



## THE ACCESS TO INFORMATION MODEL LAW

[A Model by MISA-Zimbabwe]

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## **FOREWORD**

Zimbabwe remains one of the first countries to promulgate a law to regulate access to information on the continent. To date a total of 13 African countries have in place access to information legislation. While promulgation of such laws is key, just having an Act that purports to regulate access to information is not enough. What is critical is to ensure that such laws fully comply with regional and international standards on access to information and that they fully promote and protect this right.

From the time Zimbabwe's Access to information and Protection of Privacy Act [AIPPA ] was promulgated in 2002, its inadequacies in promoting and protecting the right of access to information are a matter of public record. MISA-Zimbabwe has all along condemned this piece of legislation as an instrument of controlling the free flow of information rather than make it more accessible. This is because as it stands the Act fails basic democratic test in almost all of its various key components.

It is MISA-Zimbabwe's belief that an access to information law should lay down a clear, efficient and transparent procedure on how members of the public should access information held by public bodies as well as private entities, which is of public interest and critical in the exercise of other civil liberties.

AIPPA perpetuates a culture of secrecy and unaccountability on the part of government and private bodies with its widely couched exemptions on information that cannot be accessed or disclosed. Further, the Act imposes severe restrictions on the exercise of free journalism enterprise through an undemocratic licensing regime for journalists as well the criminalisation of the practice of journalism in the country. To make matters worse, the law lumps together media regulation with citizens' fundamental right to access to information, which two issues should be treated and legislated separately in line with regional and international best practice.

It is against this background that in 2006 MISA-Zimbabwe crafted a model law on access to information, which it used to lobby those in authority to amend the access to information legislation in accordance with regional and international instruments on freedom of expression and access to information.

The model law was circulated widely among government officials, civil society organisations and other relevant stakeholders locally and regionally. However, since then there have been several global developments relating to securing access to information as a fundamental right. These have seen the revision and formulation of standards and benchmarks on which democratic access to information laws should be modelled. The standards have been enunciated in the African Platform on Access to Information [APAI] Declaration, which was crafted and adopted by African civil society groups in 2011 and endorsed by the African Commission on Human and People's Rights during its 50<sup>th</sup> Ordinary session on the 2<sup>nd</sup> of May 2012.

Also, the continent has adopted a model law on access to information, which was crafted under the office of the African Commission on Human and People's Rights Special Rapporteur on Freedom of Expression and Access to Information in Africa. The model law also lays down a standard on which access to information legislation should be premised.

It is in this light that MISA-Zimbabwe decided to revise its model law to align it with internationally recognised principles and standards in safeguarding the right to access to information. This revision also came at a time the country was set to adopt a new constitution, which for the first time explicitly guaranteed freedom of the media and access to information as fundamental human rights.

MISA-Zimbabwe hopes the model law will generate constructive debate among citizens and those in authority as the country sets on a journey to realign its legislative framework with the new constitution as part of its democratisation processes.

**NJABULO NCUBE**  
**CHAIRPERSON**  
**MISA-Zimbabwe**

# THE ACCESS TO INFORMATION MODEL LAW

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## ACT

To provide for the disclosure of information in the public interest and for the promotion of free flow of information as guaranteed by section 62 of the Constitution and in light of Zimbabwe's international legal and treaty obligations: to guarantee the right of all persons to obtain information held by the State and by another person and that is required for the exercise or protection of any rights; to repeal the Access to Information and Protection of Privacy Act [Chapter 10:27] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe

### PART I Preliminary

#### 1. Short title

This Act may be cited as the Access to Information Act

#### 2. Interpretation

In this Act—

“**appeal**” means an appeal in terms of Part VI for internal review, to the Information Commissioner or to an appropriate magistrates or higher court;

“**applicant**”, in relation to a request for information, means the person who makes the request;

“**appropriate magistrates court**” has the meaning given to it in section *forty nine*,

“**Constitution**” means the Constitution of Zimbabwe

“**document**” includes the whole or any part of—

- (a) any paper or other material on which there is writing;
- (b) a map, plan, drawing or photograph;
- (c) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (d) any article or material from which sounds, images or writings are capable of being reproduced, with or without the aid of any other article or device;
- (e) any article or material on which information has been stored or recorded, either mechanically or electronically;
- (f) any other record of information;
- (g) any copy, reproduction or duplicate of a thing referred to in paragraphs (a) to (f);

“**information**” means any recorded information, regardless of its form, source, date of creation, or official status;

“**information commissioner**” means the chairperson and members of the Information Commission appointed in terms of section *thirty seven* sub section three of the Act.

“**information officer**” means a person designated in terms of section *ten* as a public body's information officer, and includes a provincial information officer;

“**Minister**” means the Minister of Information or any other Minister to whom the President may, from time to time, assign the administration of this Act;

- “**personal information**” means information that relates to a living individual who can be identified from that information;
- “**private body**” has the meaning given to it in section *five*
- “**provincial information officer**” means a person designated in terms of subsection (5) of section *ten* as a public body’s information officer for a province;
- “**public body**” has the meaning given to it in section *five*
- “**publish**”, in relation to information, means to make the information available in a form generally accessible to members of the public, whether in writing, by broadcasting or in electronic form, and “publication” shall be construed accordingly;
- “**response**”, includes the granting of information, refusal of information or permissible request for extension of time as provided for in this Act;
- “**request for information**” means a request for information made in terms of section *thirteen*

### 3. Objectives of the Act

The objectives of this Act are—

- (a) to give effect to the constitutional right of access to—
- (i) any information held by the State; and
  - (ii) any information that is held by another person and that is required for the exercise or protection of any rights, subject to justifiable limitations as outlined in the act,
- (b) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and
- (c) to promote transparency, accountability and good governance and development by educating the public:
- (i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;
  - (ii) to understand the functions and operation of public bodies; and
  - (iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

### 4. Guiding principles of interpretation

(1) This Act shall be interpreted:

- a. To give due consideration to the principles and objectives of this act , to the Constitution of Zimbabwe, and to Zimbabwe’s obligations under treaties and other international instruments. In doing so, any reasonable interpretation that favours the presumption of a right of access to information shall be preferred to any other interpretation;
- b. to give the fullest possible scope to freedom of expression as guaranteed by section 61 of the Constitution.

**(2) Subject to subsection (1), in the interpretation of this Act regard shall be paid to the following principles—**

- a. Every person has the right to access information from public bodies expeditiously and inexpensively, subject to exemptions that are limited and specific.

