

ACCESS TO INFORMATION ACT, 2024

No. 16



of 2024

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SCHEDULE

**An Act to provide for the right of members of the public to access information in the possession of public authorities.**

*Date of Assent:* 15.10.2024

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

1. This Act may be cited as the Access to Information Act, 2024, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint. Short title and commencement
2. In this Act, unless the context otherwise requires — Interpretation
- “classified information” has the meaning assigned to it under section 32;
- “Commission” means the Information and Data Protection Commission established under section 6 of the Data Protection Act; Cap. 42:17
- “Commissioner” means an officer appointed as such under section 8 of the Data Protection Act;
- “exempt information” means information which, by virtue of any provision of Part V, is exempt information;
- “information” includes any original or copy of documentary material irrespective of its physical characteristics, such as any record, correspondence, facts, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held;
- “information officer” means an officer appointed under section 9;
- “public authority” includes —
- (a) Parliament;
  - (b) the Cabinet;
  - (c) a Ministry or a department or division of a Ministry;
  - (d) a local authority;
  - (e) subject to section 5 (1) (b), a commission established under the Constitution or any other law;
  - (f) an entity that —
    - (i) is totally or partially owned by the Government, or financed, directly or indirectly, by the Government which discharges a public function, or
    - (ii) carries out statutory functions or services or public functions or services; and
  - (g) any other body designated by the Minister by Order published in the *Gazette*, to be a public authority for the purposes of this Act;
- “requester” means a person who requests access to information under this Act or any person acting on behalf of the person requesting access to information under this Act; and
- “responsible Minister”, in relation to a public authority, means —
- (a) the Minister to whom responsibility for the public authority is assigned in accordance with section 50 (4) of the Constitution; or

- (b) such Minister as the President may, by Order, declare to be the responsible Minister of the public authority for the purposes of this Act in accordance with section 4 of the Public Authorities (Functions) Act.
- Cap. 02:11
- Objects of Act
3. (1) The objects of this Act are to —
- (a) make available to the public, information about the operations of public authorities and to ensure that the rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices; and
- (b) create a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interest and the private and business affairs of persons in respect of whom information is collected and held by public authorities.
- (2) Any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote maximum and prompt disclosure of information at the lowest reasonable reproduction cost.
- Act binds State
- Application of Act
4. This Act binds the State.
5. (1) This Act shall apply to information held by a public authority, whether or not the information was produced before the commencement of this Act.
- (2) Notwithstanding section 4, this Act shall not apply to —
- (a) the President, when acting in his or her capacity as Commander in Chief;
- (b) a Commission of Inquiry issued by the President under the Commissions of Inquiry Act;
- (c) request for access to personal data made in accordance with the Data Protection Act;
- (d) proceedings and decisions of Cabinet and its committees, unless Cabinet allows for that information to be accessed;
- (e) judicial functions of a court, a tribunal or investigating authority established under any law;
- (f) published materials available for purchase by the public; and
- (g) library or museum materials preserved solely for public use, reference or exhibition purposes.
- Cap. 05:02

## PART II — *Administration of Act*

- Functions of Commission
6. (1) The Information and Data Protection Commission shall have oversight and shall do all things as are necessary to ensure the effective application of and compliance with this Act.
- (2) The functions of the Commission shall be to —
- (a) conduct research and studies, and promote educational activities relating to protection of the right to access to information;
- (b) instruct a public authority to take such measures as are necessary to ensure access to information in accordance with this Act;

- (c) provide guidance and instructions on appropriate measures to ensure prompt, and at lowest reasonable cost, disclosure of information;
- (d) provide information to persons on their rights to access to information;
- (e) receive reports and claims from a requester in regard to a violation of this Act, and to take such remedial action as is necessary;
- (f) investigate complaints from a requester and respond to queries of such complaints;
- (g) request for and receive reports from public authorities in relation to the implementation of this Act and to assess such reports with a view to evaluate access to information in accordance with this Act;
- (h) make recommendations to the Minister for legislative, administrative and policy reforms in relation to access to information; and
- (i) perform such additional functions and duties as may be conferred on it by any written law.

7. (1) The Commissioner shall, in such manner as may be prescribed and within such time as may be prescribed, cause an audit of a public authority as to its compliance with this Act.

Power of  
Commission to  
conduct audit

(2) The Commission shall notify a public authority before an audit under subsection (1) is conducted.

(3) When conducting an audit, the Commissioner may —

- (a) conduct inspections at the premises of the public entity;
- (b) undertake any investigation he or she considers appropriate in furtherance of an audit;
- (c) engage with staff of the public authority;
- (d) request copies of any information and any other related records from the public authority; or
- (e) access any information he or she considers necessary to undertake the audit.

(4) After having concluded an audit, the Commission shall take appropriate action or steps to call for or require the remedying and correction of matters or instances through such means as are fair, proper and effective.

8. The Commissioner shall issue to the officer of the Commission an identity card, which shall be *prima facie* evidence of appointment as an officer of the Commission.

