

H.B. 6, 2019.]



## FREEDOM OF INFORMATION BILL, 2019

### Memorandum

This Freedom of Information Bill, 2019 will repeal the Access to Information and Protection of Privacy Act [Chapter 10:27]. The Bill will give effect to section 62 of the Constitution which enshrines in the Declaration of Rights the right of access to information.

In brief, the Bill sets out—

- the procedure for access to information held by public institutions by the citizenry and permanent residents;
- the procedure for accessing by any person of information held by any person where the information is necessary for the exercise or protection of a right;
- considerations for the making available on a voluntary basis by entities, certain categories of information thereby obviating the need for formal requests for such information;
- the scope of limitations on the right of access to information which are conceived, in some cases, as mandatory and in others as discretionary, protections against disclosure of information;
- the rights of third parties with respect to any information whose disclosure has been requested;
- the role of principle officers of entities and information officers in the implementation of the right to access information;
- the procedures for internal appeals and court appeals against decisions made by information officers or principle officers of entities with respect to requests for access to information;
- the time limits within which processes must be carried out; and
- the additional functions of the Human Rights Commission with respect to the right of access to information, which are to be exercised in the normal course of its role as the guardian of human rights.

In more detail, the Bill provides as follows—

### PART I

#### Preliminary

This Part deals with preliminary matters.

*Clause 1* sets out the short title of the Bill which takes its title from the specific constitutional terminology, in line with global trends, with respect to the right.

*Clause 2* defines terms used in the Bill and significant are the following terms around which the Bill is structured, *viz a viz* “principle officer” being the person at the helm of any entity; “information” which is cast very widely; “information officer” and “responsible person” who is the principle officer of a public or public commercial entity.

*Clause 3* states the objects of the Act as being essentially to give effect to the exercise of the right of access to information.

*Part II* of the Bill which deals with providing access to information, creates in *clause 4*, a duty on entities to maintain the information of entities in a manner that facilitates the exercise of the right to access information. The entities are compelled to

generate information in respect of their activities, maintain it systematically for easy retrieval and to securely preserve its integrity.

*Clause 5* requires public entities, public commercial entities and holders of statutory bodies to disclose information which is in the interest of public accountability and in the interests of protecting a right.

Under *Clause 6*, the Act will not apply to information from Cabinet and its committees, with respect to judicial functions.

*Part III* of the Act deals with the process of requesting for access to information.

*Clause 7* sets out the procedure for requesting for access to information. Requests must be in accordance with whether the rights granted by the section 61(1) and (2) of the Constitution, that is to say, requests to public entities may only be made by the citizenry; requests to all entities are open to everyone but they are confined to limited information, i.e. information required for the protection or exercise of a right. A request may be made in writing and an information officer must afford the applicant a copy. A written acknowledgement of the request must be provided immediately, including an immediate response as well if that is possible and satisfactory to the applicant.

An applicant is not required to justify a request nor are the beliefs of the information officer relevant to the grant of a request. The clause also sets out the details that must be included in a request.

*Clause 8* details the procedure for response by an information officer, including the periods within which various stages of dealing with the request must be done. An information officer must, within twenty-one days, determine whether or not to grant a request and the applicant must be notified of the decision within that period, including notification of the fee due, if any, which must be paid before access is granted.

If a request relates to information necessary to safeguard the life or liberty of a person, the information officer's determination whether to grant access must be made within 48 hours.

Any information granted in terms of this Act is presumed to be accurate in every respect.

An applicant may not be given access to information which involves a third party before that party is notified and given an opportunity to consent or to object, giving reasons for any objection.

Where requests are refused, applicants must be notified in writing with full reasons and within the periods provided for and the applicants must be informed of their rights to appeal against decisions of the information officer.

*Clause 9* allows for an extension, once only, of the period within which a response may be made by a period not exceeding fourteen days. The applicant must be notified of the extension and the reasons therefor.

Under *clause 10*, if a response is not dealt with within the specified periods, the information officer is deemed to have refused the request.

A request for access to information which has been prepared for another institution may, under *Clause 11* be deferred until the institution concerned has been presented with the information. The clause also sets out the procedure, including the periods within which a deferment must be handled and concluded to avoid prejudice to the applicant.

*Clause 12* provides for the procedure with respect to information that cannot be found or does not exist.

*Clause 13* details the options of the forms by which access to information may be given. These include inspection, copies of documents, listening, viewing, written transcripts, in print or electronically. A request for access in a form specified by an applicant must be granted unless it is not appropriate or is unduly onerous on the entity. Reasonable steps must be taken to meet the form requested by a person with a disability.

*Clause 14* allows the severance of requested information from information that may not be disclosed.

Under *Clause 15*, an information officer is required to take certain measures set out in that clause before giving access to any medical records of an applicant or of a person represented by an applicant.

Under *Clause 16*, information must be provided in the officially recognised language requested. If the information is not held in that language, the entity must endeavour to cause the information to be translated into the requested language and may recover the cost of the translation from the applicant.

*Clause 17* provides for the prescribing, by the Minister, of various fees, if any, that may be charged for requests for access to information.

*Clause 18* requires responsible persons to make annual reports to the Human Rights Commission on the numbers of requests received, granted, refused, appealed, etc.

*Clause 19* provides that entities are at liberty to publish or give access to any information, even where the information may be exempt from publication in terms of this Act, if it can still properly do so under the law or if required by law to do so.

*Part IV* of the Bill sets out various grounds upon which a request for access should be refused or may be refused for the purpose of protecting rights and interests superior to the right of access. Significant in this Part is that in some instances in clauses under this Part, information must be refused whilst in other instances, information may be refused, signalling a requirement to exercise appropriate discretion.

Thus *clause 20* provides that some information may be refused if it falls under this part.

*Clause 21* forbids the unreasonable disclosure of personal information of people, including deceased people. However, if a person is called upon to make representations with regard to the request and neglects to do so, or if the person consents to the disclosure, or if a person has been dead for more than ten years, or if the request is in respect of a person who is under the care of the applicant and disclosure is in the best interests of the person, a request may not be refused. So too will a request not be refused with respect to the personal information of a person who was an officer of a public entity to the extent that the information requested relates to the person's information as an officer of the public entity. The disclosure of personal information relating to a deceased person may be granted with the consent of their next of kin or legal representative or if the information is requested by an executor of the estate of the deceased person.