- b. Every person has the right to access information from private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively, subject to exemptions that are limited and specific.
  - c. Information holders shall release information in the public interest unless it is shown that specific harm will result;
  - d. Information holders shall release information when the public interest in disclosure outweighs the public interest in withholding the information;
  - e. public and private bodies must proactively publish information.
  - f. Information holders must accede to the authority of the information commission in all matters relating to access to information.
  - g. Any refusal to disclose information is subject to appeal as outlined in this act.
  - h. accountability on the part of the Government and public and private bodies can be secured only if they are open and transparent in the exercise of their functions;
  - i. *freedom* of expression, in so far as it comprises freedom to receive and impart ideas and information, cannot be exercised properly unless there is ready access to information;
  - j. all persons have a right to access and correct their personal data held by public or private bodies.
  - k. while persons are entitled to their reputations and to reasonable privacy—
    - i. robust political debate, including questioning the character and ability of persons engaged in public affairs, is a necessary part of the democratic process;
    - ii. the public has a legitimate interest in the private conduct of persons engaged in public affairs, to the extent that their private conduct reflects on their character and ability;
    - iii. the public has a legitimate interest in knowing whether or not the affairs of private bodies of all kinds are being conducted honestly, efficiently and in accordance with the law;
  - l. the provisions of this Act which protect certain information from disclosure must not be used as a cloak to conceal illegality, misconduct or incompetence.
- (3) Everyone required or permitted to exercise functions under this Act shall pay regard to the principles set out in subsections (1) and (2) when exercising those functions.

## **5. Public and private bodies**

- (1) For the purposes of this Act, all branches and levels of government, including the executive, the legislature and the judiciary, are considered to be public bodies.
- (2) Public bodies for the purposes of this Act include but are not limited to the following—
  - (a) any Ministry, Department or office of the Government, including the Office of the President and Cabinet;
  - (b) the Senate and the House of Assembly;
  - (c) the Police Force, the Prison Service and any branch of the Defence Forces;

- (d) any Commission established by the Constitution;
  - (e) the office or department of the Comptroller and Auditor-General;
  - (f) the office or department of the Ombudsman;
  - (g) any local authority or similar body established by or under any enactment;
  - (h) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other such body corporate or by a Commission established by the Constitution;
  - (i) any company whose shares are listed on an official list kept by a securities exchange registered under the Securities Act [*Chapter 24:25*];
  - (j) any company the majority of whose shares are held by—
    - (i) the State or by a person on behalf of the State; or
    - (ii) a body corporate referred to in paragraph (h);
  - (k) any organisation or association that carries out a function of a public nature—
    - (i) in terms of an enactment; or
    - (ii) under a contract with another public body; but only to the extent that it carries out that function;
  - (l) any other body corporate declared in terms of subsection (3) to be a public body.
- (3) For the purposes of this Act, a private body is
- a. any body corporate that carries on a profession, trade or business, to the extent that it carries on the trade, profession or business.
  - b. any former or existing juristic person or any successor in title but excludes public bodies.
  - c. a body carrying out public functions or receiving public funds even if not subject to state control.

## **6. When body is deemed to hold information**

A public or private body is deemed to hold information whether or not it was created by the body that holds it and whether or not it is classified if—

- (a) it possesses, keeps or has the information, otherwise than on behalf of another person; or
- (b) another person possesses, keeps or has the information on behalf of the public or private body.

## **7. Application of Act in relation to other legislation**

- (1) Subject to the Constitution, the provisions of this Act shall override the provisions of any other legislation that;
  - (a) prohibits or restricts the disclosure of a record of a public body or private body; and
  - (b) is materially inconsistent with an object, or a specific provision, of this Act

- (2) This Act shall not be construed as limiting or restricting the publication or disclosure of information by public or private bodies under any other law.

## **PART II**

### **Promotion of Openness in Public Bodies**

#### **8. Public bodies to publish information**

- (1) Subject to this Act, every public body shall ensure that information is published about its structure, functions, processes, decisions and policies.
- (2) Every public body must annually within the timeframe stipulated by the Information Commission, submit to the Information Commission an information publication scheme with respect to its proactive disclosure obligations.
- (3) Information published by a public body in terms of subsection (1) shall include but not be limited to—
- (a) a description of the body's structure, functions, duties and finances; and
  - (b) any services the body provides directly to members of the public; and
  - (c) outlines of any procedures available to members of the public for lodging complaints regarding actions or failures to act by the body; and
  - (d) a guide to the body's record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information; and
  - (e) a description of the functions of the body's senior officers, and the procedure it follows in making decisions; and
  - (f) any regulations, policies, rules, guides or manuals regarding the carrying out of the body's functions; and
  - (g) the content of all decisions and policies the body has adopted which affect the public, together with the reasons for them and any authoritative interpretations of them; and
  - (h) any procedures by which members of the public may make representations or otherwise influence the formulation of the body's policy or the exercise of its powers.
- (4) Every public body shall ensure that the information referred to in (1) and (2) is published for the first time as soon as possible and —
- (a) in the case of a public body that was established before the date of commencement of this Act, not later than six months after that date;
  - (b) shall ensure that the information is kept up to date and republished at least once a year.
- (5) The Information Commission may give any public body directions as to the manner in which it should comply with the requirements of this section, including directions requiring the public body to publish information in accordance with —
- (a) an information publication scheme approved by the Information Commission;

- (b) a model publication scheme prepared or adopted by the Information Commission;

and, subject to this Act, the public body shall comply with any such direction.

## **9. Maintenance of information by bodies**

Every information holder shall ensure that information held by it is maintained in a manner which facilitates the right to information, as provided for in this Act, and in accordance with any statutory code of practice issued by the Information Commission in terms of section *forty one*.

## **10. Information officers**

- (1) Every public body shall designate at least one member of its staff to be an information officer for the purposes of this Act. A person designated as an information officer must be competent and suitable to exercise the powers and perform the duties and functions of an information officer under this Act.
- (2) If a public body fails to designate an Information Officer, the head of the body will be the Information Officer for the purposes of this Act.
- (3) Every public body shall ensure that members of the public—
  - (a) are able to easily ascertain the information officer's name(s), function and contact details; and
  - (b) have ready access to the information officer(s).
- (4) The information officer of a public body shall—
  - (a) be responsible for promoting within the public body the best possible practices in relation to the recording, maintenance, archiving and dissemination of information; and
  - (b) serve as a contact within the public body for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public body relating to information disclosure;in addition to any other functions conferred or imposed upon him or her terms of this Act.
- (5) Where a public body has departments, branches or offices in two or more provinces, the body shall designate at least one member of its staff to be the information officer for each province in which it has a department, branch or office, and the person(s) so designated shall perform the functions of the public body's information officer(s) within the province concerned.

