

CHAPTER 95

THE ACCESS TO INFORMATION

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CHAPTER 95

THE ACCESS TO INFORMATION ACT

Commencement: 20 April, 2006

An Act to provide for the right of access to information pursuant to Article 41 of the Constitution; to prescribe the classes of information referred to in that Article; to prescribe the procedure for obtaining access to that information and for related matters.

PART I—PRELIMINARY

1. Application of Act

(1) This Act applies to all information and records of Parliament, Ministries, departments of Government, local governments, statutory corporations and bodies, commissions and other Government organs and agencies, unless specifically exempted by this Act.

(2) This Act does not apply to—

- (a) Cabinet records and the records of the committees of Cabinet;
- (b) records of court proceedings before the conclusion of the case.

(3) Nothing in this Act detracts from the provisions of any other written law giving a right of access to a record of a public body.

2. Purpose of Act

The purpose of this Act is—

- (a) to promote an efficient, effective, transparent and accountable Government;
- (b) to give effect to Article 41 of the Constitution by providing the right to access to information held by organs of the State other than exempt records and information;
- (c) to protect persons disclosing evidence of contravention of the law, maladministration or corruption in Government bodies;

- (d) to promote transparency and accountability in all organs of the State by providing the public with timely, accessible and accurate information; and
- (e) to empower the public to effectively scrutinise and participate in Government decisions that affect the public.

3. Interpretation

In this Act, unless the context otherwise requires—

- “court” means the chief magistrates’ court or the High Court;
- “currency point” has the value assigned to it in the Schedule to this Act;
- “information” includes written, visual, aural and electronic information;
- “information officer” means the chief executive of a public body;
- “manual” means the manual of functions of, and index of records held by a public body, compiled under section 6;
- “Minister” means the Minister to whom the functions of the Minister under this Act have for the time being been assigned by the President;
- “prescribed” means prescribed by regulations made under section 46;
- “privacy” means the right of a person to keep his or her matters and relationships secret;
- “proprietary information” means information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaty to which Uganda is a party;
- “public body” includes a Government Ministry, department, statutory corporation, Authority or Commission;
- “record” means any recorded information, in any format, including an electronic format in the possession or control of a public body, whether or not that body created it;
- “relevant authority” means the Minister responsible for that public body or the person designated in writing by that Minister;
- “request for access” means a request for access to a record of a public body under section 10;
- “Rules Committee” means the Rules Committee established by section 40 of the Judicature Act;
- “security” means the protection of Uganda against threats such as crime, criminals and attacks by foreign countries;
- “sovereignty” means the supremacy of the State;

“third party”, in relation to a request for access, means any person, including but not limited to the government of a foreign State, an international organisation or an organ of that government or organisation, other than—

- (a) the person requesting the record; and
- (b) a public body.

PART II—ACCESS TO INFORMATION AND RECORDS

4. Right of access

(1) Every citizen has a right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

(2) For the avoidance of doubt, information and records to which a person is entitled to have access under this Act shall be accurate and up-to-date so far as is practicable.

5. Access to information and records

A person's right of access is, subject to this Act, not affected by-

- (a) any reason the person gives for requesting access; or
- (b) the information officer's belief as to what the person's reasons are for requesting access.

6. Manual of functions and index of records of public body

(1) Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body shall compile a manual containing—

- (a) a description of the public body and the functions of the public body;
- (b) the postal and street address, phone and fax number and electronic mail address of the information officer of the body and of every deputy information officer;
- (c) the address of the established office of the public body at which the public may make requests and obtain information;

- (d) sufficient detail, including the nature of all formal and informal procedures available to facilitate a request for access;
- (e) a description of the subjects on which the body holds records and the categories of records held on each subject;
- (f) the most recent notice published under section 7, if any, regarding the categories of records of the body which are available without a person having to request access under this Act;
- (g) a description of the services available to members of the public from the body and how to gain access to those services;
- (h) a description of any arrangement or provision for a person by consultation, making representations or otherwise, to participate in or influence—
 - (i) the formulation of policy; or
 - (ii) the exercise of the powers or performance of duties by the body;
- (i) a description of all remedies available in respect of an act or a failure to act by the body; and
- (j) such other information as may be prescribed.