Under *Clause 22*, trade secrets, financial or commercial information or information of a third party or information supplied in confidence by a third party should not be disclosed. A private entity is similarly protected under this clause. Exceptions to this protection include consent by the third party, disclosure necessary to facilitate accountability, disclosure relating to expenditure of public funds or disclosure which would reveal misconduct or deception.

Under *Clause 23*, disclosure which would constitute a breach of a duty of confidence owed to a third party is prohibited. Also under this clause, an information officer can

exercise his or her discretion with regard to the disclosure of information supplied in confidence by a third party and if it is in the public interest that similar information should continue to be supplied.

Under *Clause 24*, disclosure of information is prohibited where disclosure is likely to endanger the life or safety of any person. An information officer may, in his discretion, refuse a request whose disclosure might be inimical to the security of any property or the safety of the public.

*Clause 25* sets out situations where access to information in bail proceedings must be refused and situations where access may, in the discretion of the information officer, be refused in order to avoid impeding the prosecution of offences, and to prevent the circumvention of the law resulting in the miscarriage of justice or facilitating the commission of offences. Information may not be refused to the extent that it relates to the general conditions of detention of persons in custody. In addition, an information officer is authorised to refuse to deny or confirm the existence or non-existence of any information which he must refuse or which he may refuse to disclose.

Under *Clause 26*, unless consent is given by the person concerned, legally privileged information, i.e., confidential communications between the person and their doctor or lawyer or between journalists and their sources are not to be disclosed.

*Clause 27* details the circumstances in which an information officer may refuse a request for access to information concerning the defence, security and international relations of the State. Also under this clause, an information officer is authorised to refuse to deny or confirm the existence or non-existence of any information which he or she may refuse to disclose.

Similarly under *Clause 28*, access to information relating to the economic interests and financial welfare of the State may be refused if disclosure is likely to materially jeopardise the interests and welfare of the State. The clause details the nature of the information protected and extends to cover public entities. However, access to information may not be refused if disclosure will facilitate accountability and transparency by the State or public entities.

Research information of third parties must not, under *Clause 29*, be disclosed if disclosure is likely to cause serious disadvantage to a third party, a researcher or the subject matter of the research. Under the same clause, research information of an entity may not be disclosed if disclosure would expose the entity, researcher or subject matter to disadvantage.

The protection afforded under *Clause 30* is designed to enable entities to conduct their operations without opinions, consultations, minutes of meetings or any other deliberations being the subject of mandatory disclosure so as to avoid inhibiting candidness or premature disclosures which are detrimental to the success of policies or could jeopardise the effectiveness of implementation of policies. Access may however not be denied if the information has been in existence for more than twenty years or if the information is required in terms of the Administrative Justice Act [*Chapter 10:28*].

Under *Clause 31*, information officers may refuse access to information if the request is frivolous or vexatious or if the work involved in processing a request would substantially and unreasonably divert the resources of an entity. In such circumstances, the information officer is required to notify the applicant giving reasons why the request is so regarded.

*Part V* of the Bill sets out the procedure to be followed in instances of requests for access to information which affects third parties.

Under *Clause 32*, where access to information which involves information of a third party which is protected under Part V is requested, an information officer is required to take all necessary steps to notify the third party of the details of the request, the protection which might apply in terms of Part V of the Bill, the reasons why *Clause 37* with respect to a possible overriding public interest might apply. The clause sets out the periods within which the notification must be made.

Under *Clause 33*, a third party is granted the right to make representations with respect to a request or to indicate his or her consent to the request. This must be done within a stated period.

Under *Clause 34*, an information officer must make a decision within a specified period and notify the third party of the decision. The decision must take account of the representations and, in the case where it was not possible to notify a third party of the request, the fact that the third party did not have the opportunity to make representations. If the decision is to grant access, the third party must be notified of the right to appeal within a specified period and that access will not be granted until after the determination of the appeal.

In *Part VI*, the Bill provides for appeals by applicants or third parties against decisions of an information officer.

Under *Clause 35* such appeals, other than an appeal in terms of Clause 8, will be appeals to the Secretary of the Zimbabwe Media Commission.

*Clause 36* sets out the procedure for an appeal and the periods within which actions must be taken.

*Clause 37* elaborates on the procedure for appeals if the information involved affects a third party.

*Clause 38* sets out the process to be followed by the Commission in coming to a decision on an internal appeal, the period within which the decision must be made, the notification thereof to the parties concerned including advising on the right to appeal the internal appeal to the High Court. If a principle officer of an entity fails to give notice of a decision within the specified periods, he or she is deemed to have dismissed the appeal.

*Part VII* provides for general matters. These are: exemption from liability under *Clause 39* of persons acting in good faith in the performance of their functions under the Act and regulatory powers of the Commission under *Clause 40*, provides for the power of the Commission to make regulations in consultation with the Minister in terms of this Act.

Finally, *Clause 41* repeals the Access to Information and Protection of Privacy Act [*Chapter 10:27*].



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# BILL

TO additionally provide for the constitutional rights of expression, and freedom of the media; to provide further for the right of access to information held by entities in the interest of public accountability or for the exercise or protection of a right; to repeal the Access to Information and Protection of Privacy Act [*Chapter 10:27*]; and to provide for matters connected therewith.

