



TASMANIA

FREEDOM OF INFORMATION ACT 1991

No. 22 of 1991

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FREEDOM OF INFORMATION ACT 1991

No. 22 of 1991

AN ACT to give members of the public the right to obtain information contained in the records of the Government and its agencies and for related purposes

[Royal Assent 15 October 1991]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Freedom of Information Act 1991*.

Commencement

2—The provisions of this Act commence on 1 January 1993 or on such earlier day as may be proclaimed.

Object of Act

3—(1) The object of this Act is to improve democratic government in Tasmania—

(a) by increasing the accountability of the executive to the people of Tasmania; and

(b) by increasing the ability of the people of Tasmania to participate in their governance.

(2) This object is to be pursued by giving members of the public the right to obtain information contained in the records of agencies and Ministers limited only by necessary exceptions and exemptions.

(3) The object is also to be pursued by giving each person a right to have amended any inaccurate, incomplete, out of date or misleading information relating to that person contained in the records of an agency or of a Minister.

(4) It is the intention of Parliament—

(a) that this Act be interpreted so as to further the object set out in subsection (1); and

(b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

Act binds the Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Interpretation

5—(1) In this Act, unless the contrary intention appears—

“agency” means an agency as defined by section 3 (1) of the *Tasmanian State Service Act 1984* or a prescribed authority and includes the police force as defined by section 5 of the *Police Regulation Act 1898* and a municipality;

“Archives Office” has the same meaning as is in the *Archives Act 1983*;

“exempt information” means information which is exempt information by virtue of a provision of Part 3;

“officer”, in relation to an agency, includes a member of the agency, a member of the staff of the agency and any person employed by or for the agency, whether or not that person is a person to whom the *Tasmanian State Service Act 1984* applies;

“Ombudsman” means the Ombudsman appointed under the *Ombudsman Act 1984*

“prescribed authority” means—

- (a) a body corporate established for a public purpose by or in accordance with an Act; or
- (b) an unincorporated body created by the Governor or a Minister; or
- (c) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—

- (i) a body—

- (A) which is supported directly or indirectly by government funds or other assistance; or

- (B) over which the State is in a position to exercise control; or

- (d) subject to subsection (3), the person holding or performing the duties of an office established by an Act; or

- (e) the person holding, or performing the duties of, an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by—

- (i) the Governor; or

- (ii) a Minister—

otherwise than under an Act;

“principal officer” means—

- (a) in relation to an agency as defined by section 3 (1) of the *Tasmanian State Service Act 1984*—the Head of the Agency as referred to in section 28 of that Act; and

(b) in any other case—

- (i) if the regulations declare an office to be the principal office in relation to the agency—the person holding or performing the duties of that office; or
- (ii) in any other case—the person who constitutes that agency or, if the agency is constituted by 2 or more people, the person who is entitled to preside at a meeting of the agency at which the person is present;

“record” means—

- (a) anything on which words, figures, letters or symbols are marked and includes a map, plan, graph, drawing, painting or photograph; and
- (b) anything in which information is embodied so as to be capable of being reproduced;

“record of a Minister” means a record in the possession of a Minister, that relates to the affairs of an agency, and, for the purposes of this interpretation, a Minister is to be taken to be in possession of a record if the Minister is entitled to access to the record and it is not a record in the possession of an agency;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- (a) in relation to an agency of a type defined in section 3 (1) of the *Tasmanian State Service Act 1984*—the Minister administering the agency; or
- (b) in relation to an agency that is a prescribed authority referred to in paragraph (a) of the definition of “prescribed authority”—the Minister administering the Act by which the prescribed authority was established; or
- (c) in relation to an agency that is a prescribed authority referred to in paragraph (d) of that definition—the Minister administering the Act by which the office was established; or
- (d) in relation to any other agency—the Minister declared by the regulations to be the responsible Minister in respect of that agency.

(2) An unincorporated body established by or in accordance with an Act for the purpose of assisting or performing functions connected with a prescribed authority is not to be taken to be a prescribed authority for the purposes of this Act but is to be taken to be comprised within the prescribed authority.

(3) A person is not a prescribed authority solely because the person holds or performs the duties of—

- (a) a prescribed office; or
- (b) an office the duties of which the person performs as duties of his or her employment as an officer of an agency; or
- (c) an office or member of a body; or
- (d) an office established by or in accordance with an Act for the purposes of a prescribed authority.

(4) A reference to the personal affairs of a person includes the personal affairs of a deceased person, and rights given by this Act in respect of the personal affairs of a person are, where the person is a deceased person, to be taken to be rights that may be exercised in respect of those personal affairs by the next-of-kin of that person.

Act to apply to courts in respect of administrative matters

6—(1) For the purposes of this Act a court is a prescribed authority.

(2) A person holding a judicial or other office pertaining to a court, being an office established by the Act that established the court, is not a prescribed authority and is not included in an agency.

(3) A registry or other office of a court and its staff are part of the court.

(4) This Act does not apply to information contained in a record in the possession of a court unless the information relates to the administration of the court.

PART 2**RIGHT TO INFORMATION****Right to information**

7—A person has a legally enforceable right to be provided, in accordance with this Act, with information contained in records in the possession of an agency or a Minister unless the information is exempt information.

Part not to apply to certain information incorporated in records before the commencement of this Act

8—(1) Except as provided by subsection (2), a person is not entitled under this Part to information incorporated in a record more than 5 years before the commencement of this Act.