## **11. Reports to the Information Commission**

- (1) As soon as possible after the end of each year, and in any event not later than the 30th April in the following year, the information officer of every public body shall submit a report to the Information Commission on the public body's compliance with this Act during that year.
- (2) A report in terms of subsection (1) shall include information on—

- (a) the number of requests for information received, granted in full or in part, and refused by the public body; and
  - (b) the total number of times each exemption was relied upon in refusing access (i) in full, and (ii) partially and which sections of the Act were relied upon by the public body to refuse requests for information; and
  - (c) the total number of (i) decided and (ii) on-going appeals whether for internal review or to the Information Commission or the courts; and in the case of (i), whether the decision was in favour of the appellant or the respondent; and
  - (d) fees charged by the public body for requests for information; and
  - (e) the public body's activities pursuant to sections *fourteen, fifteen and sixteen*.
- (3) The Information Commission shall ensure that it compiles a report summarising the contents of the reports submitted to it in terms of subsection (1) which report shall be laid before the House of Assembly and published.
- (4) The Information Commissioner shall be obliged to produce such reports on the state of the implementation of access to information and any such further access to information matters as may be required by the African Commission, African Union any of its bodies or report to such other regional bodies in terms of any request or obligation requiring such response.

### **PART III**

#### **Access to Information Held by Public and Private Bodies**

##### **12 Right to information**

- (1) Subject to the Constitution every person has a right of access to—
- (a) information held by the state; and
  - (b) information held by every public body; and
  - (c) information held by a private body, where the information is necessary for the exercise or protection of a right.
- (2) Any person making a request for information to a public is entitled, subject to this Act—
- (a) to be informed without delay whether or not the body holds that information or any record from which that information may be derived; and
  - (b) if the body does hold that information, to be so informed without delay.
- (3.) Any person making a request for information to a private body which holds information necessary for the exercise or protection of a right is entitled, subject to this Act, to be provided with that information without delay.

##### **13 Request for information**

- (1) Subject to this section, a request for information for the purposes of subsections (2) and (3) of section *twelve* shall be made in writing to—
- (a) the information officer of the public body concerned; or
  - (b) a responsible officer of the private body concerned;

as the case may be, and shall give sufficient detail regarding the information sought to enable an experienced officer of the body concerned to identify, with reasonable effort, whether or not the body holds the information.

- (2) A request for information to a public body that has departments, branches or offices in two or more provinces may be made either to the information officer at the body's head office or to any provincial information officer.
- (3) A request for information made to a private body for the purposes of subsection (3) of section *twelve* shall identify the right the applicant is seeking to exercise or protect and the reasons why the information is required to exercise or protect that right.
- (4) Where a request for information does not comply with subsection (1), (2) or (3), the officer of the body concerned who receives the request shall render to the applicant such reasonable assistance, free of charge, as may be necessary to enable the request to comply with that subsection.
- (5) Without derogation from subsection (4), where an applicant is unable, because of illiteracy or disability or incompetence in a language, to make a written request to a public or private body for information, he or she may make an oral request and the information officer who shall be obliged to receive such a request and to reduce it to writing in an official language of Zimbabwe, including his or her name and position within the body, and give a copy of it to the applicant.
- (6) Information must be provided to an applicant in whichever of the official languages of Zimbabwe the applicant prefers; the public or private body may recover the reasonable costs associated with translation from the applicant.
- (7) In a request for information the applicant may indicate the following preferences as to the **form or manner** in which the information sought is communicated to him or her—
  - (a) a true copy of any record of the information in permanent or other form;
  - (b) an opportunity to inspect any record of the information, where necessary using equipment normally available to the public or private body which holds the information;
  - (c) where the public or private body does not have the necessary reproduction equipment, the applicant shall be afforded the opportunity to use his or her own equipment;
  - (d) a written transcript of the information contained in a sound or visual form;
  - (e) a transcript of the information, in print, sound or visual form, where such a transcript is capable of being produced using equipment normally available to the public or private body which holds the information;
  - (f) a transcript of the information, where it is recorded in shorthand or other codified form.
- (8) For the purposes of subsection (1), a request for information is to be treated as made in writing where the text of the request—
  - (a) is transmitted by electronic means; and
  - (b) is received in legible form; and
  - (c) is capable of being printed or otherwise recorded and used for subsequent reference.

#### **14. Time-limits for response to request for information**

- (1) Subject to this section, a public or private body shall respond to a request for information as soon as reasonably possible and in any event within **ten working days** after it received the request unless the applicant consents to an extension of that period.
- (2) Subject to this section, where a request for information appears reasonably necessary to safeguard the life or liberty of a person, the public or private body shall respond to it as soon as reasonably possible and in any event within **twenty-four hours** after receiving the request, unless the applicant consents to an extension of that period.
- (3) Where a request for information—
  - (a) is for a large number of records or requires a search through a large number of records; and
  - (b) to respond within the period specified in subsection (1) or (2), as the case may be, would unreasonably interfere with the activities of the public or private body to which the request has been made; the body concerned may, by written notice to the applicant within the period specified in subsection (1) or (2), as the case may be, extend the period on a single occasion for a period of not more than **5 working days**.
- (4) If a fee is payable for the provision of information by a public or private body under section *seventeen* of this Act, the body—
  - (a) shall ensure that, within the period specified in subsection (1) or (2), as the case may be, the applicant is informed of the fee and the manner in which it is payable; and
  - (b) may withhold the information until the fee has been paid.
- (5) If an information or responsible officer has taken all reasonable steps to find the information requested and is satisfied that the information is in the possession of the body but cannot be found or does not exist, the information or responsible officer must within the timelines provided in this Section notify the requester that the information cannot be found or does not exist.
- (6) If information is found after notice is given under subsection (5), the information or responsible officer must immediately notify the requester in writing and thereafter respond to the request within the timelines provided in this Section.
- (7) If a public or private body fails to respond to a request for information within the time allowed by this section, it shall be deemed to have refused to provide the information sought by the applicant and shall be subject to sanctions imposed by the Information Commission or by the courts

#### **15. Form and content of response to request for information**

- (1) The response of a public or private body to a request for information shall be in writing unless the applicant consents to it being made in some other form, and in its response the body shall, subject to this Act, provide the information requested by the applicant:  
Provided that if the applicant, in terms of subsection (6) or subsection (7) of section *thirteen* of this Act has indicated a preference as to the language, form or manner in which the information is communicated, the body shall comply with that request unless compliance would be impossible.

- (2) Where a public or private body, in accordance with Part V, refuses to provide any information, which it holds, it shall state in its response to a request for that information—
  - (a) adequate reasons for its refusal to provide the information and shall inform the applicant of any right of appeal he or she may have against the refusal.