WHEREAS section 61 of the Constitution provides as follows—

## ***“61 Freedom of expression and freedom of the media***

- 10           (1) *Every person has the right to freedom of expression, which includes—*
- (a) *freedom to seek, receive and communicate ideas and other information;*
  - (b) *freedom of artistic expression and scientific research and creativity; and*
  - (c) *academic freedom.*
- 15           (2) *Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists’ sources of information.*
- (3) *Broadcasting and other electronic media of communication have freedom of establishment, subject only to State licensing procedures that—*
- (a) *are necessary to regulate the airwaves and other forms of signal distribution; and*
  - 20           (b) *are independent of control by government or by political or commercial interests.*
- (4) *All State-owned media of communication must—*

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- (a) *be free to determine independently the editorial content of their broadcasts or other communications;*
  - (b) *be impartial; and*
  - (c) *afford fair opportunity for the presentation of divergent views and dissenting opinions.* 5
- (5) *Freedom of expression and freedom of the media exclude—*
- (a) *incitement to violence;*
  - (b) *advocacy of hatred or hate speech;*
  - (c) *malicious injury to a person’s reputation or dignity; or*
  - (d) *malicious or unwarranted breach of a person’s right to privacy.* 10

AND WHEREAS section 62 of the Constitution provides as follows—

**“62 Access to information**

(1) *Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.* 15

(2) *Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.*

(3) *Every person has a right to the correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of the government at any level, and which relates to that person.* 20

(4) *Legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.”;* 25

AND WHEREAS it is desirable, in accordance with the Constitution, to make further provision in regard to access to information;

NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe as follows— 30

**PART I**

**Preliminary**

**1 Short title**

This Act may be cited as the Freedom of Information Act, 2019 [*Chapter 10:33*].

**2 Interpretation** 35

In this Act—

“applicant” means a person requesting access to information in terms of this Act;

“Commission” means the Zimbabwe Media Commission established by section 248 of the Constitution; 40

“entity” means a private entity, public entity, public commercial entity or statutory office;

“information” includes but is not limited to any original or copy of documentary material irrespective of its physical characteristics, such as records,

correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the entity to which a request is made under this Act;

5 “information officer” means a person designated as such by the principle officer of an entity or any person acting in that capacity;

“media” has the meaning given to it under the Zimbabwe Media Commission Act [*Chapter 10:34*];

10 “Minister” means the Minister responsible for information or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“personal information” means information about an identifiable individual, and includes—

15 (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;

20 (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, fingerprints or blood type of the individual;

25 (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

(f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

30 (g) the views or opinions of another individual about the individual;

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and

35 (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, but excludes information about an individual who has been dead for more than twenty years;

40 “principal officer”, in relation to any entity, means the person who is the executive head, by whatever name known, of the entity concerned, or any person acting in that capacity;

“private entity” means an entity other than a public entity, public commercial entity or statutory office;

45 “public commercial entity” means a company or other commercial entity which is owned or controlled by the State or by a person on behalf of the State;

“public entity” has the meaning given to it in the Public Finance Management Act [*Chapter 22:19*];

50 “responsible person” means the principal officer or one of several officers of—

(a) a public entity;

- (b) a public commercial entity;  
whose duty it is to create, keep, organise and maintain information on behalf of the entity;
- “Secretary” means the Secretary of the Zimbabwe Media Commission;
- “third party”, in relation to a request for access to information, means any person, group of persons or organisation other than the person who made the request;
- “trade secret” means information, including a formula, pattern, compilation, programme, device, product, method, technique or process, that is used, or may be used, in business or for any commercial advantage and—
  - (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
  - (b) is the subject of reasonable efforts to prevent it from becoming generally known; and
  - (c) the disclosure of which would result in harm or improper benefit.

### 3 Objects of Act

The objects of this Act are—

- (a) to give effect to the right of access to information in accordance with the Constitution; and
- (b) to establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to information so as to facilitate swift, inexpensive and simple access to information; and
- (c) to promote transparency, accountability and effective governance by taking any steps necessary to—
  - (i) educate or inform the public of their rights in terms of this Act; and
  - (ii) ensure that appropriate assistance is afforded to members of the public seeking to exercise their right of access to information in order to facilitate the exercise of the right.

## PART II

### Access to Information

#### 4 Duty to create, keep, organise and maintain information

Every responsible person or holder of a statutory office shall cause to be created, kept, organised and maintained information—

- (a) in the interests of public accountability; or
- (b) in the exercise or protection of a right.

#### 5 Duty to disclose information

Subject to this Act, every public entity, public commercial entity or holder of a statutory office shall have a written information disclosure policy through which it discloses information in the interests of public accountability or that is required for the exercise or protection of a right.

#### 6 Act not to apply to certain public entities and persons

This Act does not apply to information relating to—

- (a) deliberations or functions of the Cabinet and its committees;
- (b) information protected from disclosure in victim friendly courts.

### PART III

#### Request for Access to Information

## 5    **7 Requests for access to information**

(1) Any person who wishes to request access to information from any public entity, public commercial entity or the holder of a statutory office in accordance with the rights granted under this Act may apply in writing in a prescribed manner to an information officer of the public entity, public commercial entity or holder of a statutory office concerned.

(2) On receipt of a request, an information officer must immediately provide a written acknowledgement of the request to the applicant.

(3) If an information officer is able to provide an immediate response to an applicant that is to the satisfaction of the applicant, the information officer shall make the response.

## **8 Response to request**

(1) Subject to subsection (2), an information officer to whom a request is made shall, as soon as is reasonably possible, but in any event within twenty-one days of the date of the request—

- (a) determine whether to grant the request; and
- (b) notify the applicant of the decision whether to grant the request in writing; and
- (c) subject to subsection (7), if the request is granted, give the applicant access to the information.

(2) Where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the responsible person or holder of a statutory office shall, within forty-eight hours of the submission of the request—

- (a) determine whether or not the request may be granted; and
- (b) notify the applicant of the decision whether to grant the request in writing; and
- (c) if the request is granted, give the applicant access to the information within the same forty-eight-hour period.

(3) If a request is granted, the notification referred to in subsection (1) or (2) must specify—

- (a) the form in which access to the information will be given; and
- (b) the fees due, including any reproduction, translation or transcription fees, if any, payable before the further processing of the request.

(4) Subject to subsection (6), where an information officer notifies that a request has been granted, an information officer shall—

- (a) if any prescribed fee is payable, upon payment of the fee by the applicant; or
- (b) if no fee is payable, immediately;

give access to the information to the applicant.

(5) Any information provided to an applicant in terms of this Act shall be presumed to be true and accurate in every respect and the applicant shall be entitled to rely on and use it on that basis.