Identity card

### PART III — *Obligations of Public Authority*

9. (1) A public authority shall appoint an information officer for the purposes of this Act, and shall notify the Commissioner of such an appointment.

Appointment  
of information  
officer

(2) Where an information officer is removed from office and the office of the information officer becomes vacant, the public authority shall inform the Commissioner of such removal.

- (3) The information officer appointed under subsection (1) shall —
- (a) be a person who holds the requisite qualifications; and
  - (b) be in charge of the implementation of the provisions of this Act, including receiving and causing the processing of requests for access to information under this Act.

(4) Without prejudice to the generality of subsection (3) (b), an information officer shall —

- (a) provide responses to requests for information;
- (b) maintain the information disclosure log and promote appropriate disclosure of information across the public authority;
- (c) input to and review information request handling policies and procedures;
- (d) advise and educate the public authority on how to comply with the provisions of this Act;
- (e) monitor the public authority's compliance with the provisions of this Act; and
- (f) act as the point of contact with the Commission and cooperate with the commission as requested.

(5) Where the information officer has reason to suspect that the public authority is contravening the law pertaining to access to information, and if rectification is not implemented as soon as practicable after such contravention is pointed out, the information officer shall notify the Commissioner.

(6) A public authority shall not dismiss or penalise the information officer for performing the tasks specified in subsection (5).

Duty to keep, organise and maintain information

**10.** (1) A public authority shall keep, organise and maintain the information that it holds in a manner that facilitates access to information.

(2) For purposes of complying with this section, a public authority shall —

- (a) arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification; and
- (b) keep all the information in its possession in good condition and in a manner that preserves the safety and integrity of the contents of such information.

Implementation plans

**11.** A public authority shall, within a prescribed time submit to the Commissioner, such implementation plan as may be prescribed, to ensure clear obligations and processes which support awareness raising and education interventions at community level.

Proactive disclosure of information

**12.** (1) A public authority shall, without request from any person —

- (a) cause to be published in the *Gazette* or such media as the public authority may consider appropriate; or
- (b) make available for inspection,

information produced by or in relation to such public authority within 30 days of the information being generated or received by the public authority.

- (2) The information referred to in subsection (1) shall include —
- (a) particulars of the organisational structure, functions and duties;
  - (b) powers and duties of officers and employees;
  - (c) a directory of officers and employees, from the level of the head of the public authority and below;
  - (d) the monthly remuneration received by each officer or employee of the public authority;
  - (e) information relating to budget allocated to each public authority, indicating particulars of all plans, proposed expenditures and reports on expenditures made;
  - (f) procedures followed in the decision-making process, including channels of supervision and accountability;
  - (g) rules, instructions, manuals and records held by the public authority or under its control or used by the employees for discharging its functions;
  - (h) the names, designation and other particulars of the information officer of the public authority, including their physical contact details and electronic addresses where a person may submit requests for information;
  - (i) particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of policies or similar documents;
  - (j) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
  - (k) particulars of facilities available to the for accessing information, including working hours of a library or reading room, if maintained for public use;
  - (l) all contracts awarded in terms of any applicable law detailing for each contract —
    - (i) the public works, goods acquired or rented, contracted service, or in the case of studies or research, the specific subject,
    - (ii) the amount of the contract, and
    - (iii) the name of the service provider or contractor to whom the contract has been awarded, and the period within which the contract shall be completed;
  - (m) information on licences, permits, authorisations and public-private partnerships granted by the public authority;
  - (n) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public authority; and
  - (o) such other information as may be required by the Commissioner.
- (3) The information referred to in this section shall be —
- (a) submitted to the Commissioner for approval prior to its publication or being made available for publication; and

(b) kept up-to-date and re-published whenever material change to the information occurs.

(4) Where information has not been published or made available for inspection in accordance with subsection (1), the responsible Minister shall without delay give reasons for the failure, and proceed to publish the information in the *Gazette* or such media as the public authority may consider appropriate or make the information available for inspection.

(5) A public authority shall proactively disclose any information that has been disclosed on request.

(6) Nothing in this section shall be construed as requiring disclosure of exempt information.

(7) Where a public authority comes into existence on or after the date of commencement of this Act, the public authority shall comply with the provisions of this section within 24 months after the date it so comes into existence.

Notice requiring specific disclosure

**13.** (1) A person may serve upon a public authority a notice, in writing, stating that, in the opinion of the person, a disclosure by the public authority does not contain information that was specified for proactive disclosure under section 12.

(2) The public authority shall make a decision to publish or make the information available for inspection within 21 days of receiving the notice referred to in subsection (1).

(3) Where the decision is adverse to the person's claim, the public authority shall cause the person to be given notice of the decision in writing.

(4) The notice referred to in subsection (3) 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) inform the person of his or her right to lodge a complaint with the Commission under section 49.

Duty to act in good faith

**14.** In considering whether to grant access to information under this Act or claim that information is exempt information under this Act, a public authority shall act in good faith and in the public interest, and shall endeavour, as much as possible, to afford to members of the public, maximum access to information.

#### PART IV — *Right of Access to Information*

Right of access to information

**15.** Subject to the provisions of this Act, every person shall have the right to obtain access to information held by any public authority.