(2) A person is entitled under this Part to information incorporated in a record more than 5 years before the commencement of this Act if the information relates to that person's personal affairs.

Part not to apply to certain information already otherwise available

9—A person is not entitled under this Part to—

- (a) information contained in a record that may be inspected by the public in accordance with another Act; or
- (b) information that may be purchased in accordance with arrangements made by an agency.

Records placed in custody of Archives Office or State Library by certain people

10—(1) Information contained in a record placed in the custody of the State Library of Tasmania or the Archives Office shall be provided in accordance with this Part except to the extent that the provision of the information is restricted by conditions imposed by the person who placed the record in that custody.

(2) Subsection (1) does not apply in respect of a record of an agency or a record of a Minister placed in the custody of the State Library of Tasmania or the Archives Office if information contained in the record is required to be provided as otherwise provided by this Act.

Records in the Archives Office

11—(1) A record placed in the custody of the Archives Office by an agency is to be taken for the purposes of this Act to be in the possession of that agency or, if that agency no longer exists, the agency the functions of which the record is most closely related to.

(2) Subsection (1) does not apply to a record that can be inspected by the public at the Archives Office otherwise than in accordance with this Act.

(3) Notwithstanding subsection (1), records of a Royal Commission in the custody of the Archives Office are, for the purpose of this Act to be taken to be in the possession of the agency (as defined in the *Tasmanian State Service Act 1984*) administered by the Attorney-General and charged with the administration of justice.

(4) Sections 15 and 16 of the *Archives Act 1983* do not prevent a person from being provided, in accordance with this Act, with information contained in a record in the custody of the Archives Office.

(5) This Act does not affect access to records in the Archives Office in accordance with the *Archives Act 1983*.

Information to be provided apart from Act

12—This Act does not prevent and is not intended to discourage an agency or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act.

Requests for information

13—(1) A person who requires—

- (a) information contained in a record in the possession of an agency; or

(b) information contained in a record of a Minister—
must make a written request to the agency or Minister for the information.

(2) A request must contain sufficient details of the information required to enable a responsible officer of the agency, or the Minister to identify the information.

(3) An application for information may be made by reference to the information contained in a particular record or document without specifying the subject matter of that record or document.

(4) If a person—

(a) wants to make a request to an agency or Minister;
or

(b) has made a request that does not comply with this section—

the agency of the Minister shall take reasonable steps to assist the person to make a request that complies with this section.

(5) An agency or a Minister shall not refuse a request for information on the ground that the request does not comply with subsection (2), without first giving the applicant a reasonable opportunity to consult the agency or Minister with a view to the applicant being helped to make a request in a form that does comply with subsection (2).

(6) If a person directs a request under this section to the wrong agency or Minister that agency or Minister must promptly redirect the request to the correct agency or Minister.

(7) If requested to do so by a person or if it is appropriate to do so to assist a person to make a request for information, an agency shall make available to that person general details of the information contained in the records in the possession of the agency.

Transfer of requests

14—(1) A request for information may be made to any agency or Minister that has a record containing the information.

(2) If a request is made to an agency or a Minister and the subject-matter of the information requested is more closely connected with the functions of another agency or Minister the agency or Minister to which the request was made shall—

- (a) promptly transfer the request to that other agency or Minister and inform the person making the request accordingly; and
- (b) if it is necessary to do so in order to enable that other agency or Minister to deal with the request—send the record containing the information to that agency or Minister.

(3) If a request is transferred to an agency or Minister, it is to be taken, for the purpose of section 16, to be a request made to that agency or Minister and received by the agency or Minister—

- (a) at the time at which the transfer was made; or
- (b) at the expiration of 14 days after the date of the original request—

whichever first occurs.

(4) If a request is made to the Archives Office for information contained in a record to which section 11 (1) applies, the Archives Office shall promptly transfer the request to the agency taken, by virtue of that subsection, to be in possession of that record and shall inform the applicant accordingly.

Information to be given on request

15—Except as otherwise provided by this Part, if—

- (a) a request is made by a person to an agency or Minister for information contained in a record in the possession of the agency or Minister; and
- (b) any prescribed charge that is required to be paid before the information is provided has been paid—

the person shall be provided with the information in accordance with this Act unless at that time the information is exempt information.

Time within which formal requests to be decided

16—An agency or Minister shall take all reasonable steps to enable an applicant to be notified of a decision on a request for information as soon as practicable but in any case not later than—

(a) 45 days; or

(b) if the request is made on or after 1 January 1994—
30 days—

after the request has been received by or on behalf of the agency or the Minister.

Charges for information

17—(1) If a prescribed charge is to be paid by an applicant before information is provided, it is to be calculated in accordance with the following principles or, if those principles so require, is to be waived:—

- (a) a charge that is calculated by reference to the time taken to find the record containing the information is to cover the time that would normally be spent by the agency or Minister in conducting a routine search for that record, and is not to cover additional time spent by the agency or Minister in searching for the record if it has been lost or misplaced;
- (b) a charge referred to in paragraph (a) is to be fixed on a hourly rate basis;
- (c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of any material to which access is given;
- (d) a charge may be made for the reasonable costs incurred by an agency or Minister in supplying a copy of information, in making arrangements for viewing a record or in providing a written transcript of information contained or embodied in a record;
- (e) a charge is not to be made for the time spent by an agency or Minister in examining information to determine whether it is exempt information, or in deleting or removing exempt information;
- (f) a charge is to be waived if the request is a routine request for information;

(g) a charge is to be waived or reduced if—

- (i) the applicant has requested personal information about himself or herself; or
- (ii) the applicant's intended use of the information is a use of general public interest or benefit; or
- (iii) the applicant is impecunious;

(h) a charge is to be waived if the applicant is a member of either House of Parliament and the information is required by the Member in connection with the Member's official duties;

(i) a charge is not to exceed \$400, but if a lesser amount is prescribed, that lesser amount.