(2) A public body shall update and publish its manual at least once in every two years.

(3) Each manual shall be made available as prescribed.

7. Disclosure and automatic availability of certain records

An information officer shall, once in every two years, publish a description of—

- (a) the categories of records of the public body that are automatically available without a person having to request access under this Act, including the categories available—
 - (i) for inspection under a written law other than this Act;
 - (ii) for purchase or copying from the public body; and
 - (iii) from the public body free of charge; and
- (b) how to obtain access to those records.

8. Information in directory

The Minister shall ensure the publication in every directory issued for general use by the public of the postal and street address, phone and fax number and electronic mail address of the information officer of every public body.

9. Information officers

For the purposes of this Act, the chief executive of each public body shall be responsible for ensuring that records of the public body are accessible under this Act.

10. Form of request

(1) A request for access to a record or information shall be in writing in the prescribed form to the information officer of the public body in control of the record or information required and shall provide sufficient details to enable an experienced employee of the public body to identify the record or information.

(2) The form for a request of access prescribed under subsection (1) shall require the person requesting access—

- (a) to provide sufficient particulars to enable the information officer to identify—
 - (i) the record or records requested; and
 - (ii) the person requesting the information;
- (b) to indicate which applicable form of access referred to in section 19(2) is required;
- (c) to specify the address of the person requesting the information; and
- (d) if the request is made on behalf of a person, to state the capacity in which the person requesting the information is making the request.

(3) A person who, because of illiteracy or disability, is unable to make a request for access in accordance with subsection (1) may make that request orally.

(4) The information officer of a public body to whom an oral request is made under subsection (3) shall reduce the request to writing in the

prescribed form and shall provide a copy of the written request to the person requesting access.

11. Duty to assist persons^s

(1) Where a person informs the information officer that he or she wishes to make a request for access to a record of—

- (a) the public body of that information officer; or
- (b) another public body,

the information officer shall render such reasonable assistance, free of charge, as is necessary to enable that person to comply with section 10.

(2) Where a person makes a request for access that does not comply with section 10, the information officer shall not refuse the request because of that non-compliance unless the information officer has—

- (a) notified that person of an intention to refuse the request and stated in the notice—
 - (i) the reasons for the contemplated refusal; and
 - (ii) that the information officer or other official identified by the information officer would assist that person in order to make the request in a form that would remove the reasons for refusal;

- (b) given the person a reasonable opportunity to seek the assistance referred to in paragraph (a)(ii);
- (c) as far as reasonably possible, furnished the person requesting access with any information, including information about the records, other than information under Part III of this Act that would assist the making of the request in that form; and
- (d) given the person a reasonable opportunity to confirm the request or to alter it to comply with section 10.

(3) When computing any period referred to in section 14(1), the period commencing on the date on which notice is given under subsection (2) and ending on the date on which the person confirms or alters the request for access concerned shall be disregarded.

(4) Where it is apparent, on receipt of a request for access, that the request should have been made to another public body, the information officer of the public body receiving the request shall—

- (a) render any assistance necessary to enable the person requesting access to make the request to the information officer of the appropriate public body; or
 - (b) transfer the request in accordance with section 12, to the appropriate information officer,
- whichever will result in the request being dealt with quickly.

12. Transfer of request

(1) Where a request for access is made to the information officer of a public body in respect of which

- (a) the record is not in the possession or under the control of that body but is in the possession of another public body; or
- (b) the subject matter of the record is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made,

the information officer to whom the request is made shall, as soon as reasonably possible, but in any event within twenty-one days after the request is received—

- (i) transfer the request to the information officer of the other public body; and
- (ii) if the public body of the information officer to whom the request is made is in possession of the record and considers it is helpful to do so to enable the information officer of the other public body to deal with the request, send the record or a copy of the record to that information officer.

(2) Upon the transfer of a request for access, the information officer making the transfer shall immediately notify the person requesting access of

- (a) the transfer;
- (b) the reasons for the transfer; and
- (c) the period within which the request shall be dealt with.

