessary to bring it into compliance with its obligations under this Act;

- (c) require the public body to compensate the complainant for any loss or other detriment suffered; or,
 - (d) in cases of egregious or wilful failures to comply with an obligation under this Act, impose a fine on the Public Body.
- (5) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or Private Body.

43. Transparency

- (1) Regardless of a complaint having been made but after giving a Public Body an opportunity to respond in writing, the Commissioner may decide that a Public Body has failed to comply with an obligation under Chapter III of this Act.
- (2) The Commissioner may in his or her decision pursuant to the provisions of subsection (1) of this section, require the Public Body to take such steps as may be necessary to bring it into compliance with its obligations under Chapter III of this Act, including:
- (a) appointing an Information Officer;
 - (b) publishing certain information or categories of information;
 - (c) making certain changes to its practices in relation to the keeping, management and destruction of Records or the transfer of Records to the Government archives;
 - (d) enhancing the provision of training on the right to information for its officials;
 - (e) providing him or her with an annual report, in compliance with section 21 of this Act; and,
 - (f) in cases of egregious or wilful failures to comply with an obligation under Chapter III herein, paying a fine;
 - (g) The Commissioner shall serve notice of his or her decision, including any right of appeal, upon the Public Body.

44. Power to Investigate

- (1) In making a decision pursuant to the provisions of sections 42 or 43 of this Act, the Commissioner shall have the power to conduct full investigation, including issuing orders requiring the production of evidence and compelling witnesses to testify.
- (2) The Commissioner may, during an investigation pursuant to the provisions of subsection (1) of this section, examine any Record to which this Act applies, and no such Record may be withheld from the Commissioner on any grounds.
- (3) No criminal or civil proceedings shall be made against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Act.

- (4) For purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act is privileged unless that information is shown to have been said or supplied with malice.

45. Appeal against Commissioner's Decisions and Orders

- (1) The complainant, or the relevant Public or Private Body may within forty-five days, appeal to the competent Court for review of the Commissioner's decision pursuant to sections 42 or 43 of this Act, or an order pursuant to section 44(1) of this Act.
- (2) In any appeal from a decision pursuant to section 42 of this Act, the burden of proof shall be on the Public or Private Body to show that it acted in accordance with its obligations under Chapter II.
- (3) Upon expiry of the 45 day period for appeals pursuant to subsection (1) of this section, the Commissioner may certify in writing to the court any failure to comply with a decision pursuant to section 42 or 43 of this Act, or an order pursuant to subsection 44(1) of this Act, and the court shall consider such failure under the rules relating to contempt of court.

Chapter VII

MISCELLANEOUS PROVISIONS

46. Bona fide Disclosures

- (1) No one shall be subjected to any legal, administrative or employment-related proceedings, regardless of any breach of a legal or employment obligation, for releasing information on wrong doing, or that which would disclose a threat to health, safety or the environment, as long as he or she acted in good faith and the information was substantially true and disclosed as evidence of wrongdoing or a serious threat to health, safety or the environment.
- (2) For purposes of subsection (1) of this section, wrong doing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a Public Body.
- (3) For purposes of subsection (1) of this section, individuals shall be protected against 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 conferred under this Act as long as they acted reasonably and in good faith.

47. Offences

- (1) It shall be an offence to:
 - (a) obstruct access to any Record contrary to Chapter II of this Act;

- (b) obstruct the performance by a Public Body of a duty under Chapter III of this Act;
 - (c) interfere with the work of the Commissioner; or,
 - (d) destroy Records without lawful authority.
- (2) Whoever commits any of the offences referred to under subsection (1) of this section shall, upon conviction, be liable to imprisonment for a term not exceeding two years, a fine, or both.

58. Regulations

- (1) The Commissioner shall in consultation with the Minister make such regulations appropriate and necessary for the effective and efficient implementation of provisions of this Act, specifically, regarding:
- (a) additional forms of communication of information under section 14(2) of this Act;
 - (b) training of officials under section 21 of this Act;
 - (c) reports to the Commissioner under section 22 of this Act;
 - (d) any notice required by this Act; or
 - (e) any administrative or procedural matter necessary to give effect to this Act.
- (2) When interpreting any provision of this Act, the court shall adopt such reasonable interpretation that shall better give effect to the right of access to information.
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