(2) Subject to subsection (4), an agency or Minister shall not require payment of a charge before the agency or Minister has notified the applicant whether or not information is to be provided.

(3) If an agency or a Minister believes a charge may exceed \$25, or such greater amount as prescribed, the agency or Minister must notify the applicant and inquire whether the applicant wishes to proceed with the request.

(4) In a notice given under subsection (3), the agency or Minister may require the applicant to pay a deposit of a prescribed amount or at a prescribed rate on account of the charge.

(5) If an agency or Minister requires an applicant to pay a deposit on account of a charge, the applicant's request is, for the purposes of section 16, to be taken to have been received by the agency or Minister when the applicant pays the deposit.

(6) If an agency or Minister notifies an applicant of an expected charge in accordance with subsection (3), the agency or Minister shall, if requested to do so by the applicant, discuss with the applicant ways of altering the request so as to reduce that charge, including reducing the charge if the applicant waives, either conditionally or unconditionally, the need for the agency or Minister to comply with the time limit specified in section 16.

(7) A notice under subsection (3) shall—

- (a) state what the charge is expected to be; and
- (b) if the expected charge was calculated on behalf of an agency—state the name and designation of the person who calculated the charge; and

(c) inform the applicant of—

- (i) the applicant's right to apply for a review of the expected charge; and
- (ii) the authority to which the application for review can be made; and
- (iii) the time within which the application for review must be made.

(8) Charges prescribed for the purpose of this section shall be uniform—

- (a) for all agencies and Ministers; and
- (b) as between applicants.

Deferral of provision of information

18—(1) An agency or Minister may defer providing information contained in a record if the record—

- (a) is required by this or any other Act to be published but is yet to be published; or
- (b) was prepared for presentation to Parliament, or has been designated by the responsible Minister as appropriate for presentation to Parliament, but is yet to be presented.

(2) If the provision of information is deferred, the agency or Minister shall, when informing the applicant of the reason for the decision, indicate, as far as practicable, when the record will be published, presented or submitted.

(3) An agency or a Minister has no power under subsection (1) (b) to defer providing information contained in a record when more than 15 sitting days of either House of Parliament have passed since the record was presented to the Minister for the purpose of being presented to Parliament.

Provision of information

19—(1) Information requested under this Act may be provided—

- (a) by giving the applicant a reasonable opportunity to inspect the record containing the information; or
- (b) by providing the applicant with a copy of the record containing the information; or

- (c) in the case of information contained in a record from which sounds or visual images can be reproduced—by giving the applicant a reasonable opportunity to hear the sounds or view the images; or
- (d) in the case of information recorded or embodied in a record in a manner in which it can be reproduced—by providing the applicant with a transcript of the information.

(2) If part of the information requested by an applicant is exempt information that part of the information that is not exempt information shall not be supplied to the applicant unless the applicant—

- (a) requests that the information be supplied; or
- (b) indicated when making the request for information that the applicant wants any of the information requested that is not exempt information.

(3) A copy of a record that is provided with exempt information deleted shall have included on it a note to the effect that the copy is not a complete copy of the original record.

(4) If—

- (a) information requested under this Act is included with other information; and
- (b) the information requested can be extracted from that other information by the use of a computer or other equipment usually available to the agency or Minister—

the information shall be extracted accordingly.

(5) Without prejudice to subsection (1), if—

- (a) an agency has information requested by an applicant in documentary form; and
- (b) the applicant has indicated a preference for receiving the information in documentary form—

the agency shall provide that information by providing the applicant with a copy of the document or the part of the document containing that information unless it is impracticable to do so.

Requests may be refused in certain cases**20—(1) If—**

- (a) a request for information is expressed to relate to—
 - (i) all information of a specified kind; or
 - (ii) all information in respect of a specified subject-matter; and
- (b) the agency or Minister dealing with the request is satisfied that the work involved in providing the information requested—
 - (i) would substantially and unreasonably divert the resources of the agency from its other work; or
 - (ii) would interfere substantially and unreasonably with the performance by the Minister of the Minister's other functions—

having regard to—

- (iii) the amount of that information; and
- (iv) any difficulties that exist in identifying, locating or collating the information within the records of the agency or of the office of the Minister—

the agency or Minister may refuse to provide the information without undertaking the processes referred to in paragraph (b) (iv).

(2) If, in respect of a request of a kind referred to in subsection (1) (a), it is apparent that all the information requested is exempt information the agency or Minister may refuse to provide the information without having identified all or any of the information requested.

(3) If an agency or Minister refuses a request under subsection (2), the agency or Minister shall specify the provision or provisions of Part 3 under which it is claimed the information would be exempt information.

(4) An agency or Minister shall not refuse to provide information by virtue of subsection (1) without first giving the applicant a reasonable opportunity to consult the agency or the Minister with a view to the applicant being helped to make a request in a form that would remove the ground for refusal.