13. Records that cannot be found or do not exist

(1) Where a request for access is made to the information officer of a public body in respect of which—

- (a) the record is not in the possession or under the control of the public body of that information officer and the information officer

does not know which public body has possession or control of the record; or

- (b) all reasonable steps have been taken to find a record requested; and
- (c) there are reasonable grounds for believing that the record
 - (i) is in the possession of the public body but cannot be found; or
 - (ii) does not exist,

the information officer shall, in writing, notify the person that it is not possible to give access to that record.

(2) The notice referred to in subsection (1) shall give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

(3) For the purposes of this Act, the notice under subsection (1) is to be regarded as a decision to refuse a request for access to the record.

(4) Where, after notice is given under subsection (1), the record in question is found, the person requesting access shall be given access to the record unless access is refused on a ground for refusal under Part III of this Act.

14. Deferral of access

(1) Where the information officer determines that access may be granted to a record but that record—

- (a) is to be published within ninety days after the receipt or transfer of the request or such further period as is reasonably necessary for printing the record for the purpose of publishing it;
- (b) is required by law to be published but is yet to be published; or
- (c) has been prepared for submission to a public body, public officer or a particular person but is yet to be submitted,

the information officer may defer giving access to the record.

(2) Where access to a record is deferred under subsection (1), the information officer shall notify the person concerned—

- (a) that he or she may, within twenty-one days after that notice is given, make representations to the information officer why the record is required before the publication or submission; and
- (b) of the likely period for which access is to be deferred.

(3) Where a person makes representations under subsection (2)(a), the information officer shall, after due consideration of those representations, grant the request for access only if there are reasonable grounds for believing that the person will suffer substantial prejudice if access to the record is deferred for the period referred to in subsection (2)(b).

15. Decision on request and notice

(1) The information officer to whom a request for access is made or transferred shall, subject to section 16, as soon as reasonably possible, but in any event within twenty-one days after the request is received—

- (a) determine in accordance with this Act, whether to grant the request; and
- (b) notify the person requesting access of the decision and, if the person stated as required by section 10(2)(b), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) Where the request for access is granted, the notice under subsection (1)(b) shall state—

- (a) the fee, if any, to be paid upon access;
- (b) the form in which access will be given; and
- (c) that the person requesting access may lodge an internal appeal or an application with the court, as the case may be, against the access fee to be paid or the form of access granted and the procedure, including the period, for lodging the internal application or appeal, as the case may be.

(3) Where the request for access is refused, the notice under subsection (1)(b) shall—

- (a) state adequate reasons for the refusal, including the provisions of this Act relied upon;
- (b) exclude from any reasons stated under paragraph (a), any reference to the content of the record; and

- (c) state that the person may lodge an internal appeal or an application with the court, as the case may be, against the refusal of the request and the procedure, including the period, for lodging the internal application or appeal as the case may be.

16. Extension of period to deal with request

(1) The information officer to whom a request for access has been made or transferred, may extend the period of twenty-one days referred to in section 15(1), in this section referred to as the “original period”, once for a further period of not more than twenty-one days, if—

- (a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned;
- (b) the request requires a search for records in, or collection of the records from, an office of the public body not situated in the same city, town or location as the office of the information officer that cannot reasonably be completed within the original period;
- (c) more than one of the circumstances contemplated in paragraphs (a) and (b) exist in respect of the request, making compliance with the original period not reasonably possible; or
- (d) the person requesting for the record consents in writing to the extension.

(2) Where a period is extended under subsection (1), the information officer shall, as soon as reasonably possible, but in any event within twenty-one days, after the request is received or transferred, notify the person requesting the record of the extension.

- (3) A notice given under subsection (2) shall state-
 - (a) the period of the extension;
 - (b) adequate reasons for the extension, including the provisions of this Act relied upon; and
 - (c) that the person may lodge an internal appeal or an application with a court, as the case may be, against the extension, and the procedure, including the period, for lodging the internal appeal or application, as the case may be.

17. Deemed refusal of request

Where an information officer fails to give the decision on a request for access to the person concerned within the period contemplated under section 15, the information officer is, for the purposes of this Act, regarded as having refused the request.