Access to information otherwise than under this Act

**16.** Nothing in this Act shall prevent a public authority from publishing or giving access to information, including exempt information, otherwise than as required by this Act, where the public authority has the discretion to do so or is required by law to do so.

17. (1) A request to obtain access to information under this Act shall be made in writing, in the form set out in the Schedule, or orally.

Request for  
access to  
information

(2) Where a request is made orally, the public authority shall reduce the request into writing and the requester shall append his or her signature to the request form.

(3) A requester shall —

(a) provide such details concerning the information requested as is reasonably necessary to enable the public authority to identify and locate the information;

(b) where he or she believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect and the basis for such belief; and

(c) specify the form in which access is preferred.

(4) A request made under this section may be made for access to information that —

(a) contains information of a specified kind; or

(b) relates to a particular subject matter.

(5) The public authority shall, upon receipt of a request for access to information, give an immediate response to a request for access to information and if the information requested is not readily available to be accessed, acknowledge receipt in such form as may be prescribed.

18. A person may, on behalf of another, make a request to obtain access to information under this section:

Request for  
access to  
information on  
behalf of  
another person

Provided that such a request is accompanied by an authorisation, in writing, from the person on whose behalf the request is being made.

19. (1) A public authority shall take all necessary steps to assist a person to make the request for access to information in a manner that complies with this Act.

Duty to  
assist requester

(2) Where a person with a disability wishes to make a request for access to information, the public authority shall —

(a) take all necessary steps to assist the person to make the request in a manner that complies with this Act and meets the person's needs; and

(b) provide information in an accessible communication format and technology as chosen by the person with disability and appropriate to his or her kind of disability in a timely manner and without additional cost.

20. (1) A request for access to information shall not be affected by —

(a) any reason the requester gives for requesting access; or

(b) the belief of an information officer as to what the reasons of the requester are for requesting access,

Decision on  
request for  
access to  
information

except in so far as the request relates to a request for information made for reasons specified in subsection (5).

(2) The public authority to whom a request for access to information is made shall, within 21 days after receipt, make a decision on whether or not to grant the request.

(3) Where the public authority decides to grant access, the notice granting access shall state —

- (a) the form in which access will be granted;
- (b) whether access is to only a part of the information requested because the other part is exempt information; and
- (c) the fee payable for the reproduction of information.

(4) Where the public authority decides to refuse access, the notice refusing access shall state the reason for refusal and the provision or law under which the decision is based.

(5) Where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the public authority shall, within 48 hours —

- (a) determine whether to grant the request for access to information;
- (b) notify the requester of the decision in writing; and
- (c) grant the applicant access to information, irrespective of whether any payable fee for reproduction of information has been paid.

(6) Where upon perusal of a request for access to information, it does not appear to an information officer that the information requested reasonably appears to be necessary to safeguard the life or liberty of a person, the information shall within 48 hours of receipt of the request for information —

- (a) give notice of the decision and reasons for the decision; and
- (b) inform the requester that subject to his or her right to lodge a complaint with the Commissioner, the public authority shall make a decision in relation to whether to grant access to the requested information within 14 days.

Referral of  
request for  
access to  
information

**21.** (1) Where a request for access to information is made to a public authority, and the public authority —

- (a) does not hold the information; or
- (b) knows or reasonably presumes the information to be —
  - (i) held by another public authority, or
  - (ii) more closely connected with the mandate or functions of another public authority,

the public authority shall, after inquiry with the other public authority, refer the request or such part of the request as may be appropriate to the other public authority.

(2) A public authority that refers a request for access to information in accordance with subsection (1) shall, within five days of receipt of the request —

- (a) refer the request to the other public authority; and
- (b) notify the requester of the referral in writing.

(3) A public authority that receives the request referred in accordance with this section shall within five days notify the requester of the receipt in writing.

(4) Where a request is referred to another public authority in accordance with the provisions of this section, the request shall be deemed to be a request made to the public authority to which it was referred and received on the date on which it was received by the public authority to which it was referred.

22. (1) A public authority shall be deemed to have refused a request for access to information where the public authority fails to determine a request for information —

Deemed refusal or abandonment of request to access to information

- (i) within 14 days after the request is received by the public authority, or
- (ii) within such extended period where the period has been extended in accordance with section 23,

and the requester shall have the right to seek redress under sections 49, 52 and 53.

(2) A requester shall be deemed to have abandoned a request for access to information where the requester fails to —

- (a) pay the fee for reproduction of information under section 28 despite being requested to do so; or
- (b) respond within 30 days of being notified of the grant of request for access to information.

(3) The provisions of subsection (1) shall not apply to a request which has been referred to another public authority.

23. (1) Subject to subsection (2), the public authority to whom a request is made may extend the period specified in section 20 (2) to respond to a request on a single occasion for a period not exceeding 14 days where —

Extension of time

- (a) the request is for a large volume of information or requires a search through a large number of records and compliance with the normal time limit would unreasonably interfere with the operations of the public authority;
- (b) the information requested has to be gathered from more than one source; or
- (c) consultations with a person outside the public authority are required and cannot reasonably be complied with within 14 days.