(6) Subject to subsection (5) when an information officer produces an updated or corrected version of any information previously provided, all other previous versions of such information shall cease to be presumed true and accurate in every respect. 5

(7) Where the information requested contains third party information, the applicant may not be given access to such information until any right of the third party to appeal the release of the information has expired or until any appeal lodged by the third party has been finally determined in terms of section 40. 10

(8) Notwithstanding subsection (7), an information officer officer may, as soon as possible, provide information to an applicant after having severed and redacted all relevant third party information in accordance with section 14:

Provided that such third party information is immaterial to the information being requested. 15

(9) If a request is refused, the notification referred to in subsection (1) or (2) shall—

- (a) state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the information officer; and 20
- (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
- (c) inform the applicant of the right to appeal against the decision in terms of section 35.

(10) If upon considering a request for access to information that is the subject of the request in terms of subsection (2), the responsible person or holder of a statutory office does not consider that the information requested reasonably appears to be necessary to safeguard the life or liberty of a person, he or she shall, within forty-eight hours of the submission of the request for access— 25

- (a) notify the applicant accordingly; and 30
- (b) inform the applicant that he or she has the right to appeal the decision on an urgent basis to the Commission in terms of section 36(5).

(11) Subject to subsection (1) where any part of the information requested can be provided within the period specified under subsection (1), an information officer shall respond as soon as possible with respect to the available information. 35

## 9 Extension of time

(1) Subject to subsection (2), an information officer to whom a request is made in terms of section 8(1) may, within the initial twenty-one days, seek the consent of the applicant for an extension of time for a period not exceeding fourteen days if—

- (a) the request is for a large amount of information or requires a search through a large amount of information and meeting the original time limit would unduly interfere with the operations of the entity concerned; or 40
- (b) consultations that cannot reasonably be completed within twenty-one days are necessary to comply with the request.

(2) Where an applicant is of the view that the seeking of consent to extend time by the principal officer is merely dilatory, or the information officer does not obtain the consent of the applicant for the extension, the applicant or the information officer, as the case may be, may lodge an appeal with the Commission in terms of section 35. 45

## 10 Deemed refusal

If an information officer fails to notify a decision on a request for access to information—

- (a) within the period specified in section 8(1); or
- 5 (b) where that period has been extended in accordance with section 9, within the extended period;

the information officer shall be deemed to have refused the request

## 11 Deferment of access

(1) An information officer who receives a request may defer the provision of access to the information if—

- (a) the information has been prepared for presentation to Parliament; or
- (b) the information or part thereof constitutes a report that has been prepared for the purpose of reporting to a public entity or to a public officer, but only until the report has been presented or made available to that public entity or public officer or upon the expiration of thirty days from the date of the request, whichever is the sooner; or
- 15 (c) the information is *sub judice*.

(2) If an information officer defers access to information in terms of subsection (1), he or she must notify the applicant in writing of—

- 20 (a) the deferral within twenty-one days of the date of the request; and
- (b) the reason for the deferral, including the provisions of this Act relied on; and
- (c) the likely period for which access is to be deferred; and
- 25 (d) the applicant's right to make representations, within fourteen days of receiving notice, to the information officer regarding why the information is required before such presentation, in the case of a deferral by reason of subsection (1)(a) or (b).

(3) If representations have been made in terms of subsection (2)(d), an information officer shall, after due consideration of those representations, within 30 five days of the representations being made, grant the request for access if there are reasonable grounds for believing that the applicant will suffer substantial prejudice if access to the information is deferred for the period referred to in subsection (2)(c).

## 12 Information that cannot be found or does not exist

- (1) If an information officer has—
- 35 (a) taken all reasonable steps to find the information requested; and
- (b) concluded that the information—
  - (i) cannot be found; or
  - (ii) does not exist;

40 the information officer shall, within twenty-one days of the receipt of the request, notify the applicant in writing that the information cannot be found or does not exist.

(2) If information is found after notification of the applicant in terms of subsection (1), the information officer must notify the applicant in writing within fourteen days of the information being found and thereafter proceed in terms of section 8.

## 13 Forms of access

45 (1) Access to information must be given to an applicant in one or more of the following forms—

- (a) through a reasonable opportunity to inspect the information; or
- (b) by way of a copy of the information; or
- (c) in the case of information that is an article or thing by means of which sounds or visual images are capable of being reproduced, by making of suitable arrangements for the person to hear, view, record or copy those sounds or visual images; or 5
- (d) in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by the provision of a written transcript; or 10
- (e) in the case of information which is held on a computer, or in electronic or machine-readable form, and from which the entity concerned is capable of producing a printed copy of the information or part thereof, by supplying such a copy; or
- (f) in the case of information available or capable of being made available in computer readable form, by supplying a copy in that form. 15

(2) Subject to subsection (4), where an applicant has requested access to information in a particular form, access must be given in that form.

(3) An applicant may amend their preferred form of access (on payment of any reproduction, translation or transcription fees payable) if access has been granted in the form initially requested. 20

(4) If giving access to information in the form requested by an applicant is likely to—

- (a) unreasonably interfere with the operations of the entity concerned; or
- (b) be detrimental to the preservation of the information; or 25
- (c) be inappropriate, having regard to the physical nature of the information;

access in that form may be refused if access is given in another form authorised under this Act.

(5) Where a person requests access to information in a particular form and for a reason specified in subsection (4), access in that form is refused but access is given in another form, the reproduction fee charged may not exceed the fee that would have been charged if the applicant had been given access in the form requested. 30

## 14 Severability

Where any information is contained in a record or document with information protected in terms of this Act, the protected information shall be severed from the record or document and access to the remainder of the information shall be granted to the applicant. 35

## 15 Access to health or other records

(1) If an information officer receives, in terms of this Part, a request for access to information provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being— 40

- (a) of an applicant; or
- (b) if the request has been made on behalf of a person to whom the record relates, of that person;

and the information officer is of the opinion that the disclosure of the information might cause serious harm to the applicant's or that person's physical or mental health, 45

or well-being, the information officer shall, before giving access to the record of the information, consult with a health practitioner who, subject to subsection (2), has been nominated by the applicant or the representative referred to in paragraph (b).

(2) If the person represented in terms of subsection (1)(b) is—

- 5 (a) under the age of eighteen years, a person having parental responsibilities for that person shall make the nomination contemplated in subsection (1); or
- (b) incapable of managing his or her own affairs, a person appointed by the court to manage those affairs must make the nomination contemplated in subsection (1).