Decision to be made on behalf of agency by authorized person

21—A decision in respect of a request for information made to an agency shall be made by—

- (a) the responsible Minister; or
- (b) the principal officer of the agency; or
- (c) subject to the regulations—an officer of the agency acting within the scope of authority exercisable by the officer in accordance with arrangements approved by the responsible Minister or the principal officer of the agency, and published in the *Gazette*.

Reasons, &c., to be given

22—(1) If, in relation to a request for information contained in a record in the possession of an agency or of a Minister, a decision is made—

- (a) that the applicant is not entitled to the information in accordance with the request; or
- (b) that provision of the information be deferred in accordance with section 18; or
- (c) that provision of the information be refused by virtue of section 20—

the agency or Minister shall give the applicant written notice of the decision.

(2) Notice given under subsection (1) shall—

- (a) state the finding on any material question of fact, referring to the material on which that finding was based, and the reasons for the decision; and
- (b) if the decision was made on behalf of an agency—state the name and designation of the person who made the decision; and
- (c) inform the applicant of—
 - (i) the applicant's right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application for review must be made; and

- (d) if the decision involves or relies upon consideration of the public interest in the application of a provision of this Act—state the public interest considerations on which that decision was based.

(3) An agency or Minister is not required by subsections (1) and (2) to include in a notice given under subsection (1) any exempt information.

(4) An agency or Minister may, in a notice given under subsection (1), state the decision in terms which neither confirm nor deny the existence of any information which on a ground specified in section 23, 24, 25 or 28 would be exempt information.

PART 3

EXEMPT INFORMATION

Executive Council information, &c.

23—(1) Information is exempt information if it is contained in—

- (a) the official record of a deliberation or decision of the Governor or the Executive Council; or
- (b) a record prepared for the purpose of being submitted to the Governor or the Executive Council for consideration; or
- (c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or
- (d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Governor or the Executive Council, other than a record by which a decision of the Governor or the Executive Council was officially published.

(2) For the purposes of this Act, a certificate signed by the Official Secretary to the Governor or by the Secretary to the Executive Council, as the case may be, certifying that a record is one of a kind referred to in subsection (1) establishes that fact conclusively.

(3) Subsection (1) does not include information solely because it is contained in a record that—

- (a) was submitted to the Governor or Executive Council for consideration; or
- (b) is proposed to be submitted to the Governor or Executive Council for consideration—

if the record was not brought into existence for submission to the Governor or Executive Council for consideration.

(4) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the Governor or Executive Council which has not been officially published.

(5) The Ombudsman has no power under section 48 to require that information contained in a record referred to in subsection (2) should be provided but where the Ombudsman on a review under section 48 decides that the public interest requires that the information should be provided the Ombudsman shall instead prepare a report on the application for the information and the refusal to supply it, and the Ombudsman's review of that decision, and present it to both Houses of Parliament.

Cabinet information

24—(1) Information is exempt information if it is contained in—

- (a) the official record of a deliberation or decision of the Cabinet; or
- (b) a record proposed by a Minister for the purpose of being submitted to the Cabinet for consideration provided that the Minister has contributed to the origin, subject or contents of that record; or
- (c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or
- (d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet was officially published.

(2) Subsection (1) ceases to apply in respect of information incorporated in a record after the commencement of this Act 10 years after its incorporation.

(3) For the purpose of this Act, a certificate signed by the Secretary to the Cabinet certifying that a record is one of a kind referred to in subsection (1) establishes that fact conclusively.

(4) Subsection (1) does not include information solely because it is contained in a record that—

- (a) was submitted to the Cabinet for consideration; or
- (b) is proposed by a Minister to be submitted to the Cabinet for consideration—

if the record was not brought into existence for submission to the Cabinet for consideration.

(5) Subsection (1) does not include purely factual information unless its disclosure would disclose a deliberation or decision of the Cabinet which has not been officially published.

(6) The Ombudsman has no power under section 48 to require that information contained in a record referred to in subsection (3) should be provided and shall be limited to determining whether a document has been correctly classified as an exempt document within the meaning of subsection (1).

(7) Where the Ombudsman, on a review under section 48, decides that the public interest requires that the information shall be provided, the Ombudsman shall prepare a report on the application for the information and the refusal to supply it, and the Ombudsman's review of the decision, and present it to both Houses of Parliament.

(8) In this section “the Cabinet” includes a committee of the Cabinet.

Information not relating to official business

25—Information contained in a record in the possession of a Minister is exempt information if it does not relate to the affairs of any agency or to the Minister's official business.

Information communicated by other States, &c.

26—(1) Information is exempt information if—

- (a) its disclosure under this Act would prejudice relations between—
 - (i) two or more States; or
 - (ii) a State and the Commonwealth; or

(iii) the Commonwealth or a State and any other country; or

(b) the information was communicated in confidence to—

(i) the Government or an authority of this State; or

(ii) a person on behalf of the Government or an authority of this State—

by—

(iii) the Government or an authority of the Commonwealth, of another State or of another country; or

(iv) a person on behalf of the Government or an authority of the Commonwealth, of another State or of another country—

and its disclosure would be contrary to the public interest.

(2) In this section “State” includes the Northern Territory and the Australian Capital Territory.

Internal working information

27—(1) Information is exempt information if—

(a) it consists of—

(i) an opinion, advice or a recommendation prepared by an officer or a Minister; or

(ii) a record of consultations or deliberations between officers and Ministers—

in the course of, or for the purpose of, the deliberative processes included in the functions of an agency or Minister or of the Government; and

(b) its disclosure would be contrary to the public interest.