(2) Where any part of the information requested may be considered within 14 days, the public authority shall review the request and provide the requester with information in accordance with section 20.

(3) Where an extension of time is granted under this section, an information officer shall, within seven days of receipt of the request, notify the requester in writing stating —

- (a) the period of the extension;
- (b) reasons for the extension; and
- (c) the right of the requester to lodge a complaint with the Commission, in accordance with section 49.

24. (1) A public authority that grants the request for access to information made in accordance with section 20 may defer the access to information —

Deferral of access to information

- (a) where the information has been prepared for tabling in the National Assembly; or
- (b) where the information constitutes a report or part of a report that has been prepared for the purpose of presentation to —
  - (i) any public authority, or
  - (ii) a public officer or a person acting in his or her capacity as a public officer,

until the information or report has been tabled, presented or made available to the public authority or officer or on the expiration of 21 days from the date of the request, whichever is the earlier.

(2) Where the public authority decides to defer access to information under subsection (1), the public authority shall, no later than 21 days after receipt of the request, notify the requester in writing of the decision to defer.

(3) The notice referred to in subsection (2) shall include —

- (a) reasons for deferral that are based on the provisions of this Act;
- (b) the period for which access is to be deferred; and
- (c) the right of the requester to make written or oral representations to the public authority, within 14 days of receipt of the notice, as to why access should not be deferred.

(4) On receipt of any representation made under subsection (3) (c), the public authority shall —

- (a) in the case of oral representations, reduce the representations into writing and provide a copy of the written representations to the requester; and
- (b) within seven days of receipt, consider the representations and, in writing and with reasons —
  - (i) accept the representations if there are reasonable grounds for believing that the requester will suffer prejudice, or
  - (ii) dismiss the representations if there are no reasonable grounds for believing that the requester will suffer prejudice.

Information  
that cannot be  
found or does  
not exist

**25.** (1) Where all reasonable and practical steps have been taken to find the information requested and the information cannot be found or there are reasonable grounds to believe that the information does not exist, the information officer shall, within 14 days of receipt of a request for access to information, notify the requester in writing that the information cannot be found or does not exist.

(2) The notice referred to in subsection (1) shall include a sworn statement by the information officer stating the substantive details of all steps taken to find the information or to determine whether the information exists, including details of —

- (a) any location searched for the information and the person or persons that conducted the searches;
- (b) any communication with any person that the public authority contacted in searching for the information or attempting to establish the existence of the information; and

- (c) any evidence relating to the existence of the information, including —
  - (i) any evidence that the information was destroyed, and
  - (ii) the location in which the information was last known to be held.

(3) Where the information is found after notice is given to a requester under subsection (1), the public authority shall notify the requester, and shall, within seven days of the finding of the information —

- (a) consider the request for access to information; and
- (b) complete the process and procedures of request for access to information as set out in this Act.

**26.** (1) Access to information under this Act may be granted to a requester by —

Forms of  
access

- (a) giving the requester —
  - (i) a copy of the information, or
  - (ii) reasonable opportunity to inspect the information;
- (b) making arrangements for the requester to hear the sounds or view the visual images, in the case of information from which sounds or visual images are capable of being reproduced, whether or not with the aid of another device;
- (c) giving the requester a written transcript of the words recorded in a document, in the case of information in which words are recorded in a manner in which they are capable of being reproduced in the form of sound;
- (d) giving the requester a written transcript of the words in the case of information in which words are contained in the form of shorthand writing or coded form; or
- (e) giving the requester the written form, in the case of information in which words are recorded in a manner in which they are capable of being reproduced in a written form, or in any other form, electronic, magnetic, optical or otherwise, including a computer print-out, various computer storage devices and web portals.

(2) Where a request for access to information has been made in a particular form, access to information —

- (a) shall be given in that form; or
- (b) may be refused if the form requested —
  - (i) is likely to be detrimental to the preservation of the information, or
  - (ii) having regard to the physical nature of the information, cannot be accessed in that form.

(3) Where access to information cannot be granted in the form specified by the requester but can be granted in some other form —

- (a) access to information shall be granted in that other form; and
- (b) the requester shall be provided with a reason why access cannot be in the specified form.

Reproduction  
fees

(4) For purposes of subsection (3), the requester shall not be required to pay a reproduction fee which is greater than the fee that the requester would have paid had access been granted in the form requested.

27. (1) A public authority shall not charge any fee for —

- (a) lodging a request for access to information;
- (b) time spent by the public authority searching for the information requested; or
- (c) time spent examining the information to determine whether it contains exempt information or deleting exempt information from a document.

(2) Where access to information is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the requester shall pay such fees as may be prescribed.

(3) Notwithstanding subsection (2), a fee for copies shall not be payable where a public authority —

- (a) fails to respond to a request for information within —
  - (i) the time specified under section 20, or
  - (ii) the extended period, where an extension of the period has been made in accordance with section 23; or
- (b) fails to give a requester access to information within seven working days of the payment of a fee payable under this section and in addition to access to the information requested, the requester shall be entitled to a refund of the fee paid.