18. Severability

(1) Where a request for access is made for a record containing information which is required or authorised to be refused under Part III of this Act, then every part of the record which does not contain any such information shall be disclosed notwithstanding any other provision of this Act.

- (2) Where a request for access to—
- (a) a part of a record is granted; and
 - (b) the other part of the record is refused,

in accordance with subsection (1), section 15(2) applies to paragraph (a) of this subsection and section 15(3) applies to paragraph (b) of this subsection.

19. Access and forms of access

(1) Where a person has been notified under section 15(1) that the request for access has been granted, that person shall, subject to subsections (3) and (10)—

- (a) where an access fee is payable, upon payment of that fee; or
- (b) where no access fee is payable, immediately,

be given access in the applicable forms referred to in subsection (2) as the person indicated in the request for access.

(2) The forms of access to a record in respect of which a request of access has been granted are—

- (a) if the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;
- (b) if the record is not in written or printed form—
 - (i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily

- available to the public body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them;
- (ii) in the case of a record in which words or information are recorded in a manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the public body concerned—
 - (A) by making arrangements to hear those sounds; or
 - (B) if the public body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying that transcription;
 - (iii) in the case of a record which is held on computer, or in electronic or machine-readable form, and from which the public body concerned is capable of producing a printed copy of—
 - (A) the record, or a part of it; or
 - (B) information derived from the record, by using computer equipment and expertise ordinarily available to the public body, by supplying such a copy;
 - (iv) in the case of a record available or capable of being made available in computer readable form, by supplying a copy in that form; or
 - (v) in any other case, by supplying a copy of the record.
- (3) Where a person has requested access in a particular form, access shall, subject to section 17, be given in that form, unless to do so would—
- (a) interfere unreasonably with the effective administration of the public body concerned;
 - (b) be detrimental to the preservation of the record; or
 - (c) amount to an infringement of copyright not owned by the State or the public body concerned.
- (4) Where a person has requested access in a particular form and for a reason referred to in subsection (3), access in that form is refused but access is given in another form, the fee charged may not exceed what would have been charged if the person had been given access in the form requested.
- (5) Where a person with a disability is prevented by that disability from reading, viewing or listening to the record concerned in the form in

which it is held by the public body concerned, the information officer shall, if that person so requests, take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by that person.

(6) Where access to a record is to be given to a person with a disability and the person requests that access to be given in an alternative format, a copy of the record shall be given in an alternative format—

- (a) immediately, if the record exists in the alternative format that is acceptable to that person; or
- (b) within a reasonable period, to allow the public body to prepare or cause to be prepared the alternative format, unless the making of the alternative format is considered outrageously expensive compared to the information required.

(7) Where a record is made available in accordance with subsection (5), the person shall not be required to pay an access fee which is more than the fee which that person would have been required to pay, but for the disability.

(8) Where a record is made available in terms of this section to a person for inspection, viewing or hearing, that person may make copies of, or transcribe the record using his or her equipment, unless to do so would

- (a) interfere unreasonably with the effective administration of the public body concerned;
- (b) be detrimental to the preservation of the record; or
- (c) amount to an infringement of copyright not owned by the State or the public body concerned.

(9) Where this section requires the supply to a person of a copy of a record, the copy shall, if so requested by that person, be supplied by posting it to that person.

(10) Where an internal appeal or an application to the court, as the case may be, is lodged against the granting of a request for access to a record, access to the record may be given only when the decision to grant the request is finally confirmed.

20. Access to health or other records

An information officer shall refuse access to health records, the disclosure of which would constitute an invasion of personal privacy.

21. Preservation of records

Where the information officer receives a request for access to records or information, he or she shall ensure that the records or information concerned are properly preserved until the request is met and where there is an appeal, until all the procedures for appeal are exhausted.

PART III—EXEMPTION FROM ACCESS**22. Limitation of application of Part**

A provision of this Part under which a request for access to a record is made may not be construed as—

- (a) limited in its application by any other such provision of this Part in terms of which a request for access to a record shall or may or may not be refused; and
- (b) not applying to a particular record by reason that another provision of this Part also applies to that record.

