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MALAWI GOVERNMENT

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Act

No. 13 of 2017

I assent

PRO. ARTHUR PETER MUTHARIKA
PRESIDENT
10th February, 2017

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SCHEDULE—INFORMATION HOLDERS TO WHICH ACT APPLIES

An Act to provide for the right of access to information in the custody of public bodies and relevant private bodies; the processes and procedures related to obtaining that information; and to provide for matters connected therewith or incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Access to Information Act, 2016, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

"Commission" means the Human Rights Commission established under Chapter XI of the Constitution;

"Court" means the High Court of Malawi or a Court of a Resident Magistrate;

"information" includes an original or copy of any material, record or document which communicates facts, opinion, data or any other matter regardless of its form, characteristics or date of creation, that is in the custody or under the control of any information holder to which this Act applies;

"information holder" means a public body and a relevant private body;

"personal information" means information about an identifiable individual including—

(*a*) information relating to the race, colour, sex, language, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition of the individual;

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

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

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

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

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;

"private body" means a person or organization, not being a public body, who or which carries out any business in relation to public interest, or to rights and freedoms of people;

"public body" means the Government, a statutory body, or any other body appointed by the Government to carry out public functions;

"record" means any recorded information, in any format, including an electronic format in the possession or control of a public body or relevant private body, whether or not that body created it;

"relevant private body" means a body which would otherwise be a private body under this Act, that is—

(*a*) wholly or partially owned or controlled or financed, directly or indirectly, by public funds; or

(*b*) carries out a statutory or public function or service, but only to the extent of such statutory or public function or service; and

"third party" in relation to a request for access to information,means any person, other than the person requesting the record.

Application

3.—(1) This Act shall apply to information in the custody or under the control of any information holder listed in the Schedule hereto.

(2) This Act shall not apply to the following information—

(*a*) Cabinet records and those of its committees;

(*b*) court records prior to conclusion of a matter;

Objects

4. The objects of this Act are to—

(*a*) make provision for access to information that is held by information holders;

(*b*) ensure that public bodies disclose information that they hold and provide information in line with the constitutional principles of public trust and good governance;

(*c*) provide for a framework to facilitate access to information held by information holders in compliance with any right protected by the Constitution and any other law;

(*d*) promote routine and systematic information disclosure by information holders based on constitutional principles of accountability and transparency;

(*e*) provide for the protection of persons who release information of public interest in good faith; and

(*f*) facilitate civic education on the right to access information under this Act.

Access to information

5.—(1) A person shall have the right to access information, in so far as that information is required for the exercise of his rights,

which is in the custody of, or under the control of a public body or a relevant private body to which this Act applies, in an expeditious and inexpensive manner.

(2) A private body shall on request, make available information in its custody or control, which it holds on a person who submits a request for that information pursuant to this Act.

Primacy

6.—(1) Subject to the Constitution and any other written law, when interpreting this Act, the presumption that favours access to information shall be preferred to that restricting information.

(2) Nothing in this Act shall be construed as limiting or otherwise restricting any other legislative requirement for an information holder to disclose information.

PART II—OVERSIGHT MECHANISM FOR IMPLEMENTATION OF ACCESS TO INFORMATION

Designation of the Commission

7. The Commission is hereby designated to oversee the implementation of this Act.

Powers of the Commission

8. The Commission shall, in performing its oversight function, have the power to—

(*a*) raise awareness of the right of access to information among members of the public and officials of all information holders;

(*b*) advise Government and other institutions to which this Act applies on matters related to the coordination and the management of information in the custody or under the control of information holders;

(*c*) review, on application, decisions of information holders with regard to requests for informatin and make recommendations to the relevant information holder resulting from applications made;

(*d*) make recommendations to Government on the declassification of information which is exempt from disclosure to enable access to that information;

(*e*) make recommendations to Government on matters related to the legal framework on access to information and legislation;

(*f*) perform such other functions as are conferred upon the Commission by this Act or any other law;

(*g*) give directions of a general nature to all institutions to which this Act applies, in connection with the perfomance of their duties and obligations under this Act;

(*h*) make recommendations to the Minister on the fees payable with regard to processing of requests for information;

(*i*) review decisions of information holders with regard to denial of disclosure of information or grant of access to information; and

(*j*) enter and inspect permises to which an application for review relates and inspect, make copies of, and take extracts from, any material relevant to the review process or proceedings as the cese may be.