(2) Subsection (1) does not include purely factual information.

(3) Subsection (1) does not include—

(a) a final decision, order or ruling given in the exercise of an adjudicative function; or

(b) a reason which explains such a decision, order or ruling.

(4) The disclosure of information is not contrary to the public interest for the purpose of subsection (1) (b) merely because of—

- (a) the seniority of the person who created, annotated or considered the information; or
- (b) the possibility that the public may not readily understand any tentative or optional quality of the information.

(5) If a decision is made that an applicant is not entitled to information by virtue of this section, the notice given under section 22 shall state the public interest considerations on which that decision was based.

(6) Subsection (1) ceases to apply in respect of information incorporated in a record after the commencement of this Act 10 years after its incorporation.

Law enforcement information

28—(1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to—

(a) prejudice—

- (i) the investigation of a breach or possible breach of the law; or
- (ii) the enforcement or proper administration of the law in a particular instance; or
- (iii) the fair trial of a person; or
- (iv) the impartial adjudication of a particular case; or

(b) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or

(c) disclose methods or procedures for preventing, detecting, investigating or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(d) endanger the life or physical safety of a person.

(2) Subsection (1) does not include information that—

- (a) reveals that the scope of a law enforcement investigation has exceeded a limit imposed by law; or

- (b) reveals the use of an illegal method or procedure for preventing, detecting, investigating or dealing with a matter arising out of a breach or evasion of the law; or
 - (c) contains a general outline of the structure of a programme adopted by an agency for investigating breaches of or enforcing or administering the law; or
 - (d) is a report on the degree of success achieved in a programme adopted by an agency for investigating breaches of or enforcing or administering the law; or
 - (e) is a report prepared in the course of a routine law enforcement inspection or investigation by an agency with the function of enforcing and regulating compliance with a particular law other than the criminal law; or
 - (f) is a report on a law enforcement investigation, if the substance of the report has been disclosed to the person or the body the subject of the investigation—
- if it is in the public interest that the information should be given under this Act.

Information affecting legal proceedings

29—(1) Information is exempt information if it is contained in a record of such a nature that the record would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) Subsection (1) does not apply in respect of a record solely because it was created or received by a lawyer.

Information affecting personal privacy

30—(1) Information is exempt information if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of a person.

(2) Subsection (1) does not include information relating to the personal affairs of the person making the request.

(3) Before deciding whether to provide personal information relating to a person (other than the person making the request) an agency or Minister shall, if practicable—

- (a) notify that person that the agency or Minister has received a request for the information; and

- (b) state the nature of the information requested; and
- (c) seek that person's view as to whether the information should be provided.

(4) If an agency or Minister, after seeking a person's view in accordance with subsection (3) (c), decides to provide the information requested the agency or Minister shall notify that person of the decision.

(5) A notice under subsection (4) shall—

- (a) state the nature of the information to be provided; and
- (b) if the decision was made on behalf of an agency—state the name and designation of the person who made the decision; and
- (c) inform the person to whom the notice is addressed of—
 - (i) that person's right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application must be made.

(6) An agency or Minister shall not provide the information referred to in a notice given to a person under subsection (4) until—

- (a) 28 days after that person has been notified; or
- (b) if during those 28 days the person applies for a review of the decision—that review or any subsequent review determines that the information should be provided.

(7) If—

- (a) a request is made to an agency or Minister for information of a medical or psychiatric nature concerning the person making the request; and
- (b) it appears to the principal officer of the agency or to that Minister that the provision of the information to that person might be prejudicial to the physical or mental health or well-being of that person—

the principal officer or Minister may direct that the information should not be provided to the person who made the request but should instead be provided to a legally qualified medical practitioner nominated by that person and approved by the principal officer or Minister.

(8) This section does not affect the procedures for access to adoption records contained in the *Adoption Act 1988*.

Information relating to trade secrets, &c., of undertakings

31—(1) Information is exempt information if its disclosure under this Act would disclose information acquired by an agency or a Minister from a business, commercial or financial undertaking, and—

- (a) the information relates to trade secrets or other matters of a business, commercial or financial nature; and
- (b) the disclosure of the information under this Act would be likely to expose the undertaking to competitive disadvantage.

(2) In deciding for the purpose of subsection (1) (b) whether disclosure of information would expose an undertaking unreasonably to competitive disadvantage an agency or Minister may take account of any consideration the agency or Minister considers relevant including whether the information—

- (a) is generally available to competitors of the undertaking; or
- (b) would be exempt information if it were generated by an agency or a Minister; or
- (c) could be disclosed without causing substantial harm to the competitive position of the undertaking—

and shall also, in particular, take into account whether there are any considerations in the public interest in favour of disclosure that outweigh considerations of any competitive disadvantage to the undertaking.

(3) If—

- (a) a request is made for information under this Act; and
- (b) the information was provided to an agency or Minister by an undertaking by way of information contained in a record—

an agency or Minister shall, before deciding whether the disclosure of the information under this Act would be likely unreasonably to expose the undertaking that provided the information to competitive disadvantage—

- (c) notify the undertaking that the agency or Minister has received a request for the information; and
- (d) state the nature of the information requested; and

- (e) seek the undertaking's view as to whether the information should be provided.

(4) If an agency or Minister, after seeking an undertaking's view in accordance with subsection (3), decides to provide the information requested the agency or Minister shall notify the undertaking of the decision.