23. Access subject to conditions

(1) A person is entitled to access information or a record of a public body if that person complies with all the requirements in this Act relating to a request for access to that information or record; and access to that information or record is not prohibited by this Part.

(2) A request made under subsection (1) may be for information or records containing personal information relating to the person requesting the information.

24. Minutes of Cabinet and of its committees

(1) Subject to subsection (2), the minutes of the meetings of Cabinet and its committees shall not be accessible to any person other than an authorised public officer.

(2) Notwithstanding subsection (1), the Minister may by regulations made under section 46, prescribe the categories of records which shall or may be released after the expiration of seven years, fourteen years and twenty-one years respectively after the record came into existence.

25. Protection of information relating to privacy of person

(1) Subject to subsection (2), an information officer may refuse a request for access if its disclosure would involve the unreasonable disclosure of personal information about a person, including a deceased individual.

(2) A person shall be granted access to a record referred to in subsection (1) insofar as the record consists of information—

- (a) about a person who has consented in writing to its disclosure to the person requesting the record;
- (b) that was given to the public body by the person to whom it relates and the person was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
- (c) that is already publicly available;
- (d) about a person who is deceased and the person requesting the information is—
 - (i) the person's next of kin; or
 - (ii) making the request with the written consent of the person's next of kin; or
- (e) about a person who is or was an official of a public body and which relates to the position or functions of the person, including, but not limited to—
 - (i) the fact that the person is or was an official of that public body;
 - (ii) the title, work address, work phone number and other similar particulars of the person;
 - (iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the person; and
 - (iv) the name of the person on a record prepared by the person in the course of employment.

26. Protection of commercial information of third party

(1) Subject to subsection (2), the information officer shall refuse a request for access to a record if the record contains—

- (a) proprietary information as defined by section 3;
- (b) scientific or technical information, the disclosure of which is likely to cause harm to the interests or proper functioning of the public body; 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 commercial negotiations; or
 - (ii) to prejudice that third party in commercial competition.

(d) A record may not be refused under subsection (1) insofar as it consists of information—

- (a) that is already publicly available;
- (b) about a third party who has consented in writing to its disclosure to the person requesting for it; or
- (c) about the results of any product, environmental or other investigation supplied to or by, or carried out by or on behalf of a public body and its disclosure would reveal a serious public safety, public health or environmental risk.

27. Protection of certain confidential information

(1) Subject to subsection (2), an information officer—

- (a) shall refuse a request for access if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or
- (b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party—
 - (i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and
 - (ii) if it is in the public interest, that similar information or information from the same source should continue to be supplied.

- (2) A record may not be refused under subsection (1) insofar as it consists of information
 - (a) that is already publicly available; or
 - (b) about the third party concerned that has consented in writing to its disclosure to the person requesting it.

28. Protection of safety of persons and property

An information officer—

- (a) shall refuse a request for access if the disclosure of the record could reasonably be expected to endanger the life or physical safety of a person; or
- (b) may refuse a request for access to a record of the body if the disclosure of the record is likely to prejudice or impair—
 - (i) the security of
 - (A) a building, structure or system, including, but not limited to a computer or communication system;
 - (B) a means of transport; or
 - (C) any other property; or
 - (ii) methods, systems, plans or procedures for the protection of—
 - (A) a person in accordance with a witness protection scheme;
 - (B) the safety of the public or any part of the public;
 - (C) the security of property referred to in paragraph (b) (i).

29. Protection of law enforcement and legal proceedings

- (1) An information officer—
 - (a) shall refuse a request for access to a record if access to that record would deprive a person of a right to a fair trial;
 - (b) may refuse a request to access if
 - (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, 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;

- (ii) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record could reasonably be expected
 - (A) to impede that prosecution; or
 - (B) to result in a miscarriage of justice in that prosecution; or
- (iii) the disclosure of the record is likely 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 it has been suspended or terminated, is likely to be resumed;
 - (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;
 - (C) result in the 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;
 - (D) facilitate the commission of a contravention of the law, including, but not limited, subject to subsection (2), to escape from lawful detention; or
 - (E) prejudice or impair the fairness of a trial or the impartiality of an adjudication.