(4) The fees payable by a requester under this Act shall be commensurate with the cost incurred in making the information available to the requester.

Refusal to  
process  
request for  
access to  
information

28. (1) A public authority may refuse to continue to process a request for access to information where the —

- (a) requester has not paid the fee for reproduction of information within such time as may be prescribed; or
- (b) public authority determines that even after extending the time in terms of section 23 (1), it is satisfied that the work involved in carrying out the request would substantially and unreasonably —
  - (i) interfere with the normal operations of the public authority, or
  - (ii) divert the resources of the public authority from its other operations:

Provided that before refusing to provide information on this ground, the public authority shall have taken reasonable steps to assist the requester to reformulate the request so as to avoid causing such interference.

(2) A public authority that refuses to continue to process a request for access to information shall —

- (a) immediately notify the requester in writing of the refusal; and
- (b) inform the requester of his or her right to lodge a complaint with the Commissioner within 14 days.

PART V — *Exempt Information*

**29.** Subject to section 30, a public authority may refuse to grant access to information that falls within this Part.

Prohibition of access to exempt information

**30.** (1) A public authority shall not grant access to information where access would cause prejudice to the national security and defence of Botswana.

National security and defence

(2) For the purposes of this section, “national security and defence” includes —

- (a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities or terrorism;
- (b) intelligence relating to —
  - (i) the defence of Botswana; or
  - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);
- (d) the non-disclosure of the identity of a confidential source; and
- (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding a NBC weapon.

(3) For the purposes of this section —

- (a) “NBC weapon” has the meaning assigned to it under the Counter-Terrorism Act; and
- (b) “subversive or hostile activities” means —
  - (i) an attack against Botswana by a foreign element,
  - (ii) an act of sabotage or terrorism aimed at the people or a strategic asset of Botswana, whether inside or outside Botswana, or
  - (iii) a foreign or hostile intelligence operation.

Cap. 08:08

**31.** (1) Notwithstanding any exempt information set out in this Part, a public authority from which information has been requested under this Act shall grant such access, where the disclosure of the information —

Disclosure of exempt documents in the public interest

- (a) would reveal evidence of —
  - (i) a corrupt activity or a serious offence,
  - (ii) an imminent and serious public health or safety risk,
  - (iii) an imminent and serious environmental risk,
  - (iv) mismanagement of public funds, or
  - (v) abuse of public office; or
- (b) demonstrably outweighs the resulting harm to the interest protected under the relevant exemption should the disclosure of the information be granted.

- Cap. 08:03 (2) For purposes of this section —  
 (a) “serious offence” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act; and  
 (b) a disclosure which is made to a law enforcement agency or to an appropriate public authority shall be deemed to be made in the public interest.
- Classified information 32. (1) Any classified information is exempt from disclosure under this Part.  
 (2) For purposes of this section —  
 (a) information shall remain classified until —  
 (i) it is declassified under any law,  
 (ii) its classification period expires under any law, or  
 (iii) it is lawfully disclosed; and  
 (b) “classified information” means —  
 (i) any information in relation to which disclosure is exempted under sections 30, 38 and 40,  
 (ii) any matter considered as classified under the National Security Act, and  
 (iii) any information assigned as such under the Intelligence and Security Service Act, the Botswana Defence Force Act and any other Act.
- Cap. 23:01  
 Cap. 23:02  
 Cap. 21:05
- Information for the President or the Vice-President 33. Information is exempt from disclosure where the information —  
 (a) is prepared for submission or yet to be considered by the President or Vice-President for consideration; or  
 (b) contains a matter which, the disclosure of would reveal information concerning opinion, advice, deliberation, recommendation, minutes or consultation made or given to the President or Vice-President, and is likely to undermine the deliberative process on the part of the President or the Vice-President.
- Information relating to Cabinet 34. (1) Information is exempt from disclosure where the information —  
 (a) is prepared for submission or yet to be considered by Cabinet;  
 (b) is at Cabinet and is not published or released to the public; and  
 (c) contains a matter the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendation, minutes or consultation made or given to Cabinet, and is likely to —  
 (i) prejudice the effective formulation or development of government policy,  
 (ii) frustrate the success of a policy by premature disclosure of such policy,  
 (iii) undermine the deliberative process in Cabinet, or  
 (iv) prejudice national security or defence.  
 (2) Notwithstanding subsection (1), Cabinet may publish or grant access to information that is otherwise exempt under this section.
- Information of third party 35. (1) A public authority shall refuse to grant a request for access to information where the disclosure of such information would involve disclosure of personal information about a third party.

(2) Notwithstanding the provisions of subsection (1), a public authority shall grant a request for access to information referred to in subsection (1) where —

- (a) the third party consents to the disclosure;
- (b) the information relates to the physical or mental well being of an individual who is under the care of the requester and who is —
  - (i) under the age of 18 years, or
  - (ii) incapable of understanding the nature of the request, and giving access would be in the interest of such an individual;
- (c) the information relates to the position or functions of an individual who is or was an official of the public authority; or
- (d) the information was supplied to the public authority by the individual to whom it relates and the individual was informed by or on behalf of the public authority, before it was given that the information belongs to a class of information that would or might be made available to the public.