(5) A notice under subsection (4) shall—

- (a) state the nature of the information to be provided; and
- (b) if the decision was made on behalf of an agency—state the name and designation of the person who made the decision; and
- (c) inform the undertaking of—
 - (i) its right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application must be made.

(6) An agency or Minister shall not provide the information referred to in a notice given to an undertaking under subsection (4) until—

- (a) 28 days after the undertaking has been notified; or
- (b) if during those 28 days the undertaking applies for a review of that decision—that review or any subsequent review determines that the information should be provided.

Information relating to trade secrets, &c., of agency

32—Information is exempt information—

(a) if it is—

- (i) a trade secret of an agency; or
- (ii) in the case of an agency engaged in trade or commerce—information of a business, commercial or financial nature—

that would, if disclosed under this Act, be likely to expose the agency to competitive disadvantage; or

(b) if it consists of the result of scientific or technical research undertaken by or on behalf of an agency, and—

- (i) the research could lead to a patentable invention; or
- (ii) the disclosure of the results of an incomplete state would be reasonably likely to expose a business, commercial or financial undertaking unreasonably to disadvantage; or
- (iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the agency or the person carrying out the research unreasonably to disadvantage; or

(c) if it is contained in—

- (i) an examination, a submission by a student in respect of an examination, an examiner's report or any such similar record; and
- (ii) the use for which the record was prepared has not been completed.

Information obtained in confidence

33—(1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or a government to an agency or a Minister, and—

- (a) the information would be exempt information if it were generated by an agency or a Minister; or
- (b) the disclosure of the information would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

(2) Information referred to in subsection (1) is not exempt information if it is in the public interest that the information should be given under this Act.

(3) Subsection (1) does not include information that—

- (a) was acquired by an agency or a Minister from a business, commercial or financial undertaking; and
- (b) relates to trade secrets or other matters of a business, commercial or financial nature; and

- (c) was provided to an agency or Minister pursuant to a requirement of any law.

Information on procedures and criteria

34—(1) Information is exempt information if it consists of instructions for the guidance of officers of an agency on the procedures to be followed or the criteria to be applied—

- (a) in negotiations, including financial, commercial and labour negotiations; or
- (b) in the execution of contracts; or
- (c) in the defence, prosecution and settlement of cases; or
- (d) in similar activities—

relating to the financial, property or personnel management and assessment interests of the Crown or of an agency.

(2) Information referred to in subsection (1) is not exempt information if it is in the public interest that the information should be given under this Act.

Information likely to affect State economy

35—(1) Information is exempt information if—

- (a) the information consists of details concerning any proposed action or inaction by the Parliament, the Government, a Minister or an agency in the course of, or for the purpose of, managing the economy of the State or any part of the State and its disclosure is likely to—

- (i) give any person an unfair advantage; or
 - (ii) expose any person to an unfair disadvantage; and

- (b) its disclosure would be contrary to the public interest.

(2) Information is exempt information if—

- (a) its disclosure would reasonably be expected to have a substantial adverse effect on the ability of the Government or any agency to manage the economy of the State or any part of the State; and
- (b) its disclosure would be contrary to the public interest.

Information to which secrecy provisions of enactments apply

36—(1) Information is exempt information if, by virtue of an Act applying specifically to information of that kind, a person referred to in the Act is prohibited from disclosing information of that kind, either absolutely or subject to exceptions or qualifications.

(2) This section ceases to have effect 3 years after the commencement of this Act.

PART 4**AMENDMENT OF PERSONAL INFORMATION****Person may request amendment of information****37—If—**

- (a) a person has information held or used by an agency or Minister; and
- (b) the information relates to the personal affairs of that person—

the person can request the amendment of any part of that information if it is inaccurate, incomplete, out of date or misleading.

Form of request for amendment of information**38—A request under section 37 must—**

- (a) be in writing; and
- (b) specify an address to which a notice under section 43 is to be sent; and
- (c) give particulars of the information the claimant believes is incomplete, incorrect, out of date or misleading; and
- (d) specify the amendments that the claimant wants made to that information.

Agency or Minister may amend information

39—If, following receipt of a request made under section 37, an agency or Minister decides to amend information, the agency or Minister may make the amendment by—

- (a) altering the information; or
- (b) adding an appropriate notation to it.

Notation to be added

40—If an agency or Minister amends information by adding a notation to it the notation must—

- (a) specify the way in which the information is incomplete, incorrect, out of date or misleading; and
- (b) if the information is claimed to be out of date—set out the information required to bring it up to date.

Time within which agency or Minister must notify claimant

41—An agency or Minister shall take all reasonable steps to enable a person to be notified of a decision on a request made under section 37 as soon as practicable but in any case not later than 30 days after the request was received by or on behalf of the agency or Minister.

Decision to be made on behalf of agency by authorized person

42—A decision in respect of a request made under section 37 shall be made by—

- (a) the responsible Minister; or
- (b) the principal officer of the agency; or
- (c) subject to the regulations—an officer of the agency acting within the scope of authority exercisable by the officer in accordance with arrangements approved by the responsible Minister or the principal officer of the agency, and published in the *Gazette*.

Reasons, &c., to be given

43—(1) If, in relation to a request made under section 37, a decision is made not to amend the information in the way requested the agency or Minister that received the request shall give the applicant written notice of the decision.

(2) Notice given under subsection (1) shall—

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and
- (b) if the decision was made on behalf of an agency—state the name and designation of the person who made the decision; and
- (c) inform the applicant of—
 - (i) the applicant's right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application for review must be made.