#### **16. Response to request for information that is readily obtainable elsewhere**

- (1) Where a public or private body receives a request for information which the applicant can readily obtain by inspecting a register or roll that is open to public inspection, the body may respond to the request by informing the applicant, in writing, of that fact and of the place where the register or roll may be inspected.
- (2) For the purposes of subsection (1), information shall be regarded as readily obtainable by an applicant from a register or roll if—
  - (a) the register or roll is readily accessible to the applicant; and
  - (b) the information can be obtained or easily ascertained from an inspection of the register or roll; and
  - (c) any fee charged for inspecting the register or roll is reasonable.
- (3) Where a public or private body receives a request for information that is contained in or readily ascertainable from an official document, the body may respond to the request by informing the applicant, in writing of that fact and—
  - (a) if the document is open to public inspection or available for purchase by the public, informing the applicant where it may be inspected or purchased; or
  - (b) providing the applicant with a copy of the document.
- (4) Where a public or private body which operates as a library or archive receives a request for information that is contained in a document that forms part of the library or archive, the body may respond to the request by inviting the applicant to obtain the information from that document.

#### **17. Fees**

- (1) Subject to this section, a public or private body may make the provision of information pursuant to a request conditional upon the applicant paying a reasonable fee, provided that a requester shall not be required to pay any fee on lodging a request; in relation to time spent by an information holder searching for the information requested; or in relation to time spent by the information holder in examining the information to determine whether it contains exempt information or deleting exempt information from a document.
- (2) A public body shall not require a fee under subsection (1) where the cost of collecting the fee would exceed the amount of the fee.
- (3) Regulations in terms of section *sixty three* of this Act may provide for—
  - (a) the manner in which fees under this section are to be calculated;
  - (b) the maximum amount of any fee under this section;and may prohibit the charging of fees in prescribed cases.

## **18. Duty of public bodies on receipt of request for information not held by them**

- (1) Where a public body receives a request for information not held by that body but the body's information officer knows of another public body that does hold the information, the information officer shall, as soon as reasonably possible and in any event within the appropriate period specified in section *fourteen*, either—
  - (a) transfer the request to that other public body and inform the applicant of the transfer;  
or
  - (b) inform the applicant of the identity of that other public body;whichever is likely to ensure the applicant more rapid access to the information.
- (2) Where a request for information has been transferred to a public body in terms of subsection (1), the request shall be deemed to have been made to that public body and the period within which the public body must respond to the request shall begin to run from the date of the transfer.
- (3) Where a request for information is received by—
  - (a) a provincial information officer and the information sought is held at the public body's head office or in some other province, the provincial information officer shall transfer the request to the information officer for the public body's head office or to the appropriate provincial information officer, as the case may be;
  - (b) the information officer for a public body's head office, and the information sought is held at a department, branch or office of the public body in a province, the information officer shall transfer the request to the appropriate provincial information officer.

## **PART IV EXEMPTIONS**

### **19. General Principles**

- (1) All persons have a right to seek and receive information without distinction of any kind such as sex, race, ethnic origin, colour, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (2) Information must be disclosed unless the harm to the protected interest is greater than the public interest in disclosure of the information, as laid down in section *thirty four* of this Act.
- (3) Harm must be assessed in terms of the damage that would or would be likely to occur at or after the time at which the request is considered.

### **20. Personal information**

- (1) Subject to subsection (2) and to section *thirty four* of this Act, a public or private body may refuse—
  - (a) to indicate whether or not it holds information; or

- (b) to provide information; where to indicate whether or not it holds the information or to provide the information, as the case may be, would entail disclosing personal information about a living or deceased natural person who is a third party, and would constitute an unreasonable breach of the third party's privacy; or
  - (c) to provide information; if its disclosure could reasonably be expected to endanger the life or physical safety of an individual or the protection of property.
- (2) Subsection (1) shall not apply where—
- (a) the obligation of disclosure related to an issue of public interest prevails over the protection of individuals' rights; or
  - (b) the third party has consented to the disclosure of the information; or
  - (c) the applicant is the third party's guardian, tutor or legal representative or is the executor of the third party's deceased estate; or
  - (d) the third party is or was a public officer or official of a public body and the information relates to his or her function as a public officer or such an official, as the case may be.

## 21. Legal privilege

- (1) Subject to subsection (3) and to section *thirty four* of this Act, a public or private body may refuse to indicate whether or not it holds information if to do so would involve the disclosure of information that is privileged from disclosure or production in legal proceedings.
- (2) Subject to subsection (3) and to section *thirty four* a public or private body may refuse to provide information if the information is privileged from disclosure or production in legal proceedings.
- (3) Subsections (1) and (2) shall not apply if the person entitled to the privilege has waived it.

## 22. Professional confidentiality

- (1) In this section—

**“Professional body”** means a public or private body which—

- (a) Consists wholly or mainly of professional persons; or
- (b) Is established to represent the interests of any class of professional persons; or
- (c) Whose functions consist principally in the carrying out of work which, under any enactment, is reserved for a class of professional persons or must be carried out by a professional person;

The definition of **“Professional person”** includes but is not limited to—

- (a) a person registered under the Architects Act [*Chapter 27:01*], the Chartered Secretaries (Private) Act [*Chapter 27:03*], the Estate Agents Act [*Chapter 27:05*], the Land Surveyors Act [*Chapter 27:06*], the Legal Practitioners Act [*Chapter 27:07*], Public Accountants and Auditors Act [*Chapter 27:12*], the Quantity Surveyors Act [*Chapter 27:13*], the Veterinary Surgeons Act [*Chapter 27:15*], the

Zimbabwe Institution of Engineers (Private) Act [*Chapter 27:16*], the Health Professions Act [*Chapter 27:19*], the Estate Administrators Act [*Chapter 27:20*] or the Social Workers Act [*Chapter 27:21*]; or

- (b) a person registered under any enactment which provides for the conduct of persons engaged in any profession, trade or calling and which is specified for the purposes of this definition by the Minister by notice in the *Gazette*.
- (2) Subject to subsection (3) and to section *thirty one* a professional body may refuse—
  - (a) to indicate whether or not it holds information; or
  - (b) to provide information;  
where to indicate whether or not it holds the information or to provide the information, as the case may be, would entail disclosing information about a person who is a third party in contravention of any code of conduct applicable to the professional persons who constitute or are represented by the professional body or whose functions are carried out by the professional body.
- (3) Subsection (2) shall not apply where—
  - (a) the third party has effectively consented to the disclosure of the information; or
  - (b) has consented to the disclosure of the information according to procedures of consultation laid down by the Information Commission within the time-limits established in section *fourteen* or
  - (c) the applicant is the third party's guardian or next of kin or the executor of the third party's deceased estate; or
  - (d) the third party has been deceased for more than twenty years and the applicant is the next of kin or legal representative; or
  - (e) the third party is or was a public officer or official of a public body and the information relates to his or her function as a public officer or such an official, as the case may be.