Publication of guidelines

9. The Commission shall publish, in forms accessible to the general public, guides whose contents shall include the—

(*a*) objects of this Act;

(*b*) contract details of the Commission;

(*c*) existing obligations of all information holders under this Act, including their proactive disclosure obligations;

(*d*) various methods and means of applying for disclosure of information from an information holder and through the Commission; and

(*e*) the rights of members of the public under this Act and the assistance that is available to the general public from the Commission, especially for purposes of ensuring compliance with this Act.

Immunity of the Commission

10. Notwithstanding the provisions of any other law, no civil or criminal proceedings shall lie against any staff of the Commission, or any institution to which this Act applies, or a person acting on their behalf, for the disclosure of any information or for any other act done in good faith pursuant to this Act.

Submission of Reports

11. The Commission shall, as soon as practicable but not more than six months after the expiry of each financial year, submit to the National Assembly a report concerning its activities during that financial year and the report shall include—

(*a*) the details of all activities undertaken by the Commission and all other information holders to ensure compliance with the provisions of this Act;

(*b*) a review of the status of implementation of this Act in that year; and

(*c*) a general assessment of the efficacy of the right of access to information in Malawi."

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(*b*) a review of the status of implementation of this Act in that year; and

(*c*) a general assessment of the efficacy of the right of access to information in Malawi."

PART III—COMPLIANCE WITH ACCESS TO INFORMATION OBLIGATIONS

Appointment of information officers and establishment of procedures for compliance with this Act

12.—(1) Every information holder shall, within twelve months from the commencement of this Act,—

(*a*) designate or appoint one or more of its officers as information officers; and

(*b*) establish processes and procedures for handling obligations under this Act.

(2) Every information officer designated or appointed under subsection (1) shall, in addition to handling all requests for information made pursuant to section 18, render assistance to any person seeking such information and ensure compliance by the information holder with all obligations under this Act, including the obligation to disclose all categories of information listed under section 15.

(3) A person designated or appointed as an information officer, shall be a person with competence to exercise the powers and perform the duties and functions of that office as stipulated in this Act.

(4) An information officer may, in the discharge of his obligations under this Act, seek the assistance of any other public officer and the officer shall be under an obligation to provide the information officer with the assistance sought.

(5) Where an information holder fails to designate or appoint an information officer, the head of the institution, shall, in such circumstances, serve as the information officer for purposes of this Act.

Record keeping and maintenance of records

13.—(1) Every information holder shall ensure that it keeps information or records about its operations, personnel, activities and other relevant or related information or records.

(2) Every information holder shall ensure the proper organization and maintenance of all information or records in its custody, in a manner that facilitates access to such information or records in accordance with this Act.

(3) Every information holder shall maintain information for a period of seven years from the date on which the information is generated by the institution or on which the information comes under its custody or control.

(4) At the expiration of the seven year period, the information holder shall transfer the information in its entirety, to the National Archives, where that information, document or record shall be

accessible to the public in accordance with the provisions of this Act:

Provided that some information that is exempted from disclosure may be kept for a longer period unless declassified as exempt from disclosure.

Capacity building for staff and provision of requisite infrastructure

14.—(1) Every information holder shall ensure the provision of appropriate training of its staff on the right of persons to access information or records held by the institution as provided in this Act.

(2) Every information holder shall provide the requisite infrastructure and institute mechanisms, processes and procedures for ensuring effective compliance and implementation of this Act.

PART IV—DISCLOSURE OF CERTAIN CATEGORIES OF INFORMATION

Disclosure of Information

15.—(1) An information holder shall make available to the general public information in its custody or under its control as provided in this Part.