If request refused

44—If an agency or Minister decides to refuse to amend information pursuant to a request made under section 37 the person who made the request may, at any time, by written notice, require the agency or Minister to add to the information a notation—

- (a) specifying the respects in which the information is claimed by the applicant to be incomplete, incorrect, out of date or misleading; and
- (b) if the information is claimed to be out of date—setting out the information it is claimed is required to bring it up to date.

Notice to be added to the information

45—If a notice is given to an agency or Minister under section 44 the agency or Minister shall ensure—

- (a) that a notation as required by the notice is added to the information; and
- (b) that if the information to which the notation relates is disclosed to a person (including another agency or Minister) there is also furnished to that person a statement—
 - (i) stating that the person to whom the information relates claims that it is incomplete, incorrect, out of date or misleading, as the case may be; and

- (ii) giving particulars of the notation; and
- (iii) if the agency or Minister considers it appropriate to do so—giving the reasons why the agency or Minister did not amend the information.

How amendments to be made

46—If an agency or Minister agrees to amend information in accordance with a request made under section 37 the amendment may take the form of a notation of the original document but no amendment is to be made which—

- (a) deletes or expunges the information which has been amended; or
- (b) unless the Archives Office agrees—destroys the document.

PART 5

REVIEW OF DECISIONS

Internal review

47—(1) If a decision in respect of a request made to an agency for information has been made on behalf of an agency other than by the responsible Minister or the principal officer of the agency (not being a decision on a review under this section), the applicant may, within 28 days after notice of the decision is given to the applicant in accordance with section 22 or 43, apply to the principal officer of the agency for a review of the decision.

(2) If—

- (a) a decision as to the expected charge for information was made on behalf of an agency by a person other than the responsible Minister or the principal officer of the agency; and

- (b) a notice of the decision has been given to the applicant in accordance with section 17 (3)—

the applicant may within 28 days of the receipt of the notice, and whether or not the whole or any part of the charge has been paid, apply to the principal officer of the agency for a review of the charge.

- (3) If—

- (a) a decision to provide information relating to the personal affairs of a person was made on behalf of an agency by a person other than by the responsible Minister or the principal officer of the agency; and
- (b) notice of the decision has been given to a person in accordance with section 30 (4)—

the person to whom the notice was given may within 28 days of the receipt of the notice apply to the principal officer of the agency for a review of the decision.

- (4) If—

- (a) a decision to provide information that is likely to expose an undertaking to competitive disadvantage was made on behalf of an agency by a person other than the responsible Minister or the principal officer of the agency; and
- (b) notice of the decision has been given to the undertaking in accordance with section 31 (4)—

the undertaking may within 28 days of the receipt of the notice apply to the principal officer of the agency for a review of the decision.

(5) If an application for a review of a decision is made to the principal officer in accordance with subsection (1), (2), (3) or (4), the principal officer shall forthwith—

- (a) review the decision and make a fresh decision; or
- (b) arrange for another person (not being the person who made the decision and not being a person who is subordinate to that person) authorized in accordance with section 21 (c) or 42 (c) to review the decision and make a fresh decision.

(6) A decision on a review under this section in respect of a request made under section 13 or 37 is to be given in the same manner as a decision in respect of the original request.

Application for review

48—(1) A person is not entitled to apply to the Ombudsman under this section for a review of a decision in relation to which section 47 (1), (2), (3) or (4) applies unless—

(a) the person or undertaking has made an application under section 47 (1), (2), (3) or (4) in relation to the decision; and

(b) either—

(i) the person or undertaking has been informed of the result of the review; or

(ii) 14 days have elapsed since the application was made.

(2) A person who has applied for information in accordance with Part 2 may apply to the Ombudsman for a review of a decision—

(a) that the person is not entitled to the information requested; or

(b) that the information requested is exempt information; or

(c) as to the expected charge to be paid for the information; or

(d) that provision of the information be deferred in accordance with section 18; or

(e) that provision of the information be refused by virtue of section 20.

(3) A person may apply to the Ombudsman for a review of a decision—

(a) to provide information relating to the personal affairs of the person to another person; or

(b) to provide information which is likely to expose the person (being an undertaking) to competitive disadvantage; or

(c) not to amend personal information in respect of the person.

(4) The Ombudsman has the same power when considering an application for a review as the agency or Minister had under this Act when considering the original application and may make any decision in respect of the application for a review that the agency or Minister could have made in respect of the original application.

(5) The power referred to in subsection (4) includes the power—

- (a) to reconsider the application as if it were an original application; and
- (b) to decide that exempt information should be provided.

(6) The Ombudsman shall make a decision in respect of an application for review within 30 days of receiving the application or within such further period as may be agreed by the applicant.

(7) Where a decision in respect of an application for review has been made by the Ombudsman the Ombudsman shall inform the relevant agency or Minister of that decision and the agency or Minister shall take all such action as may be necessary to implement the decision.

(8) The Ombudsman has no power to investigate a matter under the *Ombudsman Act 1978* if that matter could be the subject of a review by the Ombudsman under this section.

Time for seeking review

49—(1) An application to the Ombudsman under section 48 (2) and (3) (c) must be made within 60 days after written notice of a decision is given to the applicant—

- (a) under section 17 (3), 22 (1) or 43 (1); or
- (b) if a review is required under section 45—under that section.

(2) An application to the Ombudsman under section 48 (3) (a) or (b) must be made within 28 days after written notice of a decision is given—

- (a) under section 30 (4) or 31 (4); or
- (b) if a review is required under section 47—under that section.