### **23. Commercial and confidential information**

Subject to section *thirty four* a public or private body may refuse to provide information if—

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence; or
- (b) the information was obtained in confidence from a third party and—
  - (i) it contains a trade secret; or
  - (ii) to communicate it would be likely to cause serious prejudice to the commercial or financial interests of that third party.

### **24. protection of life, Health and safety**

Subject to section *thirty four*, a public or private body may refuse—

- (a) to indicate whether or not it holds information; or

(b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to endanger the life, health or safety of any individual.

## **25. Law enforcement**

Subject to section *thirty four*, a public or private body may refuse—

(a) to indicate whether or not it holds information; or

(b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to cause serious prejudice to—

(i) the prevention or detection of crime; or

(ii) the apprehension or prosecution of offenders against any law; or

(iii) the administration of justice; or

(iv) the assessment or collection of any tax, rate or duty; or

(v) the operation of immigration controls.

## **26. Defence and national security**

Subject to section *thirty four* a public or private body may refuse—

(a) to indicate whether or not it holds information; or

(b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to cause serious prejudice to the defence or national security of Zimbabwe.

## **27. Economic Interests of the State**

Subject to section *thirty four* a public or private body may refuse—

(a) to indicate whether or not it holds information; or

(b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to cause serious prejudice to the economic interests of Zimbabwe.

## **28. Commercial or Financial Interests**

(1) Subject to subsection (2) and to section *thirty four* a public or private body may refuse—

(a) to indicate whether or not it holds information; or

(b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to cause serious prejudice to—

- (i) the legitimate commercial or financial interests of a public body.
- (2) Subsection (1) shall not apply to a request for information concerning the results of any product or environmental testing, where the information, if disclosed, would reveal a serious risk to public safety or the environment.

## 29. International Relations

Subject to Section *thirty four* of this Act, a public or private body may refuse-

- (a) to indicate whether or not it holds information; or
- (b) to provide information;

where to do so would be likely to cause serious prejudice to the international relations of Zimbabwe; or

the information was obtained in confidence from a foreign State or international organisation, and to communicate it would be likely to cause serious prejudice to relations with that State or international organisation.

## 30. Policy making and operations of public bodies

(1) Subject to subsection (2) and to section *thirty four* of this Act, a public or private body may refuse—

- (a) to indicate whether or not it holds information; or
- (b) to provide information;

where to indicate whether or not it holds the information or to provide the information, as the case may be, would be likely to—

- (i) cause serious prejudice to the effective formulation or development of policy by the Government; or
- (ii) frustrate the success of a governmental policy, by premature disclosure of that policy; or
- (iii) seriously undermine deliberative processes within a public body by inhibiting the free and frank provision of advice or exchange of views; or
- (iv) seriously undermine the effectiveness of a testing or auditing procedure used by a public body.

(2) Subsection (1) shall not apply to the disclosure of facts, technical data or statistical information.

## 31. Contempt of court

Subject to section *thirty four* of this Act, a public or private body may refuse—

- (a) to indicate whether or not it holds information; or
- (b) to provide information;

if to do so would constitute contempt of court.

### **32. Information accessible to applicant by other means**

- (1) A public or private body may refuse to provide information, which is reasonably accessible to the applicant otherwise than under this Act.
- (2) For the purposes of subsection (1), information shall be regarded as reasonably accessible to an applicant—
  - (a) if it is information which any person is obliged by any other enactment to provide to members of the public on request; or
  - (b) even though it is accessible only on payment, where the payment is no more than is reasonably necessary to cover the cost of making the information accessible.

### **33. Information intended for future publication.**

- (1) A public or private body may refuse to provide information in response to a request for it if—
  - (a) at the time of the request the body is holding the information with a view to its publication, whether by the body or any other person, at some future date, whether determined or not; and
  - (b) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
- (2) A public or private body may refuse to indicate whether or not it holds information if to do so would involve the disclosure of any information that need not be provided in terms of subsection (1).
- (3) subsections (1) and (2) shall not apply where the information is needed for urgent situations related to safeguarding life or liberty, to the commission of a crime, to human rights abuses, or to serious wrongdoing.

### **34. Cases where exempted information under Part IV must be disclosed**

Notwithstanding any other provision of this Part, a public or private body shall not refuse—

- (a) to indicate whether or not it holds information; or
- (b) to provide information;

in terms of this Part—

- (i) unless the harm to the protected interest outweighs the public interest in disclosure; or
- (ii) where the information is already known or available to the public generally or to a substantial section of the public.
- (iii) where an individual or a third party has consented to disclosure or it is clear that information was provided as part of a class of information that was subject to disclosure.

### **35. Classified Information**

Classification status per se is not relevant in the context of a request for information.

### **36. Severability**

- (1) Where an applicant makes a request for information contained in a document which contains some information that must or need not be provided in terms of this Part, the public or private body which holds the record shall provide the applicant with whatever portion of the requested information it must provide in terms of this Act, if that information can reasonably be severed from the rest.
- (2) Where a public or private body provides an applicant with a document from which any information has been deleted or which has been altered in any other way to comply with subsection (1), the body shall inform the applicant of the fact of the alteration and of the grounds for it.
- (3) The grounds for severability shall be subject to re-evaluation of their application through public interest and harm tests and rights balancing controls after a reasonable amount of time has lapsed.

## **PART V**

### **Information Commission**

#### **37. Establishment and composition of the Information Commission**

- (1) For the purpose this Act, there is hereby established a commission, to be known as the Information Commission, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.
- (2) The Commission shall enjoy independence and autonomy in its operation and administration,
- (3) The Commission shall consist of a chairperson and eight other members appointed by the President from a list of not fewer than twelve nominees, submitted by the Committee on Standing Rules and Orders. Provided that the selection of information commissioners shall be subject to the following conditions:
  - 3.1.** That a public call for nominations shall be issued by the committee referred to in subsection (3) above.
  - 3.2.** That a transparent identification of candidates and interview process shall be undertaken, that includes public participation.
- (4) An Information Commissioner must:-
  - (a) be a fit and proper person appropriately qualified for appointment;
  - (b) be a person of high repute and unquestionable integrity;
  - (c) be independent, impartial and accountable; and
  - (d) have demonstrable knowledge in access to information, transparency or public and corporate governance.
- (5) Information Commissioner must not:
  - (a) in terms of a law in force in any country:-
    - (i) have been convicted of a crime involving dishonesty of violence; or

- (ii) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged: or
- (iii) at the time of nomination have been occupying, or have occupied in the last five years, any position within political office or is an official of a political party.