10 (3) If, after being given access to the record concerned, the health practitioner consulted is of the opinion that the disclosure of the information to the persons concerned is likely to cause serious harm to his or her physical or mental health, or well-being, the information officer may only give access to the information if the applicant proves to the satisfaction of the information officer that adequate provision has been made for  
15 such counselling or arrangements as are reasonably practicable and necessary before, during or after the disclosure of the information to limit, alleviate or avoid any harm.

(4) Before access to the information is so given in terms of this section, the person responsible for the counselling or arrangements shall be given access to the record.

## 20 **16 Language of access**

(1) Information must be provided to an applicant in such officially recognised language as the applicant requests.

25 (2) Where an entity does not hold the information in the requested language, the entity concerned shall endeavour to translate it into the requested language and may recover the reasonable costs of the translation from the applicant.

## **17 Fees**

(1) The applicant shall be notified of the fees due, if any, in terms of section 8(3)(b) for access to information before further processing of the request is carried out.

30 (2) If the preparation of the information, including any arrangements provided for in section 13 or section 16 would, in the opinion of the information officer of an entity, require more than the time prescribed for this purpose in terms of subsection (4), the information officer may notify the applicant in writing to pay as a deposit an amount not more than one third of the access fee payable.

35 (3) An applicant shall pay, in addition to the access fees prescribed in terms of this section, an additional fee for any time reasonably required in excess of the prescribed hours to search for and prepare the information requested.

(4) Fees prescribed in terms of this section may reasonably allow for—

- 40 (a) the cost of making a copy of the information in any form referred to in section 13;
- (b) the time reasonably required to search for information and preparation of information;
- (c) the costs of translation where a request is made that information released be made available in a language other than a language in which it is already held by the entity;
- 45 (d) payment for the inspection of any records.

- (5) The Minister may, by notice in the *Gazette*—
  - (a) exempt any person or class of persons from paying any fee referred to in this section;
  - (b) determine that any fee referred to in this section is not to exceed a certain maximum amount; 5
  - (c) determine the manner in which any fee referred to in this section is to be calculated;
  - (d) determine that any fee referred to in this section does not apply to a particular class of information or records.

**18 Reports to Commission** 10

Every responsible person or holder of a statutory office must annually submit to the Commission a report stating the number of—

- (a) requests for access to information received;
- (b) requests for access granted in full;
- (c) requests for access refused in full or partially and the number of times a specified provision of this Act was relied on to refuse access in full or partially; 15
- (d) cases in which the periods stipulated in section 8(1) were extended in terms of section 9;
- (e) the number of times that a request for access was regarded as having been refused in terms of section 10; 20
- (f) such other matters as may be prescribed.

**19 Entities may grant greater access to information**

Nothing in this Act shall be construed as preventing or discouraging any entity from publishing or giving access to information, including information exempt from disclosure in terms of this Act, where they can properly do so or are required by law to do so. 25

PART IV

Grounds for Refusal of Access to Information

**20 Refusal of access** 30

An entity may refuse to grant access to information only if the information falls within an exemption provided for in this Part.

**21 Protection of personal information of a third party who is a natural person**

(1) Subject to subsection (2), an information officer shall refuse a request for information if the release of the information would involve the disclosure of personal and confidential information about a third party who is a natural person, including a deceased person. 35

- (2) A request may not be refused in terms of subsection (1) where—
  - (a) the third party does not make any representations in terms of section 34(1) stating why access to the information should not be granted; or 40
  - (b) the third party consents to the disclosure; or
  - (c) the third party has been deceased for more than ten years; or

- (d) the information is already publicly available; or
- (e) the information relates to the physical or mental health or wellbeing of a person who is under the care of the applicant and who is—
  - (i) under the age of eighteen years; or
  - (ii) incapable of understanding the nature of the request; and giving access would be in the best interests of the individual; or
- (f) the information is about a deceased person and the applicant is—
  - (i) the next of kin or legal representative of the deceased person; or
  - (ii) making the request with the written consent of the deceased person's next of kin or legal representative; or
  - (iii) the executor of the estate of the deceased person; or
  - (iv) the trustee of a trust which can benefit from the estate of the deceased person; or
- (g) the information relates to the position or functions of a person who is or was an officer of a public entity, including but not limited to—
  - (i) the title, work address, work phone number and other similar particulars of the officer; and
  - (ii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the officer; and
  - (iii) the name of the individual on a record prepared by the officer in the course of employment; or
- (h) the information was given to an entity by the person to whom it relates and the person was informed by or on behalf of the entity, before it was given, that the information belongs to a class of information that would or might be made available to the public.

## 22 Protection of commercial information of third party and private entity

- (1) Subject to subsection (3), the information officer of an entity shall refuse a request for access to information of the entity if the information contains—
- (a) trade secrets of a third party;
  - (b) financial, commercial, scientific or technical information that is proprietary to a third party, and the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
  - (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—
    - (i) to put that third party at a disadvantage in contractual or other negotiations; or
    - (ii) to prejudice that third party in commercial competition.
- (2) Subject to subsection (3), the information officer of a private entity shall refuse a request for access to the information of the private entity which contains—
- (a) trade secrets of that private entity;
  - (b) financial, commercial, scientific or technical information that is proprietary to that private entity, the disclosure of which would be likely to cause harm to the commercial or financial interests of that private entity; or

- (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or
  - (ii) to prejudice that third party in commercial competition. 5
- (3) The information officer shall not refuse to provide information in terms of subsection (1) or (2) if that information consists of information—
  - (a) already publicly available; or
  - (b) about a third party who has consented in terms of section 33(2) or otherwise in writing to its disclosure to the applicant concerned; or 10
  - (c) the disclosure of which would facilitate accountability and transparency of decisions taken by an entity, other than preliminary results of any tests, research, preparations or other investigations conducted for the purpose of developing any policy; or
  - (d) which relates to the expenditure of public funds; or 15
  - (e) the disclosure of which would reveal misconduct or deception.