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

30. Protection of records privileged from production in legal proceedings

An information officer shall refuse a request for access if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

31. Defence, security and international relations

(1) An information officer may refuse a request for access to a record of the body if its disclosure—

- (a) is likely to prejudice the defence, security or sovereignty of Uganda;
- (b) subject to subsection (3), is likely to prejudice the international relations of Uganda; or
- (c) would reveal information supplied in confidence by or on behalf of another State or an international organisation.

(2) A record may not be refused under subsection (1)(b) if it came into existence more than twenty years before the request was made.

(3) A record contemplated in subsection (1), without limiting the generality of that subsection, includes a record containing information—

- (a) relating to military tactics or strategy or military exercise or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (b) relating to the quality, 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
 - (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
 - (ii) any body or person responsible for the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (d) held for the purposes of intelligence relating to—
 - (i) the defense of Uganda;
 - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; or
 - (iii) another state or an international organisation used by or on behalf of Uganda 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);
- (f) on the identity of a confidential source and any other source of information referred to in paragraph (d);
- (g) on the positions adopted or to be adopted by Uganda, another State or an international organisation for the purpose of present or future international negotiations; or
- (h) that constitutes diplomatic correspondence exchanged with another State or an international organisation or official correspondence exchanged with diplomatic missions of Uganda.

32. Operations of public bodies

- (1) An information officer may refuse a request for access—
 - (a) if the record contains—
 - (i) an opinion, advice, report or recommendation obtained or prepared; or
 - (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or
 - (2) if the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the—
 - (i) communication of an opinion, advice, report or recommendation; or
 - (ii) conduct of a consultation, discussion or deliberation.

(3) A record may not be refused in terms of subsection (1) if the record came into existence more than ten years before the request was made.

33. Mandatory disclosure in public interest

Notwithstanding any other provision in this Part, an information officer shall grant a request for access to a record of the public body otherwise prohibited under this Part if—

- (a) the disclosure of the record would reveal evidence of—
 - (i) a substantial contravention of, or failure to comply with the law; or

- (ii) an imminent or serious public safety, public health or environmental risk; and
- (b) the public interest in the disclosure of the record is greater than the harm contemplated in the provision in question.

PART IV—THIRD PARTY INTERVENTION

34. Notice to third parties

(1) Where an information officer intends to disclose any record requested for that contains or which might contain—

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific, or technical information that is confidential information supplied to the public body by the third party;
- (c) information the disclosure of which could result in material financial loss or gain, prejudice the competitive position of the third party or interfere with contractual or other negotiations of the third party,

the information officer shall, if the third party can be located, within twenty-one days after the request is received, give written notice to the third party of the request and the intention to disclose the record.

(2) The third party to whom a notice is required to be given under subsection (1) may waive the requirement; and where the third party consents to the disclosure, the third party shall be deemed to have waived the requirement.

- (3) A notice given under subsection (1) shall—
 - (a) include the intention of the information officer to release the record;
 - (b) include a description of the content of the record, that it belongs to and was supplied by or relates to the third party; and
 - (c) state that the third party may, within twenty-one days after the notice, make representation as to why the record should not be disclosed.

(4) The information officer may extend the period provided under subsection (3)(c) if the time limit prescribed under section 16 is extended

but the extension under this subsection shall not exceed the extension under section 16.

35. Representation by third party

(1) The third party to whom notice is given under section 34 shall make the representation within the period stated in the notice and the information officer shall within twenty-one days of the notice, make a decision whether or not to give access to the record.

(2) The representation made under subsection (1) shall be given in writing unless the information officer provides otherwise.

(3) The information officer shall give the third party notice of the decision made under subsection (1) and the notice shall include a statement—

- (a) that the third party is entitled to request for a review of the decision; and
- (b) that the person who requested for access will be given access unless a review is requested.

PART V—COMPLAINTS AND APPEALS

36. Complaints to chief magistrate

A person may lodge a complaint with the chief magistrate, against the decision of an information officer—

- (a) to refuse a request for access; or
- (b) taken under section 16(1) or 19(3), in relation to that person.

37. Appeal to court

Any person aggrieved by the decision of the chief magistrate under section 34, may, within twenty-one days after the decision is communicated to him or her, appeal to the High Court against the decision of the chief magistrate.