(2) An information holder shall, pursuant to subsection (1), publish the following information produced by, or in relation to, that institution within sixty working days of generation or receipt of the information—

(*a*) manuals, policies, procedures, rules or similar instruments which have been prepared for, or are used by officers of the institution in—

(i) discharging the functions and powers of the institution;

(ii) handling complaints, making decisions or recommendations; or

(iii) providing advice to persons outside the institution with respect to rights, privilegesor benefits, or to obligations, penalties or other detriments, to or for which, such persons may be entitled or subject to;

(*b*) the names, designations and other particulars of information officers, including official physical addresses and electronic addresses where an applicant may submit requests for information;

(*c*) any prescribed forms, procedures, processes or rules for engagement with the institution by members of the public;

(*d*) the 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 of the institution;

(*e*) information on any programmes implemented with public funds;

(*f*) all contracts, licences, permits, authorizations granted, and public-private partnership arrangements entered into by the institution;

(*g*) reports on surveys, studies or tests prepared by the institution; and

(*h*) any other information that the Minister may prescribe.

(3) Every public body shall publish the following information produced by, in relation to, the institution—

(*a*) the particulars of its organization, functions and duties;

(*b*) information containing interpretations or particulars of legislation or policies administered by the institution;

(*c*) details of its processes and procedures for creating, keeping, organizing, maintaining, preserving and providing information, documents or records; and

(*d*) any other information prescribed by the Minister.

(4) The publication of the information pursuant to this section, shall be done electronically, and where possible, in tangible form or any other manner as may be prescribed by the Minister.

Preparation and disclosure of information manuals

16.—(1) Every information holder shall, within twelve months of commencement of this Act, prepare information manuals which shall be accessible electronically and may be disseminated in tangible form.

(2) The information manuals, referred to in subsection (1), shall include the categories of information that an information holder is obliged to disclose under section 15.

(3) Every information holder shall update and publish its information manual whenever material changes occur to the information contained therein.

Annual reports

17.—(1) Every information holder shall, not later than three months after the end of a financial year, submit to the Minister a report on their level of compliance with the provisions of this Act, during that financial year in the form and manner as may be prescribed.

(2) The Minister shall, within three months after receiving the reports in subsection (1), submit an annual report to Parliament covering the general activities of information holder in

implementing the provisions of this Act in the year to which the report relates.

PART V—PROCEDURE FOR ACCESS TO INFORMATION

Request for access to information

18.—(1) A request for information may be made orally or in writing, and shall be addressed to an information officer:

Provided that an illiterate and indigent person, or a minor may request a third party to obtain the information on his behalf from an information holder.

(2) Where an applicant makes an oral request for information, the information officer shall reduce the oral application into writing, which shall then be read to the understanding of the applicant to secure his consent that the content of the written document fully represents the content of his oral request for information made to the said officer, after which, a copy of the written request for information shall be provided to the applicant for his record, and the original shall be kept by the information holder.

(3) The request for information shall provide sufficient details to enable the information officer to identify the person making the request.

(4) For purposes of subsection (1), a request for information shall also be treated as made in writing where the text of the request is—

(*a*) transmitted by electronic means;

(*b*) received in legible form; and

(*c*) capable of being used for subsequent reference.

Processing of requests for information

19.—(1) Where request for information is made, an information officer shall, within fifteen working days after the request is received,—

(*a*) give written notice to the applicant as to whether the information exists and, where it does, whether access to the entire information requested or a part thereof will be given; and

(*b*) where access shall be granted, promptly give the applicant access to the information.

(2) Where the information holder requires further information in order to identify or locate the information requested, the applicant shall be notified of the need for such further information within seven working days of receiving the request and in that case, the period referred to in subsection (1) shall be calculated from the date on which such further information is received from the applicant.

(3) Where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of an applicant, the information holder shall, within forty eight hours after the request is submitted—

(*a*) determine whether it shall grant the request or not;

(*b*) notify the applicant of the decision in writing; and

(*c*) where the request is granted, give the applicant access to the information.

Third party notification

20.—(1) Where an information holder determines that a request for information relates to confidential or commercial interests of a third party, the information holder shall notify the third party in writing of the details of the request.

(2) The third party shall within ten working days from the date of receipt of the notice respond to the notice in subsection (1) in writing and indicate whether he considers the information to be confidential and give reasons why the information should not be disclosed.

(3) If, based on the response in subsection (2), the information holder determines that harm is in all likelihood bound to occur to the third party, the information holder shall not disclose the information.

Partial disclosure of information

21. Where an information holder determines that part of the information requested is exempt from disclosure, the information holder shall disclose the remainder of the information which is not exempt from disclosure and shall accordingly inform the person who made the request.