### **38. Terms of Office and Conditions of Service of Information Commissioner**

- (1) Subject to this Act, an Information Commissioner shall hold office for five years.
- (2) An Information Commissioner shall continue in office after the expiry of his/her term until he/she has been re-appointed or his/her successor has been appointed, but such continuation shall not exceed six months in duration.
- (3) A retiring Information Commissioner is eligible for re-appointed for one other second and final term.
- (4) The President shall, subject to two thirds majority of the House of Assembly, have the power to terminate the appointment of an Information Commissioner where:
  - (a) the person is mentally or physically incapable of performing the functions and duties of the role;
  - (b) the person is insolvent; or
  - (c) gross misconduct has been established.

### **39. Staff of Information Commission**

- (1) There shall be, subject to law governing the Public Service, such persons employed in the Information Commission as may be necessary to perform secretarial functions.
- (2) The terms and conditions of personnel of the Information Commission shall include confidentiality agreements.
- (3) Nothing in this Act shall preclude the Information Commission from appointing any expert, specialist or other necessary personnel on a temporary basis where this is deemed appropriate and necessary.
- (4) The terms of engagement of such temporary services are to be determined by the Information Commission.

### **40. General functions of Information Commission under this Act**

In addition to the other functions conferred or imposed upon it by this Act, the Information Commission shall be responsible for—

- (a) monitoring and reporting on the compliance by public bodies with their obligations under this Act, including the compilation and publication of statistics on such compliance as defined in Section 11 of this Act;
- (b) recommending changes to the procedures and management systems of public bodies, to facilitate or ensure their compliance with this Act;

- (c) co-operating with and training public officers and other persons on the right to information and the effective implementation of this Act;
- (d) publicising the requirements of this Act and the rights of persons under it;
- (e) ensuring that all emerging legislation of any status, regulatory codes and industry practices are aligned to and subordinate to the Act;
- (f) hearing and adjudicating on appeals against decisions taken by internal review panels and monitoring compliance with such adjudication as defined in sections *forty four* and *forty six* of this Act
- (g) issuing enforcement orders as defined in section *forty four* of this Act.

#### **41. Guides and codes of practice**

- (1) As soon as practicable after the date of commencement of this Act, the Information Commission shall prepare a guide in each of the principal languages in use in Zimbabwe, informing the public in clear and simple terms how they may exercise their rights under the Constitution and this Act, and shall ensure that the guides are disseminated widely throughout Zimbabwe.
- (2) From time to time the Information Commission shall issue codes of practice to public and private bodies, giving advice and instructions on—
  - (a) the keeping, management, dissemination and disposal of information and records in compliance with international standards as laid down in ISO-15489; and
  - (b) the transfer of records to the National Archives.
- (3) The Information Commission shall ensure that the guides and codes of practice prepared and issued in terms of this section are kept up to date and that adequate supplies of them are available to interested persons.

#### **42. Reports by Information Commission**

The Information Commission shall report annually to the House of Assembly on the compliance by public and private bodies with their obligations under this Act including statistical data on compliance as defined in section 11 of this Act and shall publish such reports.

#### **43. Investigations by Information Commissioner**

- (1) The Information Commission may from time to time conduct investigations into the compliance by public and private bodies generally, or by any class of such bodies or by any particular such body, with their obligations under this Act.
- (2) In an investigation under subsection (1), the Information Commission may examine any information or record to which this Act applies, and no such information or record shall be withheld from him or her on any ground.
- (3) Reports on such investigations shall be published and shall include statistical data on compliance as defined in section 11 of this Act

#### **44. Enforcement orders**

- (1) If the Information Commission is satisfied, whether after an investigation or for any other good cause, that a public or private body has failed to comply with any of its obligations under Part I, the Information Commission may order the body to take such steps as it considers are necessary to rectify the failure, including—
  - (a) the appointment of an information officer;
  - (b) the publication of information or classes of information;
  - (c) the alteration of its practices in relation to the keeping, management and destruction of records or the transfer of its records to the National Archives;
  - (d) the provision of training for its officials on the right to information;
  - (e) the provision of reports to the Information Commission.
- (2) Before making an order under subsection (1), the Information Commission shall afford the public or private body concerned an adequate opportunity to make representations in the matter.
- (3) The Information Commission shall cause notice of an order under subsection (1) to be given to the public or private body concerned, and in that notice shall notify the body of its right of appeal against the order.

#### **45. Appeal against enforcement order**

- (1) A public or private body that is aggrieved by an order of the Information Commission under section *fourty four* may appeal against it to the Magistrate Court, and on such an appeal the Magistrate Court may confirm, vary or set aside the order concerned or give such other order or direction in the matter as the court considers just.
- (2) An appeal under subsection (1) shall be filed with the Magistrate Court within thirty (30) days after the public or private body was notified of the order appealed against.

#### **46. Enforcement of enforcement order**

- (1) If the Information Commission considers that a public or private body has failed to comply with an order under section *fourty four*, and the order is no longer subject to appeal, the Information Commission may apply to the High Court for an order under subsection (2).
- (2) In an application under subsection (1), the High Court may do all or any of the following—
  - (a) direct the public or private body concerned to comply with the Information Commission's order;
  - (b) punish the public or private body or individual person in the case that personal liability attaches to a failure to comply concerned for failure to comply with the Information Commission's order;

- (c) give such other order or direction as, in the court's opinion, will ensure enforcement of the Information Commission's order.
- (4) For the purposes of paragraph (b) of subsection (2), the High Court shall have the same powers of punishment as if the public or private body concerned were guilty of contempt of court.

## **PART VI**

### **Appeals**

#### **47. Sequence of appeals**

An aggrieved party may appeal a refusal to disclose information by recourse to:

- (a) internal review, which must hear the appeal within 14 days of its being lodged;
- (b) the Information Commission;
- (c) an appropriate magistrates court;
- (d) higher courts.

#### **48. Internal review**

- (a) the person or persons responsible for conducting the internal review shall be clearly identified;
- (b) the internal review shall be conducted at the highest level of the body concerned;
- (c) in the case of large bodies, responsibility may be delegated to an appropriately senior person or committee;
- (d) in the case that the head of the agency holding the requested information is the same person who issued the original refusal to disclose, then the internal appeal shall be heard by a person of equivalent seniority assigned from a different agency;
- (e) if an appeal is denied by internal review the person conducting an internal review shall indicate explicitly that the decision may be appealed to the Information Commission.

#### **49. Appropriate magistrates courts**

- (1) A court of a magistrate for the province within which—
  - (a) a request for information was made to a public or private body; or
  - (b) an applicant who has made a request for information resides, carries on business or is employed; or
  - (c) is situated the head office of a public or private body to which a request for information was made;

shall be an appropriate magistrates court for hearing and determining any appeal in terms of this Part arising out of the request for information concerned.

- (2) Where more than one magistrates court would be an appropriate magistrates court for the hearing and determination of any appeal in terms of subsection (1), the appeal may be lodged with any one of those courts.