38. Procedure

The Rules Committee shall, within six months after the commencement of this Act, make rules of procedure for the courts to regulate the procedure in respect of applications made under sections 34 and 39.

39. Disclosure of records by court

(1) Notwithstanding this Act or any other law, a court hearing an appeal against a decision, may examine any record of a public body to which this Act applies, and no such record may be withheld from the court on any grounds except whenever access to information is expressly prohibited by this Act or any other law.

(2) The court may not disclose to any person, including the parties to the proceedings concerned, other than the public body referred to in subsection (1)—

- (a) any record of a public body which, on a request for access, may have been refused under this Act;
- (b) if the information officer of a public body or the Inspector General of Government in refusing to grant access to a record refused to confirm or deny the existence or non-existence of the record, any information as to whether the record exists.

(3) The court under subsection (1) may

- (a) receive representation *ex parte*;
- (b) conduct hearings in camera; and
- (c) prohibit the publication of such information in relation to the proceedings as the court determines, including information in relation to the parties to the proceedings and the contents or orders made by the court in the proceedings.

40. Civil proceedings

(1) For the purposes of this Part, proceedings on application are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings in an application under this Part.

- (3) The burden of establishing that
- (a) the refusal of a request for access; or
 - (b) any decision taken under this Act,

complies with the provisions of this Act rests on the party claiming that it complies.

41. Decision of court

The court hearing an application under section 37 may, in addition to any other order, grant an order—

- (a) confirming, amending or setting aside the decision which is the subject of the application concerned;
- (b) requiring an information officer to grant or deny access to a record of a public body;
- (c) requiring the information officer or relevant authority of a public body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (d) granting an interim or specific relief, a declaratory order or compensation; or
- (e) as to costs.

PART VI—MISCELLANEOUS**42. Annual report**

(1) Every Minister shall submit an annual report to Parliament on requests for access to records or information made to public bodies under his or her Ministry in relation to the relevant year, and shall indicate whether access was given or not, and if access was not given, state the reasons for denial.

(2) For the avoidance of doubt, the annual report referred to in subsection (1) may be included in the annual policy statement of the Ministry.

43. Protection of persons releasing information

(1) A person shall not be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For the purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or maladministration regarding a public body.

44. Protection of officers

A public officer, information officer or other person acting on the directions of such a person is not subject to any civil or criminal liability for any act done or omitted to be done in good faith in the exercise or performance of any power or duty under this Act.

45. Offences

Any person who with intent to deny a right of access under this Act

- (a) destroys, damages or alters a record;
- (b) conceals a record; or
- (c) falsifies a record or makes a false record,

commits an offence and is liable, on conviction, to a fine not exceeding two hundred forty currency points or to imprisonment for a term not exceeding three years, or both.

46. Regulations

- (1) The Minister may, by statutory instrument, make regulations for
 - (a) any matter which is required or permitted by this Act to be prescribed;
 - (b) any matter relating to the fees including the procedures and guidelines for determining when such fees should be waived or reduced;
 - (c) any notice required by this Act;
 - (d) forms for requests and places at which forms may be obtained;
 - (e) uniform criteria to be applied by the information officer when deciding which categories of records are to be made available in terms of section 7;
 - (f) prescribing the categories of information that an information officer may refuse to grant access to under sections 28, 29, 31 and 32;
 - (g) any administrative or procedural matter necessary to give effect to this Act.

(2) The fee for access to be prescribed by regulations under this section shall be a fee representing the actual cost of retrieval and reproduction of the information.

(3) The Minister may prescribe, in the regulations, for the contravention of any of the regulations, a penalty not exceeding two hundred forty currency points or imprisonment for a term not exceeding three years, or both.

47. Power to amend Schedule

The Minister may, by statutory instrument, with the approval of Cabinet, amend the Schedule to this Act.

SCHEDULE

Sections 3, 47

Currency Point

A currency point is equivalent to twenty thousand shillings.

History: Act 6/2005; S.I. 11/2006; Act 17/2023

Cross References

Constitution Judicature
Act, Cap. 16