36. (1) Subject to subsection (2), a public authority may not grant a request for access to information that contains —

- (a) trade secrets of the public authority or a third party; or
- (b) information about the public authority or a third party that would substantially prejudice a legitimate commercial or financial interest of the public authority or a third party.

Information relating to trade secrets, business affairs, etc.

(2) Notwithstanding subsection (1), a public authority shall grant a request for access to information referred to in subsection (1), where —

- (a) the disclosure of the information would facilitate accountability and transparency of decisions taken by the public authority;
- (b) the information relates to the expenditure of public funds;
- (c) the disclosure of the information would reveal misconduct or criminal activity;
- (d) the third party consents to the disclosure; or
- (e) the information is in the public domain.

37. A public authority shall not grant a request for access to information where the release of the information is likely to —

- (a) endanger the life, health or safety of an individual; or
- (b) prejudice or impair the security of a building, structure or system, including a computer or communication system, or any other property.

Information relating to protection of individual or property

38. A public authority shall refuse to grant access to information —

- (a) supplied by or on behalf of Botswana to another state or an international organisation in terms of an international agreement with that state or organisation which requires the information to be held in confidence;
- (b) on the positions adopted or to be adopted by Botswana, another state or an international organisation for the purpose of present or future international negotiations; or

Information relating to international relations

(c) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the state, if the release of the information would cause substantial prejudice to the international relations of Botswana.

Information  
relating to law  
enforcement

**39.** (1) A public authority shall refuse to grant access to information where the release of the information would cause prejudice to —

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice;
- (d) the assessment or collection of any tax or duty; or
- (e) the operation of immigration controls.

(2) Notwithstanding the provisions of subsection (1), this section shall not apply to any information that —

- (a) reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law;
- (b) reveals the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;
- (c) contains any general outline of the structure of any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;
- (d) is a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, or enforcing or administering, the law;
- (e) is a report prepared in the course of routine law enforcement inspections or investigations by a public authority which has the function of enforcing and regulating compliance with a particular law other than criminal law; or
- (f) is a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation, if it is in the public interest that access to the information should be granted under this Act.

Information  
affecting  
national  
economy

**40.** (1) A public authority may refuse to grant access to information which would be contrary to public interest by reason that it would cause substantial harm to the economic interest of Botswana or Government's ability to manage the economy.

(2) The information to which subsection (1) apply include information which relates to —

- (a) the determination of currency or exchange rates;
- (b) the determination of interest rates;
- (c) the determination of taxes, including duties of customs or of excise;
- (d) proposals for expenditure;
- (e) foreign investment in and outside Botswana; or

(f) borrowing by the Government.

**41.** (1) A public authority may refuse to grant a request for access to information where the information would otherwise be privileged from production in legal proceedings between —

Information relating to legally privileged documents

- (a) a medical practitioner and his or her patient;
- (b) a legal practitioner and his or her client;
- (c) a journalist and his or her source; or
- (d) spouses.

(2) Notwithstanding the provisions of subsection (1), a public authority may grant access to information referred to in subsection (1) where the patient, client, source, spouse or any person entitled to the privilege, consents, in writing, to the release of the information or has waived the privilege.

**42.** (1) A public authority may refuse to grant a request for access to information relating to —

Information relating to academic or professional examination and recruitment process

- (a) an academic or a professional examination; or
- (b) a recruitment or selection process,

prior to the completion of such examination or process, if the release of the information is likely to jeopardise the integrity of such examination or process.

(2) The information referred to in subsection (1) may be released on request after the academic or professional examination or recruitment or selection process has been completed.

**43.** (1) A public authority may refuse to grant a request for information where the request is manifestly frivolous or vexatious.

Manifestly frivolous or vexatious requests

(2) A request is regarded as manifestly frivolous or vexatious if such a request is determined to be done for malicious reasons or is aimed at causing nuisance.

(3) Where a public authority refuses a request on the basis of subsection (1), the notice referred to in section 20 (4) shall include an affidavit signed by the information officer stating the reasons that the information officer considers the request to be manifestly frivolous or vexatious.

**44.** (1) A public authority may refuse to grant a request for information where the request —

Information relating to internal working documents and policy documents

- (a) would disclose any matter in the nature of an opinion, advice or recommendation prepared by an officer or a Minister, or consultation or deliberation that has taken place between officers, Ministers, or an officer and a Minister, in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority; or
- (b) would prejudice the formulation or development of policy by the Government, by having an adverse effect on the —
  - (i) provision of an opinion, advice or recommendation, or
  - (ii) exchange of views for the purposes of deliberation.