**23 Protection of certain other confidential information of third party**

- (1) Subject to subsection (2), an information officer—
  - (a) shall refuse a request for access to information of the entity if the disclosure of the information would constitute a breach of a duty of confidence owed to a third party in terms of any agreement; or 20
  - (b) may refuse a request for access to information of the entity if the information consists of information that was supplied in confidence by a third party and the disclosure of which could reasonably be expected to prejudice the future supply of similar information or information from the same source. 25
- (2) Information may not be refused in terms of subsection (1) to the extent that it consists of information—
  - (a) already publicly available; or
  - (b) about a third party who has consented in terms of section 33(2) or otherwise in writing to its disclosure to the applicant concerned. 30

**24 Protection of safety of individuals and property**

- (1) An information officer of an entity shall refuse a request for access to any information of the entity if the disclosure could reasonably be expected to endanger the life or physical safety of an individual. 35
- (2) An information officer of an entity may refuse a request for access to information of the entity if its disclosure would be likely to prejudice or impair—
  - (a) the security of any property whatsoever; or
  - (b) the methods, systems, plans or procedures for the protection any property whatsoever; 40
  - (c) the safety of the public or any section of the public.

**25 Protection of information in bail proceedings, law enforcement and other legal proceedings**

- (1) An information officer of a public entity, public commercial entity or holder of a statutory office— 45

- (a) shall refuse a request for access to information if access to that information is prohibited in terms of section 117A(10) of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; or
- (b) may refuse a request for access to information if—
  - 5 (i) the record contains methods, techniques, procedures or guidelines for—
    - A. the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law; or
    - B. the prosecution of alleged offenders;
  - 10 and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence; or
  - 15 (ii) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the information could reasonably be expected—
    - A. to impede that prosecution; or
    - B. to result in a miscarriage of justice in that prosecution;
  - 20 or
  - (iii) the disclosure of the information could reasonably be expected to—
    - A. prejudice the investigation of a contravention or possible contravention of the law which is about to commence or is in progress or, if the investigation has been suspended or terminated, is likely to be resumed; or
    - 25 B. reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
    - C. result in the interference, intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law; or
    - 30 D. facilitate the commission of a contravention of the law, including, but not limited to, and subject to subsection (2), escape from lawful detention; or
    - 35 E. prejudice or impair the fairness of a trial or the impartiality of an adjudication.

(2) Information may not be refused in terms of subsection (1)(b)(iii)(D) insofar as it consists of information about the general conditions of detention of persons in custody.

## 26 Protection of legally privileged information

An information officer of any entity shall refuse a request for access to information if the information is privileged in terms of laws of Zimbabwe unless the patient, client, source or person entitled to the privilege consents to the release or has waived the privilege.

## 27 Protection of defence, security and international relations of State

- (1) An information officer may refuse a request for access to information of an entity if the disclosure of the information—
- (a) is likely to cause prejudice to—
    - (i) the defence or security of the State; 5
    - (ii) subject to subsection (3), the international relations of the State; or
  - (b) would disclose information—
    - (i) supplied in confidence by or on behalf of another State or an international organisation; or
    - (ii) supplied by or on behalf of the State to another state or an international organisation in terms of an arrangement or international agreement with that state or organisation which requires the information to be held in confidence; or 10
    - (iii) required to be held in confidence by an international agreement or in accordance with customary international law. 15
- (2) Without limiting the generality of subsection (1), information referred to in that subsection shall include information—
- (a) relating to military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities; 20
  - (b) relating to the quantity, characteristics, capabilities, vulnerabilities or deployment of—
    - (i) weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities; or 25
    - (ii) anything being designed, developed, produced or considered for use as weapons or such other equipment;
  - (c) relating to the characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of—
    - (i) any military force, unit or personnel; or 30
    - (ii) any body or person responsible for the detection, prevention, suppression or curtailment of subversive or hostile activities;
  - (d) held for the purpose of intelligence relating to—
    - (i) the defence of the State; or
    - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; or 35
    - (iii) another state or an international organisation used by or on behalf of the State in the process of deliberation and consultation in the conduct of international affairs;
  - (e) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d); 40
  - (f) on the identity of a confidential source or any other source of information referred to in paragraph (d);
  - (g) on the positions adopted or to be adopted by the State, any other state or an international organisation for the purpose of present or future international negotiations; or 45
  - (h) that constitutes diplomatic correspondence exchanged with another state or an international organisation or official correspondence exchanged with diplomatic missions or consular posts of the State.

(3) A record may not be refused in terms of subsection (1)(a)(ii) if it came into existence more than twenty years before the request.

(4) If—

- 5 (a) a request for access to information may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the information would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the information; and
- 10 (b) if the information officer so refuses to confirm or deny the existence or non-existence of the information, a notice to the applicant shall—
  - (i) state that fact; and
  - (ii) identify the provision of subsection (1) in terms of which access would have been refused if the information had existed; and
  - 15 (iii) give adequate reasons for the refusal to the extent that they can be given without causing the harm contemplated in subsection (1); and
  - (iv) state that the applicant may appeal against the decision in terms of section 36.

## 28 Protection of economic interests and financial welfare of State and commercial interests of public entities

20 (1) An information officer of a public entity may refuse a request for access to information of the entity if its disclosure would be likely to materially jeopardise the national economic interests or financial welfare or the ability of the government to manage the national economy effectively in the national best interest.

25 (2) Without limiting the generality of subsection (1), the information referred to in subsection (1) shall include information on—

- (a) a contemplated change in, or maintenance of, a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment;
- 30 (b) a contemplated change in or decision not to change—
  - (i) credit or interest rates; or
  - (ii) customs or excise duties, taxes or any other source of revenue; or
  - (iii) the regulation or supervision of financial institutions; or
  - (iv) government borrowing; or
  - 35 (v) the regulation of prices of goods or services, rents or wages, salaries or other incomes; or
- (c) a contemplated—
  - (i) sale or acquisition of immovable or movable property; or
  - (ii) international trade agreement.