**50. Right of appeal and forums for appeals**

- (1) A person who is aggrieved at—
- (i) a refusal by a public or private body to indicate whether or not it holds information; or
  - (ii) a refusal or failure by a public or private body to provide information; or
  - (iii) the amount of a fee charged by a public or private body for the provision of information; or
  - (iv) a failure by a public or private body to communicate information in the form requested, in contravention of section *fifteen* of this Act; or
  - (v) an unreasonable failure by a public body to observe the time limits laid down by this Act for responding to a request; or
  - (vi) disclosure of altered or incomplete information in response to a request; or
  - (vii) a failure by an agent to transmit or to transmit timeously a request to the appropriate information holder;

may, subject to this Part, appeal against the refusal, failure or fee, as the case may be, for internal review, to the Information Commission and to an appropriate magistrates court.

- (2) An appellant who has lodged an appeal—
- (a) shall not lodge a further appeal in connection with the same request for information unless, with the leave of the Information Commission and the consent of the other parties to the appeal, he or she has withdrawn the earlier appeal;
  - (b) with an appropriate magistrates court, shall not lodge a further appeal with the Information Commission or another magistrates court in connection with the same request for information unless, with the leave of the court and the consent of the other parties to the appeal, he or she has withdrawn the earlier appeal.

**51. Time limits within which appeals must be lodged**

- (1) An appeal against a refusal by a public or private body to indicate whether or not it holds information, or to provide information, shall be lodged within **one month** after—
- (a) the appellant was notified of the body's refusal; or
  - (b) the expiry of the period within which the body was required by section *fourteen* this Act to respond to the appellant's request for information;
- as the case may be.

- (2) An appeal against the amount of a fee charged by a public or private body for the provision of information shall be lodged within **fourteen days** after the appellant was notified of the fee.
- (3) An appeal against a failure by a public or private body to communicate information in the form requested shall be lodged within **fourteen days** after the appellant became aware or ought to have become aware of the refusal.
- (4) Notwithstanding subsections (1), (2) and (3), the Information Commission or an appropriate magistrates court may for good cause shown extend the period within which an appeal is lodged. In situations of urgency and to safeguard the life and liberty of a person, the Information Commission may shorten the period within which an appeal is lodged to 48 hours.

## **52. Time-limits within which appeals must be determined**

- (1) Subject to subsection (2), the internal reviewer, Information Commission or an appropriate magistrates court, as the case may be, shall determine every appeal as soon as is reasonably possible, and in any case within **fourteen days** after the appeal was lodged.
- (2) The parties to an appeal may consent to an extension of the period specified in subsection (1).
- (3) If an appeal is not determined within the fourteen-day period specified in subsection (1), and the parties have not consented to an extension of the period, the appeal shall be deemed to have been allowed but the parties shall have a further right of appeal under section *fifty seven* of this Act.

## **53. Forms and procedure for appeals**

- (1) The Information Commission may prescribe or specify the form in which appeals are to be lodged within the internal review process in terms of section *forty eight* or with him or her in terms of section *fifty* of this Act:
  - (a) Provided that—
    - (i) such a form shall not place an undue burden upon appellants;
    - (ii) the Information Commission shall ensure that copies of the form are kept available, free of charge, for appellants to use.
  - (2) The procedure to be followed in an appeal to—
    - (a) the internal review shall be as determined from time to time by the Information Commission subject to the provisions of section *fifty four* of this Act, section *fifty five* of this Act and section *fifty six*] of this Act
    - (b) Information Commission, shall be as determined from time to time by the Information Commission subject to the provisions of section *fifty four* of this Act, section *fifty five* of this Act and section *fifty six*] of this Act
    - (c) an appropriate magistrates court, shall be as prescribed in rules of court made under the Magistrates Court Act [*Chapter 7:10*]:

(d) a higher court, shall be as prescribed in the rules of that particular court

Provided that—

- (i) the procedure so determined or prescribed shall be simple and informal to ensure that the parties have an adequate opportunity to be heard or to make representations, and that appeals are dealt with fairly and as expeditiously as possible in accordance with the principles of this Act;
- (ii) in any case not prescribed as provided in paragraph (b), a magistrates or higher court shall act in whatever way it considers will ensure that the appeal is dealt with fairly and expeditiously in accordance with the principles of this Act.

**54. Burden of proof in appeals**

In every appeal, the burden of proof shall be on the public or private body concerned to show that it acted in accordance with the principles of this Act and carried out its obligations under Part II. Public or private bodies shall be required to support any decisions to refuse information on the basis of clear and convincing evidence that the exemption cited applies and that harm will result from disclosure. The Court may examine any information or record to which this Act applies, and no such information or record shall be withheld from any court on any ground.

**55. Representation of parties in appeals**

In an appeal, every party may—

- (a) appear in person; or
- (b) be represented by—
  - (i) a legal practitioner; or
  - (ii) a media or information consultant appointed in writing by the party.
- (c) make written representations to the person or committee responsible for conducting the internal review, the Information Commission or the appropriate magistrates court, as the case may be.

**56. Decision on appeal**

- (1) The internal reviewer, Information Commission or an appropriate magistrates court may summarily reject appeals—
  - (a) which are frivolous, vexatious or clearly unwarranted; or
  - (b) where the appellant without good cause has failed to use any effective and timely internal appeals mechanisms provided by the public or private body concerned.
- (2) After considering any evidence adduced and representations made in an appeal, the internal reviewer, Information Commission or the appropriate magistrates court, as the case may be, may do any one or more of the following—
  - (a) reject the appeal;

- (b) require the public or private body concerned to take such steps as the Information Commission or the court considers necessary to carry out the body's obligations under Part II;
- (c) order the public or private body concerned to compensate the appellant for any loss or other detriment suffered;
- (d) in the case of an appropriate magistrates court, give such order as to the costs of the appeal as the court considers appropriate;
- (e) if the internal reviewer, Information Commission or the court considers that any member, officer or employee of the public or private body concerned was guilty of—
  - (i) a wilful disregard for the body's obligations under Part V; or
  - (ii) gross negligence in carrying out or failing to carry out the body's obligations under Part II;
 recommend that disciplinary proceedings be instituted against that member, officer or employee:

Provided that no such recommendation shall be made unless the member, officer or employee has been given an adequate opportunity to make representations in the matter.

- (3) The appellate body shall cause notice of the decision in any appeal to be given—
  - (a) to both the appellant and the public or private body concerned; and
  - (b) where the appellate body has made a recommendation referred to in paragraph (e) of subsection (2), to the member, officer or employee in respect of whom the recommendation was made; and in that notice shall notify them of their right of appeal against the decision.
- (4) An order of compensation made by an appropriate magistrates court in terms of paragraph (c) of subsection (2) shall have effect as a civil judgment of the court against the public or private body concerned.
- (5) Where the internal review or Information Commission makes an order of compensation in terms of paragraph (c) of subsection (2), any interested party may lodge a copy of the order with the clerk or registrar of an appropriate magistrates court, who shall record it, and thereupon it shall have the same effect as a civil judgment of the appropriate magistrates court against the public or private body concerned.
- (6) Where an appropriate magistrates court has made a recommendation referred to in paragraph (e) of subsection (2), the court shall cause the Information Commissioner to be notified of the recommendation.