Means by which communicatio n is to be provided to an applicat

22. An information holder, shall, having regard to any specific request by an applicant of the format in which the applicant wants requested information to be given, as well as the circumstances and the costs to provide the information in the manner requested, provide the information requested—

(*a*) in a permanent form or in another form acceptable to the applicant;

(*b*) with a reasonable opportunity to inspect the original document or record containing the information;

(*c*) in a digest or summary of the information, document or record; or

(*d*) in the case of an applicant with sensory disability, in a format that allows the applicant to view, read or listen to the record, document or information.

Transfer of request for information to relevant institutions

23.—(1) Where an information holder to which a request for information is made considers that another institution has greater interest in the information requested, the information officer to which the request was initially made, shall, within three working days after the request is received, transfer the request to the other institution and give written notice of the transfer of the request to the applicant.

(2) For the purposes of this section—

(*a*) the processing period specified in section 19 shall apply to the institution to which the request is transferred; and

(*b*) an institution has greater interest in information requested if—

(i) a record or document, containing the information was originally produced by or for the institution; or

(ii) in the case of information not originally produced by or for the institution, the said institution was the first recipient of the original information.

Fees

24.—(1) Subject to subsection (2), a person shall not pay any fees on lodging an application for request of information.

(2) The fees payable by an applicant under this Act shall be limited to reasonable standard charges for document duplication, translation or transcription, where necessary.

(3) The Minister shall, on recommendation of the Commission, prescribe a uniform scale of fees applicable for processing requests for information.

Refusal of disclosure of requested information

25. Where an information holder refuses to disclose information which has been requested either in whole or in part, the information holder shall, in writing, notify the applicant of the refusal and—

(*a*) state the grounds for the refusal including the specific provisions of this Act relied on to justify its decision; and

(*b*) inform the applicant of the availability of a process for reviewing the decision, the institution to which the review may be lodged and the period within which the application for review may be made.

Information that cannot be found or does not exist

26.—(1) Where an application for information is made to an information holder in respect of which—

(*a*) the information is not in the possession or under the control of the information holder and the information officer does not

know which institution has possession or control of the information;

(*b*) all reasonable steps have been taken to find the information requested; and

(*c*) there are reasonable grounds for believing that the information is not in the possession of the institution or does not exist,

the information officer shall notify the applicant in writing that it is not possible to disclose the information requested.

(2) The notice referred to in subsection (1) shall include a statement of the details of all steps taken to find the information, or to determine whether the information actually exists.

(3) Where the information is found after notice is given to the applicant under subsection (1), the information officer shall immediately notify the applicant in writing.

(4) The information holder shall, within seven working days after the information is found after the notice is given under subsection (3)—

(*a*) determine whether to grant the request;

(*b*) notify the applicant of the decision in writing;

(*c*) if the request is granted, subject the disclosure of the information to the payment of any applicable reproduction, translation or transcription fee; and

(*d*) give the applicant access to the information.

Deemed denial

27.—(1) Where an information holder fails to grant an applicant access to information within the time limits set out in this Act, the information holder shall be deemed to have refused to grant access to the information.

(2) Any refusal by an information holder to disclose information requested by an applicant under this Act shall be subject to review.

PART VI—INFORMATION EXEMPT FROM DISCLOSURE

Limitation on the right of access to information

28.—(1) Information requested under this Act may only be exempt from disclosure by an information holder where all or part of the information in the custody or control of the information holder, falls within the categories exempted from disclosure under this Act.

(2) The Minister shall, by notice published in the *Gazette* declassify cabinet records after thirty years.

Protection of personal information

29.—An information holder shall not disclose information which has been requested where the information holder determines that disclosure of the information requested would result in the unreasonable disclosure of personal information about a third party.

Protection of information that preserves national security or defence

30.—An information holder may not disclose information which has been requested where disclosure of the information would reasonably be expected to—

(*a*) cause damage to the security or defence of Malawi or would divulge information which relates to the defence or security of a foreign government which is communicated in confidence by, or on behalf of such foreign government;

(*b*) disclose or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of law or endanger the life or physical safety of any person; or

(*c*) cause substantial harm to the legitimate interests of the Republic of Malawi in crime prevention and any preliminary investigation of criminal or other unlawful acts.