Review where decisions delayed

50—(1) If—

- (a) a request has been made to an agency or Minister under section 13 or 37; and
- (b) the period provided in section 16 or 41, as the case may be, has elapsed; and

- (c) notice of a decision on the request has not been received by the applicant—

the principal officer of the agency or the Minister is, for the purpose of enabling an application to be made to the Ombudsman under section 48, to be taken to have made, on the last day of the relevant period, a decision refusing to grant the request.

- (2) If—

(a) by virtue of this section an application has been made to the Ombudsman under section 48 but the Ombudsman has made no decision on the application; and

(b) a decision, other than a decision to grant the request, is given by the agency or Minister—

the Ombudsman may, at the request of the applicant and if the decision was made by a Minister or the principal officer of an agency, treat the application as extending to an application for review of that decision in accordance with section 48.

(3) Before further hearing an application made under section 48 by virtue of this section, the Ombudsman may, on the application of the Minister or principal officer of the agency concerned, allow the Minister or agency further time to deal with the request.

(4) The Ombudsman may allow a Minister or agency further time in accordance with subsection (3), subject to such conditions as the Ombudsman thinks fit, including a condition that any charge that might otherwise be required to be paid be reduced or waived.

Inspection of exempt documents by Ombudsman

51—(1) If an application for a review made to the Ombudsman under section 48 relates to information that is claimed to be exempt information, the Ombudsman may order the person who made the decision under review to give the information to the Ombudsman to enable the Ombudsman to determine whether the information is exempt information.

- (2) A person shall comply with an order under subsection (1).

(3) The Ombudsman must ensure that when information is given in accordance with subsection (1)—

- (a) it is not disclosed to a person other than a member of the staff of the Ombudsman in the course of the performance of that person's duties; and
- (b) any record containing the information or any copy of the information is returned at the conclusion of the review.

Disciplinary action

52—If, at the conclusion of a review under this Part, the Ombudsman is satisfied that—

- (a) there is evidence that an officer of an agency has been guilty of a breach of duty or of misconduct in the administration of this Act; and
- (b) the evidence is, in all the circumstances, of sufficient force to justify the Ombudsman doing so—

the Ombudsman shall bring the evidence to the notice of—

- (c) if the officer is the principal officer of an agency—the responsible Minister; or
- (d) in any other case—the principal officer of the agency.

PART 6

MISCELLANEOUS

Protection against actions for defamation or breach of confidence

53—(1) Where information has been provided and the provision of that information—

- (a) was required or permitted by this Act; or

- (b) was authorized by a Minister or an officer having authority, in accordance with section 21 or 42, to make decisions in respect of requests for information made in accordance with this Act, in the *bona fide* belief that the information was required to be provided in accordance with this Act—

an action for defamation or breach of confidence does not lie against the Crown, an agency, a Minister or an officer by reason of the provision or the authorizing of the provision of that information, and an action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the provision of that information does not lie against the author of the information or any other person by reason of that author or other person having supplied the information to an agency or Minister.

(2) The provision of information (including exempt information) in consequence of a request made under section 13 does not constitute for the purposes of the law relating to defamation or breach of confidence an authorization or approval to the publication of that information by the person to whom the information was provided.

Protection in respect of offences

54—Where information has been provided and the provision of that information—

- (a) was required or permitted by this Act; or
(b) was authorized by a Minister or an officer having authority, in accordance with section 21 or 42, to make decisions in respect of requests for information made in accordance with this Act in the *bona fide* belief that the information was required to be provided in accordance with this Act—

neither the person authorizing the provision of the information nor any other person concerned in providing the information is guilty of a criminal offence by reason only of the provision or the authorizing of the provision of the information.

Act to be publicized, &c.

55—The Department shall publish details of this Act and the way in which people can exercise their rights under it.

Annual report on administration of Act

56—(1) The Department shall, as soon as practicable after the end of each year, prepare a report on the administration of this Act showing, in particular—

- (a) the number of requests made under this Act and the agencies or Ministers that received the requests; and
- (b) the number of requests refused and the provisions of this Act under which they were refused; and
- (c) the number of applications for review made to the Ombudsman under section 48 and the results of those applications; and
- (d) the total amount of charges collected in respect of applications made under this Act.

(2) The Department shall give the report prepared in accordance with subsection (1) to the Minister who shall table it in both Houses of the Parliament within 5 sitting days of its receipt.

Regulations

57—The Governor may make regulations for the purposes of this Act and may, in particular, make regulations prescribing—

- (a) fees to be charged for the purpose of this Act; and
- (b) the officers who may make decisions on behalf of an agency.

Local Government information

58—(1) As soon as practical after the commencement of this Act each municipality shall establish procedures to administer the provisions of this Act in respect of information contained in records in the possession of the municipality.

(2) Subject to subsection (3), nothing in this Act applies to information contained in records in the possession of a municipality until the Minister, by notice in the *Gazette*, declares that the Minister is satisfied that the municipality is able to administer this Act with respect to records in its possession and that this subsection accordingly ceases to have effect in respect of that municipality.

(3) If the Minister has not published a notice in accordance with subsection (2) on the anniversary of the commencement of this Act that subsection shall cease to have effect and this Act shall accordingly apply to all information contained in records in the possession of municipalities.

Administration of Act

59—Until an order is made under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Premier; and
- (b) the Department responsible to the Premier is the Department of Premier and Cabinet.