(2) Subsection (1) shall —

- (a) cease to apply to information brought into existence on or after the commencement of this Act when a period of 10 years has elapsed since the document came into existence; and
- (b) not apply to information which contains —
- (i) material that has been publicly mentioned as the basis of a public policy or for formulating public policy, or
  - (ii) factual or statistical data.
- 45.** A public authority may refuse to grant a request for information where the granting of request would —
- (a) be in contempt of court;
  - (b) be contrary to an order made or given by a commission, tribunal or other person or body having the power to take evidence on oath; or
  - (c) contravene the provisions of the National Assembly (Powers and Privileges) Act.
- 46.** (1) A public authority shall, where it is practicable, grant access to information with such deletions or redactions as to make information not exempt.
- (2) Where access is granted to any portion of a record or document in accordance with subsection (1), the requester shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any information deleted or redacted is exempt information.
- 47.** (1) Subject to subsection (4), information classified as exempt information under this Part shall, unless the Minister otherwise determines, cease to be exempt information on the expiry of 20 years from the year in which the information came into existence.
- (2) On expiry of the period specified in subsection (1), a public authority shall grant access to information in accordance with this Act.
- (3) Notwithstanding subsection (2), a public authority shall refuse to grant access to information where the disclosure will endanger the life or physical safety of an individual, public safety, national security and defence national economic interest and international relations with another country.
- (4) Notwithstanding this section, a public authority shall not grant access to information that is classified under any other law until such time that the information is declassified or its classification period expires under such law.

Information disclosure of which would be contempt of court, etc.

Cap. 02:05

Deletion or redaction of exempt information

Limitation of period for information exempt from disclosure

#### PART VI — *Miscellaneous*

Indemnity of information officer, etc.

**48.** (1) An information officer or any officer of a public authority shall not be penalised or subjected to any disciplinary proceedings in relation to the officer having made or attempted to make a disclosure of information which the officer obtained in confidence in the course of exercising or performing his or her powers or functions, if the disclosure is in public interest:

Provided that the disclosure is done with reasonable belief in the veracity of the information or for instances specified under section 30.

(2) Without prejudice to subsection (1), no matter or thing done or omitted to be done by an information officer or any officer of a public authority shall if the matter or thing is done *bona fide* in the course of exercising or performing powers or functions under this Act, render the information officer or any officer of a public authority personally liable to an action, claim or demand.

(3) An information officer or any officer of a public authority shall not incur liability for any breach of confidentiality or any disclosure made in compliance with this Act.

(4) For purposes of this section, an information officer or any officer of a public authority is penalised if the person is dismissed, discriminated against, made a subject of reprisal or other forms of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided but for the disclosure made.

**49.** (1) A person aggrieved by a decision of a public authority under this Act may lodge a complaint to the Commission.

Complaint to  
Commission

(2) A complaint to the Commission shall be made within 30 days of receipt of the decision of the public authority.

(3) A complaint to the Commission may be made in writing or orally and shall state the request and the decision of the public authority which is the subject of the application for review.

(4) Where a complaint is made in writing, it shall be signed by the complainant or his or her representative

(5) Where a complaint is made orally, the person to whom the complaint is made shall reduce the complaint into writing and provide a copy of the written record to the complainant.

(6) Notwithstanding any law to the contrary, where a complaint is written by a person in custody, or by a patient in a hospital, is addressed to the Commission, it shall be immediately forwarded unopened and unaltered to the Commission by the person for the time being in charge of the place or institution where the applicant is in custody or of which he or she is a patient.

**50.** (1) The Commissioner may, either on his or her own initiative or upon receipt of information or a complaint from any person, commence an investigation, where the Commissioner has reasonable grounds to suspect that —

Investigation by  
the Commission

(a) there is interference with the right of members of the public to access information held by a public authority;

(b) the right of a requester to access information is being infringed upon; or

(c) the request for access to information is not processed in accordance with this Act.

(2) For the purposes of investigations under this section, any officer of the Commission designated to investigate by the Commissioner may —

- (a) enter any premises used or alleged to be used by a public authority, at any reasonable time and search for any record, document or thing that the investigator considers relevant to the investigation;
- (b) inspect and make copies, or take extracts from, and where necessary in an appropriate case, take possession of such record, document or thing; and
- (c) direct the public authority or any relevant person, in writing, to —
  - (i) produce the relevant evidence to the investigator as specified in the direction,
  - (ii) give the investigator explanations or further information about the relevant evidence, or
  - (iii) attend before the investigator at a reasonable time and place specified in the direction, and answer under oath, questions relating to the matter.

(3) An officer of the Commission who enters any premises under this section shall produce an identity card, issued by the Commissioner under section 8, to an owner or occupier of any premises.

Decision of  
Commission

**51.** (1) The Commissioner shall as soon as reasonably practicable, but not later than 14 days after receipt of a complaint under section 49 —

- (a) make a decision; and
- (b) notify the applicant of the decision in writing.

(2) Where the Commissioner determines that access to information should be granted, the notice referred to in subsection (1) shall state —

- (a) the fee payable; and
- (b) the form in which access to information will be given.

(3) Where the applicant has been notified that access to information has been granted, the applicant shall, upon payment of reproduction fee, or where no fee is payable, be given access to the information.

(4) Where the Commissioner refuses access to the information, the Commissioner shall notify the applicant in writing, within seven days of making such decision.