Protection of information to preserve the life, health and safety of a person

31. An information holder may refuse to disclose information that has been requested where disclosure of that information has a real likelihood of endangering the life, health or safety of a person.

Protection of legally privileged information

32.—(1) An information holder may refuse to disclose information which has been requested where the information—

(*a*) consists of confidential communication between a medical practitioner and his patient;

(*b*) consists of confidential communication between a lawyer and his client;

(*c*) consists of confidential communication between a journalist and his informant; or

(*d*) would otherwise be privileged from production in legal proceedings.

(2) The information in subsection (1) may be disclosed where the patient, client, source or person entitled to the privilege, as the case may be, consents to the release of the information or has waived the privilege, or a court order is made to that effect.

Protection of information on going academic or recruitment processes

33.—(1) An information holder may refuse to disclose information which has been requested where the information relates to an academic or professional examination, or recruitment or selection process prior to the completion of that examination or recruitment or selection process where the release of the information is likely to jeopardize the integrity of the process.

(2) 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.

Protection of information on Malawi's international relations

34. An information holder may refuse to grant access to information which has been requested where the information—

(*a*) has been supplied by or on behalf of, the Republic of Malawi, to another state or international organization, pursuant to an international agreement with that state or organization which requires the information to be held in confidence;

(*b*) is required to be held in confidence under international law;

(*c*) is on the positions adopted or to be adopted by the Republic of Malawi or another state or an international organization for the purpose of present or future international negotiations; or

(*d*) constitutes diplomatic correspondence exchanges with another State or with an international organization or official correspondence with diplomatic missions or consular posts of the Republic of Malawi,

where the release of the information would cause substantial prejudice to the international relations between the Republic of Malawi and another State or international organization as the case may be.

Protection of commercial and confidential information of an information holder or a theird party

35. An information holder may refuse to disclose information which has been requested if that information contains—

(*a*) trade secrets of the information holder or third party; or

(*b*) information about the information holder or third party that would substantially prejudice the legitimate interest of the information holder or third party.

Manifestly malicious, frivolous or vexatious requests

36. An information holder may refuse to grant a request for information where the information holder considers that the request is manifestly malicious, frivolous or vexatious and states reasons for such consideration.

Third parties to be notified of disclosure of exempted information

37. Where disclosure of information in respect of which an information holder has claimed an exemption is determined to be of public interest, the information holder shall—

(*a*) notify an affected third party in writing that the information shall be disclosed after the expiry of fifteen working days from receipt of the notice; and

(*b*) inform the third party—

(i) of that party's right to have the decision reviewed;

(ii) the authority to which an application for review should be lodged; and

(iii) the period within which the application for review may be lodged.

Proof of exemption to be shown when disclosure is denied

38. An information holder that refuses to grant access to information which has been requested shall, on a balance of probabilities, prove that—

(*a*) the information is exempt from disclosure under this Act; and

(*b*) the harm to the protected interest under the relevant exemption that would result from the disclosure of the information.

PART VII—INTERNAL REVIEW OF DECISIONS OF INFORMATION HOLDERS

Right of internal review of decisions of information holders

39.—(1) An applicant may, where an information holder refuses to disclose information requested, apply for an internal review of the decision.

(2) A third party may, where an information holder grants access o information containing information relating to the third party without consent of the third party, apply for an internal review of the decision.

Application for internal review of decisions of information holders

40.—(1) A person aggrieved by a decision of an information holder may submit an application for a request for an internal review, to an information officer within sixty working days of the receipt of a notice of the decision.

(2) Where the person who submits the application under subsection (1) is a third party, the application shall be submitted within ten working days of the receipt of a notice of the decision with regard to a request for information.

(3) An application for review of a decision may be submitted orally or in writing.

(4) Where an applicant or a third party makes an oral application for an internal review, the information officer shall reduce that oral request into writing and provide a copy thereof to the applicant or third party as the case may be.

(5) An application for an internal review shall clearly state the request and decision which is the subject of the internal review.

(6) Where an application for internal review is submitted after the expiration of sixty working days, the information officer shall, on good cause shown, allow the late lodging of the application.