## **57. Appeals against decisions of Information Commission and appropriate magistrates court**

- (1) Any person aggrieved by a decision of the Information Commission or an appropriate magistrates court in an appeal in terms of this Part may appeal against that decision to the High Court and, subject to this section, the appropriate provisions of the High

Court Act [*Chapter 7:06*] and the Magistrates Court Act [*Chapter 7:10*] shall apply in relation to any such appeal.

- (2) For the avoidance of doubt, it is declared that a member, officer or employee of a public or private body in respect of whom a recommendation has been made in terms of paragraph (e) of subsection (2) of section *fifty six* of this Act is a person aggrieved by a decision for the purposes of subsection (1).
- (3) An appeal under subsection (1) shall be filed with the High Court within fourteen days after the appellant was notified of the decision appealed against.
- (4) In an appeal under subsection (1), the High Court may confirm, vary or set aside the decision appealed against and may give such other order or direction in the matter as the court considers will give effect to the provisions of this Act and in particular to the principles set out in section *four* of this Act.

## **58. Enforcement of decisions on appeal**

- (1) Every public or private body shall—
  - (a) subject to section *fifty seven* of this Act, comply with a decision of the Information Commission or an appropriate magistrates court given on an appeal in terms of section *forty nine* [Right of appeal and forums for appeals] of this Act;
  - (b) subject to the High Court Act [*Chapter 7:06*] and the Supreme Court Act [*Chapter 7:13*], comply with a decision of the High Court given on a further appeal in terms of section *fifty seven* of this Act.
- (2) If the Information Commission or an appellant considers that a public or private body has failed to comply with a decision given by the Information Commission on appeal, the Information Commission or the appellant, as the case may be, may apply to the High Court for an order under subsection (3).
- (3) In an application under subsection (2), the High Court may do all or any of the following—
  - (a) direct the public or private body concerned to comply with the Information Commission's decision;
  - (b) punish the public or private body concerned for its failure to comply with the Information Commission's decision;  
give such other order or direction as, in the court's opinion, will ensure enforcement of the Information Commission's decision.
- (4) For the purposes of paragraph (b) of subsection (3), the High Court shall have the same powers of punishment as if the public or private body concerned were guilty of contempt of court.
- (5) A decision given by an appropriate magistrates court on appeal in terms of this Part shall be enforceable in the same way as any other judgment given by the court in civil proceedings.

**59. Action to be taken where internal review, Information Commission or appropriate magistrates court recommends disciplinary proceedings**

- (1) Where the internal review, Information Commission or an appropriate magistrates court has recommended, in terms of paragraph (e) of subsection (2) of section *fifty-six* that disciplinary proceedings be instituted against a member, officer or employee of a public or private body, the body concerned shall without delay institute such proceedings and, upon their conclusion, notify the Information Commission of their result and of any action taken against the member, officer or employee as a consequence of the proceedings.
- (2) Disciplinary proceedings contemplated by this section include, in the case of a director of a company, removing the director in terms of section 175 of the Companies Act [*Chapter 24:03*].

**PART VII**

**Exemption from Liability for Certain Disclosures**

**60. Non-liability for disclosure of information in terms of this Act**

- (1) Where, in response to a request for information, a public or private body provides an applicant with information which it is obliged to provide in terms of this Act, no liability for defamation, *injuria*, breach of confidence or infringement of copyright shall attach to—
  - (a) the public or private body concerned or to any of the body's members, employees or agents; or
  - (b) the author of the information or any person who supplied the information to the public or private body concerned;as a result of the provision of the information to the applicant.
- (2) Where in response to a request for information a public or private body provides an applicant with information in terms of this Act, the body shall not be regarded as authorising or approving—
  - (a) for the purposes of the law of defamation, *injuria* or breach of confidence, the publication of the information by the applicant; or
  - (b) the doing by the applicant of anything that constitutes an infringement of any copyright in the information.

**61. Information supplied for purposes of investigation by Information Commission**

Information published, provided or disclosed in connection with an investigation by the Information Commission under this Act shall be privileged, and the person who published, provided or disclosed the information shall not be liable to administrative or employment related sanctions, to civil or criminal proceedings for defamation or *injuria* unless he or she supplied information knowing it to not be subject to disclosure or not having reasonable grounds for believing it was or might subject to disclosure.

**PART IX**  
**Offences and Regulations**

**62. Offences**

- (1) Any member, officer or employee of a public body who knowingly causes or permits the public body to contravene or fail to comply with—
- (a) a direction given to the public body by the Information Commission in terms of section *forty six* of this Act; or
  - (b) any provision of a code of practice issued by the Information Commission in terms of section *forty one* and applicable to the public body;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

- (2) Any member, officer or employee of a public or private body who causes or permits the private body to contravene or fail to comply with an order given by the Information Commission in terms of section *forty three* shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

- (3) A person who with intent to deny the right of access to information under this Act:

- (a) destroys, damages or alters information; or
- (b) conceals information; or
- (c) falsifies information or makes a false record; or
- (d) obstructs the performance by a public body or private body of a duty under this Act; or
- (e) interferes or obstructs the work of the Information Commission;
- (f) directs, proposes, counsels or causes any person in any manner to do any of the above-

Shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

- (4) Without derogation from Part III of the Criminal Procedure and Evidence Act [*Chapter 9:07*]—

- (a) the Information Commission shall be regarded as having a substantial and peculiar interest in the outcome of the trial for the purposes of instituting a private prosecution against any public or private body for a contravention of subsection (1) or (2);
- (b) an applicant whose request for information has been refused or not responded to by a public or private body shall be regarded as having a substantial and peculiar interest in the outcome of the trial for the purposes of instituting a private prosecution against that body for a contravention of subsection (1) or (2).

**63. Regulations**

- (1) The Minister, with the approval of the Information Commission, may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations in terms of subsection (1) may provide for—
  - (a) the form and manner in which information may be provided under this Act;
  - (b) the submission by public and private bodies of reports to the on their compliance with this Act;
  - (c) the training of members, officers and employees of public and private bodies in the performance of their functions under this Act.

**64. Repeal of Cap. 10:27**

The Access to Information and Protection of Privacy Act [*Chapter 10:27*] is repealed.

**66. Commencement**

This Act shall come into effect on a day to be appointed by the House of Assembly, by an order published in the Gazette.