(5) The notice to the applicant shall —

- (a) state the reason for the refusal based on the contents of the application and the information considered by the Commissioner;
- (b) refer to the specific provision of the law relied on; and
- (c) inform the applicant of the right to apply to the Appeal's Tribunal for a review of the decision and the process of lodging such appeal, in terms of the Data Protection Act.

Application  
for review by  
Appeals  
Tribunal

**52.** (1) A person or public authority aggrieved by a decision of the Commissioner in relation to a complaint lodged under section 49 may appeal to the Information and Data Protection Appeals Tribunal established under the Data Protection Act.

(2) An appeal under this section shall comply with the procedure for lodging appeals set out under the Data Protection Act, which may determine the appeal in terms of the procedure under the Data Protection Act.

**53.** A public authority or person aggrieved by any decision of the Appeals Tribunal may, within 30 days after the decision of the Appeals Tribunal, appeal or make an application for judicial review to the High Court against that decision in accordance with the provisions of any law in force for the time being regulating appeals or applications for judicial review.

Judicial review

**54.** (1) A public authority shall on or before 31st March in each year, furnish to the Commissioner such information as he or she requires for the purposes of the preparation of a report under section 55, and shall comply with any administrative requirements set out by the Commissioner, in writing, concerning the furnishing of that information.

Reports to  
Commission

(2) A report under this section shall include, in respect of the year to which the report relates, the following information —

- (a) the number of requests made to a public authority during the period;
- (b) the number of decisions by a public authority in relation to which a requester was not entitled to access information pursuant to a request, including the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
- (c) the number of applications for judicial review of decisions made under this Act and the outcome of those applications;
- (d) the number of notices served upon a public authority under section 13 (1), including the number of decisions by the public authority, in respect of such notices, which were adverse to a person's claim;
- (e) the amount of reproduction fees collected by a public authority under this Act; and
- (f) any other information which indicates an effort by a public authority to comply with this Act.

**55.** (1) The Commissioner shall as soon as practicable, but not later than three months after 31st March in each year, or by such later date as the Minister may allow, submit to the Minister a report on the operation of this Act in the previous year.

Annual report  
by Minister

(2) A report referred in subsection (1) shall include —

- (a) a comprehensive summary of the requests made and how they have been dealt with;
- (b) compliance with the requirements to grant access to information as provided for in this Act;
- (c) the findings of any audit undertaken under section 7; and
- (d) any offences reported under this Act.

(3) A report made under this section shall be laid in Parliament by the Minister within three months of receipt.

**56.** (1) A person who, with intent to deny a right to access to information —

Offences and  
penalties

- (a) destroys, damages or alters information required to be accessed under this Act;
- (b) conceals information requested under this Act;
- (c) falsifies or manipulates information or makes a false record of information under this Act;
- (d) obstructs, interferes or hinders an information officer or any other officer or employee of a public authority in the exercise or performance of his or her powers or functions under this Act;
- (e) obstructs, interferes or hinders the Commissioner, or his or her officers in the exercise or performance of their powers or functions under this Act; or
- (f) accesses information exempt from disclosure in terms this Act without the relevant authorisation,

commits an offence and is liable to a fine not exceeding P100 000 or imprisonment for a term not exceeding five years, or to both.

(2) A requester who, with the grant of access to information, including to view documents or listen to recordings held by a public authority, defaces, mars, steals or destroys such information, commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding two years, or to both.

(3) A public authority who, without reasonable cause in relation to access of information –

- (a) refuses to receive a request for access to information;
- (b) fails to respond to a request for access to information within the period specified in section 20 or if that period has been extended in accordance with section 23 within such extended period;
- (c) fails to comply with an order of the Commissioner;
- (d) gives incorrect, incomplete or misleading information; or
- (e) obstructs in any manner, the release of information granted,

is liable to an administrative fine not exceeding P100 000, as may be imposed by the Commission,

Regulations

**57.** The Minister may make regulations –

- (a) for the better carrying out of the provisions of this Act; and
- (b) prescribing anything that under this Act requires to be prescribed.

SCHEDULE  
THE ACCESS TO INFORMATION ACT  
Request for Access to Information  
(section 17(1))

1. Name of Public Authority:

.....

2. Name of Applicant:

.....

3. Address of Applicant:

.....

.....

4. Telephone Number of Applicant:

.....

.....

5. (a) Description of information requested:

1.....

2.....

3.....

*(NOTE: Applicants shall identify the document(s), or provide sufficient information to enable an officer/employee of the public authority who is familiar with the relevant documents, to identify the document(s) requested with reasonable effort. Continue on a separate page if necessary.)*

(b) Requested form of Access:

1.....

2.....

3.....

6. Is the information necessary to safeguard life or liberty of person? YES NO

If yes provide a statement

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

The making of this request is free of charge, but where access to a document is to be given in the form of a copy (printed or otherwise), the applicant shall be required to pay such fee as may be prescribed.

Date of Application:.....

Signature of Applicant:.....

PASSED by the National Assembly this 19th day of August, 2024.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*