40 (3) Subject to subsection (5), an information officer may refuse a request for access to information if the information—

- (a) contains trade secrets of the State or a public entity;
- (b) contains financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public entity;
- 45 (c) contains information the disclosure of which could reasonably be expected—

- (i) to put a public entity at a disadvantage in contractual or other negotiations: or
- (ii) to prejudice a public entity in commercial competition; or
- (d) is a computer programme owned by the State or a public entity, except insofar as it is required to give access to information to which access is permitted in terms of this Act. 5

(4) The information referred to in subsection (2)(c)(i) shall, without limiting the generality of that provision, include information in connection with an agreement or contemplated agreement to transfer any interest in or right to shares in the capital of a public entity to any person not being a public entity. 10

(5) Access to information may not be refused in terms of subsection (3) to the extent that it consists of information—

- (a) already publicly available; or
- (b) about or owned by an entity, other than the entity to which the request is made, which has consented in writing to its disclosure to the applicant concerned; or 15
- (c) the disclosure of which would facilitate accountability and transparency of decisions taken by the State or an entity, other than preliminary results of any tests, research, preparations or other investigations conducted for the purpose of developing any policy. 20

(6) If a request for access to information contemplated in subsection (5)(c) is granted and any testing or other investigation relevant to that information was carried out by or on behalf of the public entity from which the information is requested, the information officer must at the same time as access to the information is given, provide the applicant with a written explanation of the methods used in conducting the testing or other investigation. 25

## 29 Protection of research information of third party or entity

(1) An information officer may refuse a request for access to information of the entity if the information relates to any research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose— 30

- (a) the third party; or
- (b) the researcher; or
- (c) the subject matter of the research;

to serious disadvantage.

(2) An information officer may refuse a request for access to information of the entity if the information relates to a research being or to be carried out by or on behalf of an entity the disclosure of which would be likely to expose— 35

- (a) the entity; or
- (b) the researcher; or
- (c) the subject matter of the research; 40

to serious disadvantage.

## 30 Operations of public entities

(1) Subject to subsections (3) and (4), an information officer of a public entity, public commercial entity or holder of a statutory office may refuse a request for access to information— 45

- 5 (a) if the information contains an opinion, advice, report or recommendation obtained or prepared, or an account of a consultation, discussion or deliberation that has occurred (including, but not limited to, minutes of a meeting)—
- (i) for the purpose of assisting to formulate a policy; or
- (ii) to take a decision in the exercise of a power or performance of a duty; or
- 10 (b) if the disclosure of the information could reasonably be expected to frustrate the deliberative process in the public entity, public commercial entity or statutory office by inhibiting the candid—
- (i) communication of an opinion, advice, report or recommendation; or
- (ii) conduct of a consultation, discussion or deliberation.
- 15 (c) if the disclosure of the information could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

(2) Subject to subsection (4), an information officer of a public entity, public commercial entity or holder of a statutory office may refuse a request for access to information of the entity concerned if—

- 20 (a) the disclosure of the information could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by the public entity; or
- (b) the information contains evaluative material, whether or not the person who supplied it is identified, and the disclosure of the material would breach an express or implied undertaking which was—
- 25 (i) made to the person who supplied the material; and
- (ii) to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or
- 30 (c) the information contains a preliminary, working or other draft of an official of a public entity.

(3) Access to information may not be refused in terms of subsection (1) if the information came into existence more than twenty years before the request concerned.

35 (4) Access to information may not be refused in terms of subsection (1) or (2) insofar as it consists of an account of, or a statement of reasons required to be given in accordance with the Administrative Justice Act [*Chapter 10:28*].

### **31 Manifestly frivolous or vexatious requests, or requests involving substantial and unreasonable diversion of resources**

- 40 (1) An information officer of an entity may refuse a request for access to information if—
- (a) the request is manifestly frivolous or vexatious; or
- (b) the work involved in processing the request would substantially and unreasonably divert the resources of the entity.
- (2) The information officer shall notify the applicant accordingly, giving reasons
- 45 why the request is considered to fall within either of the descriptions referred to in subsection (1).

## PART V

## Notification and Intervention of Third Parties

**32 Notice to third parties**

(1) An information officer of an entity considering a request for access to information containing information of any third party which may be protected in terms of Part IV must take all reasonable steps to notify the third party concerned in writing of the request. 5

(2) The information officer must notify a third party in terms of subsection (1)—

- (a) as soon as reasonably possible, but in any event, within seven days of the receipt of the request or the transfer of the request to another entity; and 10
- (b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the information officer must—

- (a) state that the information officer is considering a request for information which may include information relating to the third party and describe the content of the information; and 15
- (b) furnish the name of the applicant; and
- (c) describe the protection granted in terms of this Act with respect to the information concerned; and 20
- (d) state that the third party may, within seven days of the date of the notification—
  - (i) make written representations to the information officer why the request for access should be refused; or
  - (ii) give written consent for the disclosure of the information to the applicant. 25

**33 Representations or consent by third party**

(1) A third party notified in terms of section 32(1) of a request for access may, within seven days of the date of the notification—

- (a) make written representations to the information officer concerned stating why the request should be refused; or 30
- (b) give written consent for the disclosure of the information to the applicant concerned.

(2) A third party that becomes aware of a request for access otherwise than in terms of section 32(1) may— 35

- (a) make written representations to the information officer concerned why the request should be refused; or
- (b) give written consent for the disclosure of the information concerned.

**34 Decision on representations for refusal and notice thereof**

(1) An information officer shall, as soon as reasonably possible, but in any event within seven days of any third party being notified as provided for in section 32— 40

- (a) make a decision, after giving due regard to any representations made by a third party in terms of section 33, whether or not to grant the request for access; and

(b) notify the third party concerned of the decision.

5 (2) If, after all reasonable steps have been taken as required by section 32(1), a third party is not notified or is not aware of a request, any decision whether or not to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations as to why the request should be refused.

(3) If a request for access is granted, the notification in terms of subsection (1) (b) must state—

- 10 (a) adequate reasons for the grant of the request, including the provisions of this Act relied upon; and
- (b) that the third party may lodge an appeal in terms of Part VI or an application to court against the decision within seven days of the date of notification of the decision, and the procedure for lodging the appeal; and
- 15 (c) that the applicant will be given access to the record after the expiry of the period referred to in paragraph (b) unless an appeal or application is lodged within that period.

(4) If an information officer decides to grant a request for access, the information officer shall give the applicant access to the information concerned after the expiry of seven days of the date of the notice referred to in subsection (1)(b) unless an appeal or an application to court is lodged against the decision within that period.