(7) The information officer shall, within five working days after receipt of the request for internal review—

(*a*) submit to the head of the information holder—

(i) the request for internal review;

(ii) the information that is the subject of the review; and

(iii) the reasons for the decision made; and

(*b*) notify the applicant and, where relevant, the third party, in writing that the documents relating to the appeal have been submitted.

Decision on internal review

41.—(1) The head of an information holder to which an application for internal review of a decision is submitted in accordance with section 40, shall within five working days of receipt of the application for review—

(*a*) make a decision on behalf of the institution; and

(*b*) notify the applicant and, where relevant, the third party of that decision in writing.

(2) Where the head of the information holder decides to disclose the information requested, the notice to the applicant referred to in subsection (1) shall state the fees if any, payable for access to the information requested and the form in which access to the information will be given.

(3) Where an applicant has been given notice that access to the information has been granted, that applicant shall be given access to the information immediately, or upon payment of fees if so required.

(4) Where the head of the information holder has determined to disclose information containing third party information, the applicant may not be granted access to that information until such time as any right of the third party to oppose the release of the information has expired, or any appeal lodged by the third party has been finally determined.

(5) If the head of the information holder decides not to disclose information requested, the notice to the applicant referred to in subsection (1) shall—

(*a*) state reasons for the refusal with reference to specific provisions of this Act upon which the refusal is based; and

(*b*) inform the applicant that he may lodge an appeal against the decision.

Decision making on internal review not to be delegated

42. The decision referred to in section 41 shall be made by the head of the information holder personally and may not be delegated to any other person.

Deemed refusal under an internal review process

43. Where the head of the information holder fails to give a decision on an application for request for an internal review within the time specified in section 40, he shall be deemed to have affirmed the original decision of the information officer which is the subject of the application for internal review.

PART VIII—REVIEW OF DECISIONS OF INFORMATION HOLDERS

Review of decisions of information holders

44.—(1) A person who has exhausted the internal review mechanism of the information holder may apply to the Commission for the review of a decision of that information holder.

(2) An application made under subsection (1) shall be in respect of the following—

(*a*) the refusal of access by the information holder to the information requested;

(*b*) the payment of fees payable pursuant to section 24 which the applicant considers to be unreasonable;

(*c*) the failure of the information holder to comply with the various timelines stipulated for processing requests for information or decisions on internal review; or

(*d*) any other matter relating to a request for or access to information under this Act.

(3) An applicant for review under this Part shall—

(*a*) unless the Commission authorizes that it may be made orally, be in writing; and

(*b*) be made not later than two years from the date from which a request for information was received by an information holder.

(4) A third party who is of the opinion that his interests referred to in sections 35 are likely to be adversely affected by the decision

of the information holder to disclose information requested under this Act, may apply to the Commission for a review of that decision.

(5) A person who makes any application under this Part shall be given an opportunity to make representations during review proceedings.

(6) The Commission shall, within thirty working days from the date of receipt of an application under subsection (1), determine the application and may, within that period, make an inquiry into or investigate the matter which is the subject of the application.

Examination of record

45. The Commision may, during investigations relating to any application for a review under this Part, examine any record that is under the custody or control of an information holder.

Report of findings

46.—(1) Where the Commission finds that a person is entitled to access the information requested, it shall immediately provide the head of the information holder concerned with a report containing—

(*a*) the findings of the review and the determinations made by the Commission; and

(*b*) a direction that notice be given, within the time specified in the report, to the Commission of all actions taken to implement the determinations in the report.

(2) Where the Commission finds that the applicant is not entitled to access the information requested, the Commission shall, within seven working days from the date of making the determination, inform the applicant of—

(*a*) the decision in writing stating stating the reasons thereof; and

(*b*) the right to apply to Court for a review of the determination.

(3) The Commission shall give a copy of the decision made under—

(*a*) subsection (1) (*a*), to the applicant and any third party that made representations to the Commission in the course of the proceedings; and

(*a*) subsection (1) (*b*), to the head of the information holder concerned.

Information on Determinations

47. The Commission shall, within thirty working days from the date the determination is made, inform the applicant and any third party of whether the information holder concerned has taken action to comply with the determinations of the Commission.

Provision of access to information

48. Where, during or after the consideration of an application for review, the head of the information holder notifies the Commission that access to the information requested has either been given or will be given to an applicant, the head of the information holder shall give the applicant access to the information requested—

(*a*) within five working days from the date of the notification, if no notice has been given to a third party under section 43; or

(*b*) within ten working days from the date of the notification, if notice has been given to a third party under section 43.