20

## PART VI

### APPEALS TO COMMISSION

#### 35 Right to appeal

25 (1) An applicant may lodge an appeal to the Commission against any decision of an information officer in terms of this Act.

(2) A third party may lodge an appeal to the Commission against a decision of the information officer to grant a request for access to information concerning that third party's information.

#### 36 Procedure on appeal

- 30 (1) An appeal shall—
- (a) be lodged in the prescribed form and within thirty days of the date of notification of the decision appealed against; and
- (b) be delivered or sent to the Commission; and
- 35 (c) identify the subject of the appeal and state the reasons for the appeal and may include any other relevant information known to the appellant; and
- (d) if, in addition to a written response, the appellant wishes to be informed of the decision on the appeal in any other manner, provide the necessary details to that effect; and
- 40 (e) if applicable, be accompanied by the prescribed fee referred to in subsection (3); and
- (f) specify the appellant's address and phone number.

(2) If—

45 (a) an appeal is lodged after the expiry of the period referred to in subsection (1), the Secretary of the Commission may, on good cause shown, allow the late lodging of the appeal; or

(b) the Secretary of the Commission disallows the late lodging of the appeal, the Secretary shall give notice of that decision to the appellant.

(3) An appeal against the refusal of a request for access to information shall be accompanied by the prescribed fee, if any and if a fee is payable, the decision on the appeal may be deferred until such fee is paid. 5

(4) As soon as reasonably possible, but in any event within ten working days of the date of the lodging of an appeal, an information officer shall submit to the Secretary of the Commission the application for access to information together with the officer's reasons for refusing access.

(5) The Commission shall prescribe expedited procedures for the hearing of appeals made in the circumstances referred to in section 8(10). 10

### 37 Notice to and representations by third parties

(1) If the Secretary is considering an appeal against the refusal of a request for access to information which affects any third party, the Secretary shall notify any such third party concerned of the appeal unless all necessary steps to locate the third party have been unsuccessful. 15

(2) The Secretary shall notify a third party in terms of subsection (1)—

- (a) as soon as reasonably possible, but in any event within ten working days of the date of the lodging of the appeal; and
- (b) by the fastest means reasonably possible. 20

(3) When notifying a third party in terms of this section, the Secretary shall—

- (a) state that he or she is considering an appeal against the refusal of a request for access to information which affects the third party, describe the content of the record and nature of the information and the provisions of this Act relevant to the information concerned; and 25
- (b) furnish the name of the appellant; and
- (c) in any case where the principal officer of an entity believes that the provisions of section 32 may apply, describe those provisions and state the reasons why he or she is of the opinion that the section may apply; and 30
- (d) state that the third party may, within ten working days of the date of the notification of the third party, make written representations to the Secretary as to why the request for access should not be granted.

(4) A third party that is notified of an appeal in terms of subsection (1) may, within ten working days of the date of the notification, make written representations to the Secretary as to why the request for access should not be granted. 35

(5) A third party that becomes aware of an appeal otherwise than in terms of subsection (1) may—

- (a) make written or oral representations to the Secretary as to why the request for access should be refused; or 40
- (b) give written consent for the disclosure of the information to the applicant concerned.

(6) If the Secretary is considering an appeal against the granting of a request for access to information, he or she shall give notice of the appeal to the applicant concerned. 45

**38 Decision on appeal and notification thereof**

- (1) The decision on an appeal must be made with due regard to—
  - (a) the particulars stated in the appeal; and
  - (b) any reasons submitted by the information officer for the decision appealed against;
  - (c) any representations made by an applicant or a third party in terms of section 32; and
  - (d) if a third party cannot be located, the fact that the third party did not have the opportunity to make representations as to why the appeal should be dismissed.
- (2) When deciding on the appeal, the Commission may confirm the decision appealed against or substitute a new decision for it.
- (3) The Commission shall decide the appeal—
  - (a) as soon as reasonably possible, but in any event within thirty days of the date of the lodging of the appeal;
  - (b) if notice is given to an applicant in terms of section 37(6), within five working days after the applicant concerned has made written representations in terms of section 38(7).
- (4) The Commission shall, immediately after the decision on an appeal, give notice of the decision to every interested party in the matter.
- (5) The notice in terms of subsection (4) shall—
  - (a) state adequately, the reasons for the decision, including the provision of this Act relied upon; and
  - (b) state that the applicant or the third party may appeal to the High Court against the decision on appeal within thirty days of the date of the decision and the procedure for lodging the appeal; and
  - (d) if the Commission decides on an appeal to grant a request for access, state that access shall be granted after the expiry of thirty days of the date of the notice if no appeal is lodged against such decision within that period.
- (6) If the Commission fails to give notice of the decision on an appeal to the appellant in the period contemplated in subsection (3), it shall be deemed to have determined the appeal in favour of the appellant.

**PART VII**

**General**

**39 Liability**

No criminal or civil liability shall attach to any person with respect to anything done or omitted to be done in good faith and without gross negligence in the exercise or performance or purported exercise or performance of any function in terms of this Act.

**40 Regulations**

(1) The Commission, after consultation with the Minister, may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the Commission's opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

(2) Regulations may provide for—

- (a) any matter relating to the levy of fees contemplated in terms of this Act;
- (b) the form of any notice required by this Act;
- (c) uniform criteria to be applied by the information officer of an entity when deciding which information is to be made available; 5
- (d) the standards to be observed by employees of public entities when responding to requests for information;
- (e) the procedures and code of ethics to be followed when disclosing information;
- (f) persons, organisations or institutions exempted from the provisions of this Act; 10
- (g) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(3) Regulations made in terms of subsection (1) may provide for penalties for contraventions thereof: 15

Provided that no such penalty shall exceed a fine of level six or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

#### **41 Repeal of Cap. 10:27 and savings**

(1) Subject to subsection (2) The Access to Information and Protection of Privacy Act [*Chapter 10:27*] is repealed. 20

(2) All statutory instruments or made under the Access to Information and Protection of Privacy Act [*Chapter 10:27*] shall remain in force as if they had been made under the appropriate provision of this Act and may be amended, replaced or repealed accordingly.