Application to court for review

49. A person may, after proceedings for review under this Part have been concluded, apply to Court for a review of the decision of the Commission.

PART IX—PROTECTION OF WHISTLE BLOWERS

Protection of whistle blowers

50.—(1) Any person shall not be penelized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way as a result of having made or attempted to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

(2) for purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) where such person has reasonable belief in the veracity of the information.

(4) Disclosure of information under subsection (1) includes formation on—

(*a*) violations of the law, including human rights violations;

(*b*) mismanagement of funds;

(*c*) conflict of interest;

(*d*) corruption;

(*e*) abuse of public office; and

(*f*) the risks and threats to public health, safety and the environment.

(5) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided but for this action as a whistleblower.

(6) Any term of any settlement arising from a claim under this section, insofar as it purports to improse an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(7) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that—

(*a*) in the circumstances, the disclosure was in the public interest; and

(*b*) where the offence is alleged to have been committed by a public officer or Government contractor and involves the disclosure of information obtained by the person in his position as such, the defendant had, before making the disclosure, complied with the provisions of subsection (3).

PART X—OFFENCES AND PENALTIES

Prevention of disclosure of information

51. Any person who willfully conceals, destroys, mutilates, falsifies or otherwise alters a document or record containing information which has been requested with intent to prevent disclosure of the information, commits an offence and shall, on conviction be liable to a fine of three million Kwacha (K3,000,000) and imprisonment for a term not exceeding three years.

False information

52. Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for a term not exceeding two years.

Wrongful denial of disclosure of information

53. Where an information holder wrongfully denies to disclose information either through negligence, recklessness or otherwise under this Act, whether it is in response to a specific request for information or disclosure of information under Part IV, the officer or institution responsible shall be liable to a fine of three million Kwacha (K3,000,000).

Misuse of disclosed information

54. Any person who, having been granted access to information under this Act, uses that information—

(*a*) for unlawful purposes;

(*b*) for reasons other than those for which a request for information was made, without the authority of an information holder; or

(*c*) in such a manner so as to be detrimental to the interests of public officers, information holders or the public interest,

commits an offence, and shall, on conviction be liable to a fine of three million kwacha (K3,000,000) and imprisonment for three years.

PART XI—MISCELLANEOUS

Regulations

55.—(1) The Minister may make regulations for the better carrying out of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe—

(*a*) the manner in which applications for information are to be made;

(*b*) the form in which information requested under this Act is to be supplied;

(*c*) the measures to be taken by information holders in order to assist persons to exercise their rights under this Act;

(*d*) the measures which information holders shall take to ensure proper keeping of records of information;

(*e*) the procedure to be followed by information holders in consulting with a third party before disclosing information relating to or obtained from that third party;

(*f*) the procedures to be followed in ensuring that personal information held by information holders is accurate;

(*g*) fees payable for processing requests for information;

(*h*) the procedure for conducting reviews of decisions of information holders;

(*i*) forms and procedures of publication of information; and

(*j*) any other matters that are necessary for implementation of this Act.

(3) Notwithstanding section 21(*e*) of the General Interpretation Act, the regulations made pursuant to subsection (1) may prescribe penalties of up to three million Kwacha (K3,000,000) and imprisonment for a maximum term of three years .

Transitional arrangements

56. All information holders shall comply with the provisions of this Act within twelve months of commencement of this Act.

SCHEDULE (s.3(1))

INFORMATION HOLDERS TO WHICH THIS ACT APPLIES

1. The Executive, all its organs and persons in their service.
2. The Legislature, all its organs, and persons in their service.
3. The Judiciary, all its organs, and persons in their service.
4. Institutions and organizations whether established by or under an Act of Parliament or otherwise, in which the Government holds shares or exercises financial or administrative control and persons in the service of those institutions and organizations.
5. Non-Governmental Organizations constituted for public benefit purposes and persons in their service.
6. Commissions and persons in the service of those commissions established by or under the Constitution or any Act of Parliament.
7. Organizations contracted by Government to do work for the Government and persons in the service of those organizations.

Passed in Parliament this fourteenth day of December, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament