

DRAFT MODEL LAW

FOR

AU MEMBER STATES

ON

ACCESS TO INFORMATION

**PREPARED UNDER THE AUSPICES OF THE SPECIAL RAPPORTEUR ON
FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA**

IN PARTNERSHIP WITH

THE CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA



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Preamble

Recalling *resolution* [Resolution 167 (XLVIII)] of the African Commission on Human and Peoples' Rights authorising the Special Rapporteur on Freedom of Expression and Access to Information in Africa to initiate '*the process of developing a model access to information legislation for Africa*';

Recalling further Resolution 122 (XXXXII) 07 of the African Commission confirming that 'the right to access information which is a component of the fundamental right to freedom of expression is indeed covered by the mandate of the Special Rapporteur', thus amending the title of the Special Rapporteur to include Access to Information;

Conscious that the adoption of a model law on access to information in Africa is essential to the fulfilment of the mandate of the African Union to promote and protect human and peoples' rights in accordance with Article 45 of the *African Charter on Human and Peoples' Rights* (the African Charter);

Recognising the right of access to information as an international human right as expressed in Articles 19 of the *Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*;

Encouraged by the express recognition by Member States of the significance of the right of access to information as expressed in Article 9 of the *African Union Convention on Preventing and Combating Corruption* requiring States Parties to adopt legislative and other means to '*give effect to the right of access to any information that is required to assist in the fight against corruption*' as well as the *African Charter on Elections and Democracy* which lists as one of its objectives, '*the establishment of the necessary conditions to foster citizen participation, transparency, access to information...*';

Concerned that despite the potential of access to information legislation to foster good governance through enhancing transparency, accountability and the participation of persons in public affairs, including by exposing corruption and issues associated with underdevelopment on the continent, there is a dearth of access to information legislation in Member States;

Committed to addressing the limited guarantees for access to information on the continent by assisting Member States in formulating, adopting or reviewing access to information legislation which meets minimum thresholds of good practice and providing uniform benchmarks for effective implementation of such legislation;

Hereby endorses the following model law on access to information for adoption by Member States of the African Union.

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ACCESS TO INFORMATION

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PART I - PRELIMINARY

1 Definitions

- (1) In this Act, except insofar as the context or subject-matter otherwise indicates or requires –

commercial or confidential information of a third party means information in section 39.

exempt information means **information** that is exempt from access in accordance with Part IV of this Act.

head of a public body, relevant private body or private body means the administrative head of that body.

information means any information regardless of form or medium in the possession or under the control of the **public body, relevant private body or private body** to whom a request has been made.

information holder means a **public body, relevant private body or private body** to whom a **request** is made.

information officer means a person designated as the **information officer** of a **public body, relevant private body or private body** in accordance with section 8 or 22, as applicable.

internal review request means a request made by a requester or a third party for an internal review of a decision of an **information officer** in accordance with section 54.

international organisation means an international organisation of States or established by the governments of States.

person means a natural person or a juristic person.

personal information means **information** or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the **information** or opinion.

private body means:

- (a) a natural person who carries on or has carried on any trade, business or profession, but only in such capacity;
- (b) a partnership which carries on or has carried on any trade, business or profession; or
- (c) any former or existing juristic person or any successor in title;

but excludes **public bodies** and **relevant private bodies**.

public body means any body:

- (a) established by or under the Constitution;
- (b) established by statute; or
- (c) which forms part of any level or branch of government.

publish means to make available in a form and manner which is easily accessible to the public and includes print, broadcast and electronic means of communication.

relevant private body means any body:

- (a) owned, controlled or substantially financed directly or indirectly by funds provided by government, but only to the extent of that financing; or
- (b) carrying out a statutory or public function, but only to the extent of that statutory or public function.

reproduction fee means the fee payable by a **requester** to an **information holder** for access to **information** calculated by the relevant body in accordance with sections 21 or 34, as applicable.

request means an application made under section 11 or 25.

requester means a **person** who requests access to **information** under this Act or any **person** acting on behalf of the **person** requesting access.

sitting days of Parliament means days in which Parliament is in session.

third party means a **person** other than the **information holder** or the **requester**.

third party information means **personal information** or **commercial and confidential information** of a **third party**.

2 Principles

- (1) The right to **information** shall be guaranteed by law in accordance with the following principles –
 - (a) every person has the right to access **information** of **public bodies** and **relevant private bodies** expeditiously and inexpensively;
 - (b) every person has the right to access **information** of **private bodies** that may assist in the exercise or protection of any rights expeditiously and inexpensively;
 - (c) this Act and any other law, policy or practise creating a right of access to **information** shall be interpreted and applied on the basis of a duty to disclose. Non disclosure shall be permitted only in exceptionally justifiable circumstances;
 - (d) **public bodies, relevant private bodies** and **private bodies** shall accede to the authority of the oversight mechanism in all matters relating to access to **information**;
 - (e) any refusal to disclose **information** shall be subject to appeal;
 - (f) **public bodies** and **relevant private bodies** shall proactively **publish information**; and
 - (g) no one shall be subject to any sanction for releasing **information** under this Act in good faith.

3 Objectives

- (1) The objects of this Act are –
 - (a) to give effect to the right of access to information as guaranteed within the African Charter, to—
 - (i) any **information** held by a **public body** or **relevant private body**; and
 - (ii) any **information** held by a **private body** that may assist in the exercise or protection of any right;
 - (b) to establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to **information** in a manner which enables persons to obtain access to **information** of **public bodies, relevant private bodies** and **private bodies** as swiftly, inexpensively and effortlessly as is reasonably possible;
- (2) In keeping with the duty to promote access to **information, public bodies, relevant private bodies** and **private bodies** are obliged to keep and maintain **information** in a form and manner that facilitates the right of to access **information**.
- (3) It is a further objective of this Act generally, to promote transparency, accountability, effective governance and development by, empowering and educating everyone to understand their rights in terms of this Act.

4 Primacy of Act

- (1) This Act applies to the exclusion of any provision in any other legislation or regulation that prohibits or restricts the disclosure of **information** of a **public body, relevant private body** or a **private body**.
- (2) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a **public body, relevant private body** or a **private body** to disclose **information**.

5 Interpretation

When interpreting this Act due consideration must be given to its principles and objectives, the Constitution and any international instruments. In so doing, any reasonable interpretation that favours the presumption of a right to access **information** must be preferred to any adverse interpretation.

PART II – ACCESS TO INFORMATION OF PUBLIC BODIES AND RELEVANT PRIVATE BODIES

6 Proactive disclosure

Each **public body** and **relevant private body** is required to **publish** the following **information** produced by or in relation to that body as soon as the **information** is generated or received by the body:

- (a) **information** containing interpretations or particulars of Acts or schemes administered by the body;
- (b) manuals, policies, procedures or rules which have been prepared for, or are used by, officers of the body in making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
- (c) contracts entered into by the body from the commencement of this part for the provision of services to or on behalf of the body where the amount payable under the contract is in excess of [insert amount];
- (d) the budget and expenditure plans for the current financial year and any previous financial years from the date of the commencement of this part; and
- (e) any other **information** directed by the oversight mechanism.

7 Unpublished information not to prejudice public

Where a **public body** or **relevant private body** fails to **publish information** referred to in section 6, a member of the public who was not aware of that **information** shall not be subjected to any prejudice if he or she could lawfully have avoided that prejudice had they been aware of the **information**.

8 Designation of information officer

- (1) The **head** of every **public body** and **relevant private body** must designate an **information officer** for the purposes of this Act.
- (2) If a **public body** or **relevant private body** fails to designate an **information officer**, the **head of the body** will be the **information officer** for the purposes of this Act.
- (3) A person designated as an **information officer** must be competent to exercise the powers and perform the duties and functions of an **information officer** under this Act.
- (4) The **information officer** has the powers, duties and functions that are conferred or imposed on the **information officer** by this Act.

9 Designation of deputy information officers

- (1) If it is necessary to enable a **public body** or **relevant private body** to comply with the requirements of this Act, the **head of the body** must designate a person or persons as **deputy information officers**.
- (2) A **deputy information officer** may exercise all the powers, duties and functions of an **information officer**.
- (3) Each person designated as a **deputy information officer** of a **public body** or **relevant private body** shall be subject to the supervision of the **information officer** of that **public body** or **relevant private body** in the performance of the powers, duties and functions under this Act.

10 Right of access

- (1) Subject to this Act, every **person** has a legally enforceable right to access information from a **public body** or **relevant private body**.
- (2) Nothing in this Act is intended to prevent or discourage **public bodies** or **relevant private bodies** from **publishing** or giving access to **information** (including **exempt information**) where they can properly do so or are required by law to do so.

11 Requests for access

- (1) A **person** who wishes to obtain access to **information** of a **public body** or **relevant private body** shall make a **request** in writing or orally to the **information officer** of the body.
- (2) Subject to subsection (3), if a **person** makes a **request** orally the **information officer** must reduce that oral request to writing and provide a copy thereof to the **requester**.
- (3) If an **information officer** is able to provide an immediate response to a person making a **request** orally and such response is to the satisfaction of the **requester**, the **information officer** shall not be required to reduce the request to writing.
- (3) No **person** shall be requested to provide a justification or reason for requesting any **information**.
- (4) A **request** shall -
 - (a) provide such detail concerning the **information** requested as is reasonably necessary to enable the **information officer** with reasonable effort to identify the **information**;
 - (b) notwithstanding subsection (3), if the **requester** believes that the **information** is necessary to safeguard the life or liberty of a **person**, include a statement to that effect, including the basis for that belief;
 - (c) identify the nature of the form in which the requester prefers access; and
 - (d) if the request is made on behalf of someone else, include an authorisation from the **person** on whose behalf the request is made.
- (5) On receipt of a **request** an **information officer** must provide a written acknowledgement of the **request** to the **requester**.

12 Duty to assist requesters

Where a **person** -

- (a) wishes to make a **request** to a **public body** or **relevant private body**; or
- (b) has made a **request** to a **public body** or **relevant private body** that does not comply with the requirements of this Act -

it is the duty of the **information officer** to take reasonable steps to assist the **person**, free of charge, to make the **request** in a manner that complies with this Act.

13 Response to request

- (1) Subject to subsection (2), the **information officer** to whom a **request** is made must, as soon as reasonably possible, but in any event within 30 days after the **request** is received -
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the request is granted, subject to the payment of any applicable **reproduction fee**, give the **requester** access to the **information**.
- (2) Notwithstanding subsection (1), where a **request** relates to **information** which reasonably appears to be necessary to safeguard the life or liberty of a person, the **information officer** must within 48 hours:
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the request is granted, give the requester access to the **information**.

Access granted

- (3) If the **request** is granted, the notice referred to in subsections (1) and (2) must state -
 - (a) the **reproduction fee** (if any) payable;
 - (b) the form in which access to the **information** will be given; and
 - (c) that the **requester** may apply for a review of the **reproduction fee** payable or the form in which access has been granted in accordance with section 54.
- (4) Where a **requester** has been given notice that his or her **request** has been granted, that **requester** must, subject to subsections (5) and (6) -
 - (a) if a **reproduction fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** is payable, immediately -
be given access to the **information**.
- (5) Notwithstanding subsection (4), where an **information officer** is required to respond to a **request** within 48 hours under subsection (2) and grants the **request**, the **requester** must be given access to the **information** immediately, irrespective of whether any **reproduction fee** payable has been paid.
- (6) Notwithstanding subsections (1)(c) and (4), where **information requested** contains **third party information** a **requester** may not be granted access to that **information** until such time as any right of the **third party** to appeal the release of the **information** has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (7) If the **request** is refused, the notice referred to in subsections (1) and (2) must state:
 - (a) adequate reasons for the refusal, including the provisions of this Act relied on; and

- (b) that the **requester** may apply for a review of the decision in accordance with section 54.

48 hour request refused

- (8) If upon reviewing a **request** and the **information** that is the subject of the **request** the **information officer** does not consider that the **information requested** reasonably appears to be necessary to safeguard the life or liberty of a **person**, the **information officer** must within 48 hours of receipt of the **request** -
 - (a) provide notice of the decision, including adequate reasons for the decision, to the **requester**;
 - (b) inform the **requester** that, subject to the **requester's** right to apply for a review of the decision, the **information officer** will make a decision regarding whether to grant access to the **requested information** within the time period specified in subsection (1); and
 - (c) inform the **requester** that they may appeal to the oversight mechanism in respect of the decision in accordance with section 81.

14 Extension of time

- (1) The **information officer** to whom a **request** is made may extend the period to respond to a **request** in section 13(1) on a single occasion for a period of not more than 14 days if -
 - (a) the **request** is for a large amount of **information** or requires a search through a large amount of **information** and meeting the original time limit would unreasonably interfere with the activities of the **public body** or **relevant private body** concerned; or
 - (b) consultations are necessary to comply with the **request** that cannot be reasonably completed within 30 days.
- (2) Notwithstanding subsection (1), if any part of the **information requested** can be considered by the **information officer** within the time period specified under section 13(1) it must be reviewed and a response provided to the **requester** in accordance with that section.
- (3) If a period to respond to a **request** is extended in terms of subsection (1) the **information officer** must, as soon as reasonably possible, but in any event within 30 days after the **request** is received notify the **requester** in writing of that extension.
- (4) The notice in terms of subsection (3) must state -
 - (a) the period of the extension;
 - (b) adequate reasons for the extension, including the provision of this Act relied on; and
 - (c) that the **requester** may apply for a review of the decision in accordance with section 54.

15 Transfer of request

- (1) Where a **request** is made to a **public body** or **relevant private body** requesting **information** -
 - (a) which the **public body** or **relevant private body** knows is held by another **public body** or **relevant private body**; or
 - (b) the subject matter of which is more closely connected with the functions of another **public body** or **relevant private body** -the body to which such **request** is made, shall transfer the **request**, or such part of it as may be appropriate, to that other **public body** or **relevant private body**.
- (2) A **public body** or **relevant private body** that transfers a **request** in accordance with subsection (1) must -
 - (a) make the transfer as soon as practicable but in any event within 5 days from the date of receipt of the **request**; and
 - (b) immediately notify the **requester** of the transfer in writing.
- (3) A **public body** or **relevant private body** that receives a transferred **request** must immediately notify the **requester** of the receipt in writing.
- (4) Where a **request** is transferred to another **public body** or **relevant private body** in accordance with subsection (1) the **request** shall be deemed to have been -
 - (a) made to the **public body** or **relevant private body** to which it was transferred; and
 - (b) received by that **public body** or **relevant private body** on the day the body to which it was originally made received it.

16 Deemed refusal

If the **information officer** fails to give a decision on a **request** within the time specified in section 13(1) or, where that time period has been extended in accordance with section 14, within any extended period of time, the **information officer** shall be deemed to have refused the **request**.

17 Information that cannot be found or does not exist

- (1) If an **information officer**-
 - (a) has taken all reasonable steps to find the **information requested**; and
 - (b) is satisfied that the **information**:
 - (i) is in the possession of the **public body** or **relevant private body** but cannot be found; or
 - (ii) does not exist -

the **information officer** must, as soon as possible but in any event within 30 days of the receipt of the **request**, notify the **requester** in writing that the **information** cannot be found or does not exist.

- (2) The notice referred to in subsection (1) must include an affidavit signed by the **information officer** stating all steps taken to find the **information** or to determine whether the **information** exists, including, but not limited to -
 - (a) details of all locations searched for the **information** and the person or persons that conducted those searches;
 - (b) details of any communications with any person that the **information officer** contacted in searching for the **information** or attempting to establish the existence of the **information**; and
 - (c) any evidence relating to the existence of the **information** including –
 - (i) any evidence that the **information** was destroyed; and
 - (ii) the location in which the **information** was last known to be held.
- (3) If **information** is found after notice is given to a **requester** under subsection (1), the **information officer** must immediately notify the **requester** in writing and thereafter as soon as possible but in any event within 14 days-
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee**, give the requester access to the **information**.
- (4) If access to the **information** is granted, the notice referred to in subsection 3 must comply with section 13(3) and access shall be given in accordance with sections 13(4) and 13(6).
- (5) If access to the **information** is refused, the notice referred to in subsection 3 must comply with section 13(7).

18 Deferral of Access

- (1) An **information officer** who receives a **request** may defer the provision of access to the **information** if -
 - (a) the **information** has been prepared for presentation to Parliament – until the expiration of 5 **sitting days of Parliament**;
 - (b) the **information** constitutes a report that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the State – until the report has been presented or made available to that body or person or upon the expiration of 45 days from the date of the request, whichever is the earlier.
- (2) If an **information officer** determines to defer access to **information** under subsection (1) the **information officer** must notify the **requester** in writing:
 - (a) of the decision as soon as possible but not later than 30 days after receiving the **request**;
 - (b) of the reason for the decision, including the provisions of this Act relied on;
 - (c) of the likely period for which access is to be deferred; and

- (d) that the **requester** may, within 14 days of receiving notice, make written or oral representations to the **information officer** regarding why the **information** is required before such presentation.
- (3) If a **person** makes oral representations in accordance with subsection (2)(d), the **information officer** must reduce those oral representations to writing and provide a copy thereof to the **requester**.
- (4) If a **requester** makes a representation in terms of subsection (2)(d) the **information officer**, after due consideration of those representations, must, as soon as reasonably possible but in any event within 5 days, grant the **request** for access if there are reasonable grounds for believing that the **requester** will suffer substantial prejudice if access to the **information** is deferred for the likely period referred to in subsection (2)(c).

19 Form of Access

- (1) Access to **information** may be given to a **requester** in one or more of the following forms -
 - (a) a reasonable opportunity to inspect the **information**;
 - (b) a copy of the **information**;
 - (c) in the case of **information** that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
 - (d) in the case of **information** by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the **public body** or **relevant private body** of a written transcript;
 - (e) in the case of **information** which is held on a computer, or in electronic or machine-readable form, and from which the **public body** or **relevant private body** concerned is capable of producing a printed copy of the **information** or part of it, by supplying such a copy; or
 - (f) in the case of **information** available or capable of being made available in computer readable form, by supplying a copy in that form.
- (2) Subject to subsection (4) where the **requester** has requested access to **information** in a particular form, access shall be given in that form.
- (3) A **requester** may amend their preferred form of access on receipt of notice of the **reproduction fees** payable if access is granted in the form initially requested.
- (4) If the giving of access to **information** in the form requested by the **requester** would:
 - (a) unreasonably interfere with the operations of the **public body** or **relevant private body**;
 - (b) be detrimental to the preservation of the **information**;

- (c) having regard to the physical nature of the **information**, not be appropriate; or
- (d) involve an infringement of copyright subsisting in a person other than the **public body**, **relevant private body** or the State –

access in that form may be refused and access may be given in another form.

- (5) Where a person requests access to **information** in a particular form and for a reason specified in subsection (4) access in that form is refused but access is given in another form, the **reproduction fee** charged may not exceed what would have been charged if that **requester** had been given access in the form requested.
- (6) If a **requester** with a disability is prevented by that disability from reading, viewing or listening to the **information** concerned in the form in which it is held by the **public body** or **relevant private body**, the **information officer** of the **public body** or **relevant private body** must, if that **requester** so requests, take reasonable steps to make the **information** available in a form in which it is capable of being read, viewed or heard by the **requester**.

20 Language of Access

Where **information** exists in more than one language, the **information** shall be provided to the **requester** in such of those languages as the **requester** prefers.

21 Fees

- (1) A **requester** shall not be required to pay any fee:
 - (a) on lodging a **request**;
 - (b) in relation to time spent by a **public body** or **relevant private body** in searching for the **information requested**;
 - (c) in relation to time spent by the **public body** or **relevant private body** in examining the **information** to determine whether it contains **exempt information** or deleting **exempt information** from a document; or
 - (d) in relation to time spent or costs incurred by the **public body** or **relevant private body** in transcribing the **information**.
- (2) Subject to subsection (3), the **public body** or **relevant private body** may charge the **requester** a **reproduction fee** consisting of the reasonable reproduction costs incurred by the **public body** or **relevant private body**.
- (3) No **reproduction fee** shall be payable:
 - (a) for reproduction of **personal information** of the **requester**, or where the **request** is made on behalf of another person, the **personal information** of the person on whose behalf the **request** is made;
 - (b) for reproduction of **information** which is in the public interest; or
 - (c) where the **public body** or **relevant private body** has failed to comply with the time for responding to a **request** under section 13(1) or where an extension of time has been made under section 14, within that extended period of time; or

- (d) where the **requester** is indigent.

PART III – ACCESS TO INFORMATION OF PRIVATE BODIES

22 Designation of Information Officer

- (1) Every **private body** must designate an **information officer** for the purposes of this Act.
- (2) If a **private body** fails to designate an **information officer**, the **head of the body** will be the **information officer** for the purposes of this Act.
- (3) A person appointed as an **information officer** must be competent to exercise the powers and perform the duties and functions of an **information officer** under this Act.
- (4) The **information officer** has the powers, duties and functions that are conferred or imposed on the **information officer** by this Act.

23 Designation of Deputy Information Officers

- (1) If it is necessary to enable a **private body** to comply with the requirements of this Act, the **head of the body** must designate a person or persons as **deputy information officers**.
- (2) A **deputy information officer** may exercise all the powers, duties and functions of an **information officer**.
- (3) Each person designated as a **deputy information officer** of a **private body** shall be subject to the supervision of the **information officer** of that **private body** in the performance of the powers, duties and functions under this Act.

24 Right of access

- (1) Subject to this Act, every **person** has a legally enforceable right to access **information** from a **private body** where the **information** may assist in the exercise or protection of any right.
- (2) Nothing in this Act is intended to prevent or discourage **private bodies** from **publishing** or giving access to **information** (including **exempt information**) where they can properly do so or are required by law to do so.

25 Requests for access

- (1) A **person** who wishes to obtain access to **information** of a **private body** shall make a **request** in writing or orally to the **information officer** of the body.
- (2) Subject to subsection (3), if a **person** makes a **request** orally the **information officer** must reduce that oral request to writing and provide a copy thereof to the **requester**.
- (3) If an **information officer** is able to provide an immediate response to a person making a **request** orally and such response is to the satisfaction of the **requester**, the **information officer** shall not be required to reduce the request to writing.

- (4) A **request** shall -
- (a) provide such detail concerning the **information** as is reasonably necessary to enable the **information officer** with reasonable effort to identify the **information**;
 - (b) provide an explanation of why the requested **information** may assist in the exercise or protection of any right;
 - (c) if the **requester** believes that the **information** is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief;
 - (d) identify the nature of the form in which the **requester** prefers access; and
 - (e) if the request is made on behalf of someone else, include an authorisation from the **person** on whose behalf the request is made.
- (4) On receipt of a **request** an **information officer** must provide a written acknowledgement of the **request** to the **requester**.

26 Duty to assist requesters

Where a **person**:

- (a) wishes to make a **request** to a **private body**; or
- (b) has made a **request** to a **private body** that does not comply with the requirements of this Act-

it is the duty of the **information officer** to take reasonable steps to assist the **person**, free of charge, to make the **request** in a manner that complies with this Act.

27 Response to request

- (1) Subject to subsection (2), the **information officer** to whom a **request** is made must, as soon as reasonably possible, but in any event within 30 days after the **request** is received:
- (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee**, give the **requester** access to the **information**.
- (2) Notwithstanding subsection (1), where a **request** relates to **information** which reasonably appears to be necessary to safeguard the life or liberty of a person, the **information officer** must within 48 hours-
- (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, give the **requester** access to the **information**.

Access granted

- (3) If the **request** is granted, the notice referred to in subsections (1) and (2) must state:
 - (a) the **reproduction fee** (if any) payable;
 - (b) the form in which access to the **information** will be given; and
 - (c) that the **requester** may apply for a review of the **reproduction fee** payable or the form of access in accordance with section 54.
- (4) Where a **requester** has been given notice that his or her **request** has been granted, that **requester** must, subject to subsections (5) and (6) -
 - (a) if a **reproduction fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** is payable, immediately -
be given access to the **information**.
- (5) Notwithstanding subsection (4), where an **information officer** is required to respond to a **request** within 48 hours under subsection (2) and grants the **request**, the **requester** must be given access to the **information** immediately, irrespective of whether any **reproduction fee** payable has been paid.
- (6) Notwithstanding subsection (1)(c) and (4), where **information requested** contains **third party information** a **requester** may not be granted access to that **information** until such time as any right of the **third party** to appeal the release of the **information** has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (7) If the **request** is refused, the notice referred to in subsections (1) and (2) must state:
 - (a) adequate reasons for the refusal, including the provisions of this Act relied on; and
 - (b) that the **requester** may apply for a review of the decision in accordance with section 54.

48 hour request refused

- (8) If upon reviewing a request and the **information** that is the subject of the **request** the **information officer** does not consider that the **information requested** reasonably appears to be necessary to safeguard the life or liberty of a person, the **information officer** must within 48 hours of receipt of the **request** -
 - (a) provide notice of the decision, including adequate reasons for the decision, to the **requester**;
 - (b) inform the **requester** that, subject to the **requester's** right to apply for a review of the decision, the **information officer** will make a decision regarding whether to grant access to the **requested information** within the time period specified in subsection (1); and
 - (c) inform the **requester** that they may appeal to the oversight mechanism in respect of the decision in accordance with section 81.

28 Extension of time

- (1) The **information officer** to whom a **request** is made may extend the period to respond to a **request** in section 27(1) on a single occasion for a period of not more than 14 days if:
 - (a) the **request** is for a large amount of **information** or requires a search through a large amount of **information** and meeting the original time limit would unreasonably interfere with the activities of the **private body** concerned; or
 - (b) consultations are necessary to comply with the **request** that cannot be reasonably completed within 30 days.
- (2) Notwithstanding subsection (1), if any part of the **information** requested can be considered by the **information officer** within the time period specified under section 27(1) it must be reviewed and a response provided to the **requester** in accordance with that section.
- (3) If a period for responding to a request is extended in terms of subsection (1) the **information officer** must, as soon as reasonably possible, but in any event within 30 days after the **request** is received notify the **requester** in writing of that extension.
- (4) The notice in terms of subsection (3) must state;
 - (a) the period of the extension;
 - (b) adequate reasons for the extension, including the provision of this Act relied on; and
 - (c) that the **requester** may apply for a review of the decision in accordance with section 54.

29 Deemed refusal

If the **information officer** fails to give a decision on a **request** within the time specified in section 27(1) or, where that time period has been extended in accordance with section 28, within any extended period of time, the **information officer** shall be deemed to have refused the **request**.

30 Information that cannot be found or does not exist

- (1) If an **information officer** -
 - (a) has taken all reasonable steps to find the **information requested**; and
 - (b) is satisfied that the **information** -
 - (i) is in the possession of the **private body** but cannot be found; or
 - (ii) does not exist -

the **information officer** must, as soon as possible but in any event within 30 days of the receipt of the **request**, notify the **requester** in writing that the **information** cannot be found or does not exist.

- (2) The notice referred to in subsection (1) must include an affidavit signed by the **information officer** stating all steps taken to find the **information** or to determine whether the **information** exists, including, but not limited to:
 - (a) details of all locations searched for the **information** and the person or persons that conducted those searches;
 - (b) details of any communications with any person that the **information officer** contacted in searching for the **information** or attempting to establish the existence of the **information**;
 - (c) any evidence relating to the existence of the **information** including:
 - (i) any evidence that the **information** was destroyed; and
 - (ii) the location in which the **information** was last known to be held.
- (3) If **information** is found after notice is given to a **requester** under subsection (1), the **information officer** must immediately notify the **requester** in writing and thereafter as soon as possible, but in any event within 14 days -
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee**, give the **requester** access to the **information**.
- (4) If access to the **information** is granted, the notice referred to in subsection (3) must comply with section 27(3) and access shall be given in accordance with sections 27(4) and 27(6).
- (5) If access to the **information** is refused, the notice referred to in subsection (3) must comply with section 27(7).

31 Deferral of access

- (1) An **information officer** who receives a **request** may defer the provision of access to the **information** if the **information** constitutes a report that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the State – until the report has been presented or made available to that body or person or upon the expiration of 45 days from the date of the request, whichever is the earlier.
- (2) If an **information officer** determines to defer access to **information** under subsection (1) the **information officer** must notify the **requester**:
 - (a) of the decision as soon as possible but not later than 30 days after receiving the **request**;
 - (b) of the reason for the decision, including the provisions of this Act relied on;
 - (c) of the likely period for which access is to be deferred; and
 - (d) that the **requester** may, within 14 days of receiving notice, make written or oral representations to the **information officer** regarding why the **information** is required before such presentation.

- (3) If a person makes oral representations in accordance with subsection (2)(d), the **information officer** must reduce those oral representations to writing and provide a copy thereof to the **requester**.
- (4) If a **requester** makes a representation in terms of subsection (2)(d) the **information officer**, after due consideration of those representations, must as soon as reasonably possible but in any event within 5 days, grant the **request** for access if there are reasonable grounds for believing that the **requester** will suffer substantial prejudice if access to the **information** is deferred for the likely period referred to in subsection (2)(c).

32 Form of access

- (1) Access to **information** may be given to a **requester** in one or more of the following forms -
 - (a) a reasonable opportunity to inspect the **information**;
 - (b) a copy of the **information**;
 - (c) in the case of **information** that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
 - (d) in the case of **information** by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the **private body** of a written transcript;
 - (e) in the case of **information** which is held on a computer, or in electronic or machine-readable form, and from which the **public body** concerned is capable of producing a printed copy of the **information**, or part of it, by supplying such a copy; or
 - (f) in the case of **information** available or capable of being made available in computer readable form, by supplying a copy in that form.
- (2) Subject to subsection (4) where the **requester** has requested access to **information** in a particular form, access shall be given in that form.
- (3) A **requester** may amend their preferred form of access on receipt of notice of the **reproduction fees** payable if access is granted in the form initially requested.
- (4) If the giving of access to **information** in the form requested by the **requester** would -
 - (a) unreasonably interfere with the operations of the **private body**; or
 - (b) be detrimental to the preservation of the **information**; or
 - (c) having regard to the physical nature of the **information**, not be appropriate; or
 - (d) involve an infringement of copyright subsisting in a person other than the **private body**—

access in that form may be refused and access may be given in another form.

- (5) Where a **person** requests access to **information** in a particular form and for a reason specified in subsection (4) access in that form is refused but access is given in another form, the **reproduction fee** charged may not exceed what would have been charged if that **requester** had been given access in the form requested.
- (6) If a **requester** with a disability is prevented by that disability from reading, viewing or listening to the **information** concerned in the form in which it is held by the **private body**, the **information officer** of the **private body** must, if that **requester** so requests, take reasonable steps to make the **information** available in a form in which it is capable of being read, viewed or heard by the **requester**.

33 Language of access

Where **information** exists in more than one language, the **information** shall be provided to the **requester** in such of those languages as the **requester** prefers.

34 Fees

- (1) A **requester** shall not be required to pay any fee:
 - (a) on lodging a **request**; or
 - (b) in relation to time spent by a **private body** in searching for the **information** requested;
 - (c) in relation to time spent by the **private body** in examining the **information** to determine whether it contains **exempt information** or deleting **exempt information** from a document; or
 - (d) in relation to time spent or costs incurred by the **private body** in transcribing the **information**.
- (2) Subject to subsection (3), the **private body** may charge the **requester** a **reproduction fee** consisting of the reasonable reproduction costs incurred by the **private body**.
- (3) No **reproduction fee** shall be payable:
 - (a) for reproduction of **personal information** of the **requester**, or where the **request** is made on behalf of another person, the **personal information** of the person on whose behalf the **request** is made;
 - (b) for reproduction of **information** which is in the public interest; or
 - (c) where the **private body** has failed to comply with the time for responding to a **request** under section 27 (1) or where an extension of time has been made under section 28, within that extended period of time; or
 - (d) where the **requester** is indigent.

PART IV – EXEMPTIONS

35 Refusal

An **information holder** may refuse to grant access to **information** only if the **information** falls within an exemption stated in this Part.

36 Public interest override

- (1) Notwithstanding any of the exemptions in this Part, an **information officer** must grant a **request** for access to **information** if the public interest in the disclosure of the **information** outweighs the harm to the interest protected under the relevant exemption.
- (2) An **information officer** must consider whether subsection (1) applies in relation to any **information** requested before refusing access on the basis of an exemption stated in this Part.

37 Classified Information

Information is not exempt from access under this Act merely on the basis of its classification status.

38 Personal information of a third party

- (1) Subject to subsection (2) an **information officer** may refuse a **request** for **information** if its release would involve the unreasonable disclosure of **personal information** about a natural third party, including a deceased individual.
- (2) A **request** must not be refused in terms of subsection (1) where:
 - (a) the **third party** does not make a representation under section 52 stating why access to the **information** should not be granted;
 - (b) the **third party** consents to the disclosure;
 - (c) the **third party** has been deceased for more than 10 years;
 - (d) the **information** is in the public domain;
 - (e) the **information** relates to the physical or mental wellbeing of an individual who is under the care of the **requester** and who is:
 - (i) under the age of 18 years; or
 - (ii) incapable of understanding the nature of the **request** – and giving access would be in the individuals best interests;
 - (f) the **information** is about a deceased individual and the **requester** is:
 - (i) the individuals next of kin or legal personal representative;
 - (ii) making the **request** with the written consent of the individuals next of kin or legal personal representative; or
 - (iii) the executor of the deceased's estate;

- (g) the **information** relates to the position or functions of an individual who is or was an official of the **information holder** or any other **public body** or **relevant private body**;
- (h) the **information** was given to the **information holder** by the individual to whom it relates and the individual was informed by or on behalf of the **information holder**, before it was given, that the **information** belongs to a class of **information** that would or might be made available to the public.

39 **Commercial and confidential information of an information holder or a third party**

- (1) An **information officer** may refuse a **request** for **information** if it contains:
 - (a) trade secrets of the **information holder** or a **third party**; or
 - (b) **information** about the **information holder** or a **third party** that would substantially prejudice a legitimate commercial or financial interest of the **information holder** or **third party**.
- (2) A request must not be refused in terms of subsection (1) where:
 - (a) the disclosure of the **information** would facilitate accountability and transparency of decisions taken by the **information holder**;
 - (b) the **information** relates to expenditure of public funds; or
 - (c) the disclosure of the **information** would reveal misconduct or deception.

40 **Protection of life, health and safety of an individual**

An **information officer** may refuse a request where the release of the **information** would be likely to endanger the life, health or safety of an individual.

41 **National security and defence**

- (1) An **information officer** may refuse to grant access to **information**, where to do so would cause substantial prejudice to the **security or defence of the State**.
- (2) For the purpose of this section *security or defence of the State* means:
 - (a) military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression, or curtailment of **subversive or hostile activities**;
 - (b) intelligence relating to –
 - (i) the defence of the State;
 - (ii) the detection, prevention, suppression or curtailment of **subversive or hostile activities**;

- (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);
 - (d) the identity of a confidential source and any other source of information referred to in paragraph (b); or
 - (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons.
- (3) For the purpose of this section, ***subversive or hostile action*** means:
- (a) an attack against the State by a foreign element;
 - (b) acts of sabotage or terrorism aimed at the people of the State or a strategic asset of the State, whether inside or outside the State; or
 - (c) a foreign or hostile intelligence operation.

42 International relations

- (1) An **information officer** may refuse to grant access to **information**, where to do so would cause substantial prejudice to the **international relations of the State**.
- (2) For the purposes of this section information which relates to the ***international relations of the State*** is information:
- (a) supplied by or on behalf of the State to another State or an international organisation in terms of an international agreement with that State or organisation which requires the **information** to be held in confidence;
 - (b) required to be held in confidence by international law;
 - (c) on the positions adopted or to be adopted by the State, another State or an international organisation for the purpose of present or future international negotiations; or
 - (d) that constitutes diplomatic correspondence exchanges with another State or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the country.

43 Economic interests of the State

- (1) An **information officer** may refuse to grant a request if the release of the **information** would cause substantial harm to -
- (a) the economic interests of the State; or
 - (b) the ability of the State to manage the economy.
- (2) For the purposes of this section, **information** which relates to the ***economic interests of the State or the ability of the State to manage the economy*** means information relating to the determination of -
- (a) currency or exchange rates;
 - (b) interest rates; or

- (c) taxes, including duties of customs or of excise.

44 Law enforcement

- (1) An **information officer** may refuse to grant access to **information**, where to do so would be likely to cause prejudice to:
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - (c) the administration of justice; or
 - (d) the assessment or collection of any tax or duty.

45 Legally privileged documents

An **information officer** may refuse a **request** if the **information** is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

46 Academic or professional examination and recruitment processes

- (1) An **information officer** may refuse a **request** for information relating to an academic or professional examination or recruitment or selection process prior to the completion of that examination or recruitment or selection process if the release of the **information** would be likely to jeopardise the integrity of that examination or recruitment or selection process.
- (2) **Information** referred to under subsection (1) must be released on request after the academic or professional examination or recruitment or selection process is complete.

47 Provision of free and open advice – public body and relevant private body

- (1) An **information officer** of a **public body** or **relevant private body** may refuse to grant a request –
 - (a) if the release of the **information** would disclose a matter relating to the deliberative processes of the body concerned (including opinions, advice, recommendations and the results of consultations considered by the body for the purpose of those processes); and
 - (b) the granting of the **request** would be contrary to the public interest.
- (2) Subsection (1) does not apply to **information** insofar as it contains –
 - (a) matter used, or intended to be used by a **public body** or **relevant private body** for the purpose of making decisions, determinations or recommendations referred to in section [proactive disclosure section];
 - (b) factual (including statistical) information and analyses thereof;
 - (c) a final decision and the reasons for the making of a decision by a **public body** or **relevant private body**;

- (d) a report of an investigation or analysis of the performance, efficiency or effectiveness of a **public body** or **relevant private body** in relation to the functions generally or a particular function of the body;
- (e) a report, study or analysis of a scientific or technical expert relating to the subject of his or her expertise or a report containing opinions or advice of such an expert and not being a report used or commissioned for the purpose of a decision of a **public body** or **relevant private body** made pursuant to any enactment or scheme.

48 **Redaction**

Where a portion of a record or document containing requested **information** is exempt from release under this Part, the exempt portion of the **information** shall be severed or redacted from the record or document and access to the remainder of the **information** shall be granted to the **requester**.

49 **Maximum period for non-disclosure**

A **request** may not be refused on the basis of any of the exemptions set out in this Part IV if the **information requested** is more than 10 years old, unless the reason for the exemption continues to exist.

50 **Manifestly frivolous or vexatious requests**

An **information officer** may refuse a **request** if the **request** is manifestly frivolous or vexatious.

51 **Burden of proof**

An **information officer** that refuses to grant access to **information** requested has the burden of proving that:

- (a) such **information** is exempt from disclosure under this Act; and
- (b) the public interest in the disclosure of the **information** does not outweigh the harm to the interest protected under the relevant exemption.

52 **Notice to third parties**

- (1) If an **information officer** is considering a **request** for access to **personal information** of a natural **third party** or **commercial or confidential information of a third party** the **information officer** must take reasonable steps to inform the **third party** to whom or which the **information** relates or, where the **third party** is deceased, the next of kin or legal representative of the **third party**, in writing of the **request** as soon as reasonably possible, but in any event within 5 days after the **request** is received.
- (2) When informing the **third party** under subsection (1) the **information officer** must include in the notice –
 - (a) the nature of the **request** and the content of the **information**;
 - (b) the name of the **requester**;

- (c) that the **third party** may consent to the release of the **information** or make a representation as to why access to the **information** should not be granted in accordance with subsection (3);
 - (d) that the **information officer** may release the information even if the **third party** makes a representation under subsection (3);
 - (e) that if the **information officer** determines to release the **information** the **third party** may lodge an appeal under section 54.
- (3) Within 10 days of being informed of a **request** under subsection (1) a **third party** may:
- (a) inform the **information officer** orally or in writing that they consent to the release of the **information** to the **requester**; or
 - (b) make a representation to the **information officer** orally or in writing stating why the request for access to the **information** should not be granted.
- (4) If consent is given or a representation is made orally under subsection (3) the **information officer** must reduce that consent or representation to writing and send a copy thereof to the **third party**.
- (5) Where a **third party** does not provide a response under subsection (3) within 10 days or cannot be located after reasonable steps have been taken to do so, the **information officer** must assume that the **third party** does not object to the **information** being granted to the **requester**.
- (6) Where a **third party** cannot be located, an **information officer** must prepare and sign an affidavit stating all steps taken to locate the **third party**.
- (7) On determining whether to grant the **requester** access to the **personal or commercial or confidential information of the third party**, the **information officer** must notify the **third party** in writing of their decision as soon as possible, but in any event within 5 days.
- (8) If the **information officer** has granted the **request** for access in circumstances where the **third party** objected to the granting of access, the notice referred to in subsection (7) must state –
- (a) the reason(s) for granting the **request**;
 - (b) that the **third party** may apply for a review of the decision under section 54 within 10 days of receipt of the notice; and
 - (c) that the **requester** will be granted access to the **information** unless an appeal is lodged within the 10 day period.
- (9) Notwithstanding the above provisions, if the **information officer** is considering a **request** which the **information officer** must respond to within 48 hours under section 13(2) or 27(2) and that **information** contains **personal information of a natural third party or commercial or confidential information of a third party**, the **information officer** must take reasonable steps to inform the **third party** to whom or which the record relates, in writing, of:
- (a) the nature of the **request** and the content of the **information**;
 - (b) the name of the **requester**;
 - (c) whether the **information officer** released the **information** to the **requester**.

- (10) Notwithstanding subsection (3), where an **information officer** must respond to a **request** within 48 hours under section 13(2) or 27(2), a **third party** shall not have the right to make a representation to the **information officer** stating why the **request** should not be granted.

PART V – INTERNAL REVIEW OF DECISIONS

53 Right of internal review

- (1) A **requester** may apply for an internal review of a decision of an **information officer**-
- (a) refusing to grant access to **information** in accordance with a **request**;
 - (b) under section 14 or 28 to extend the period of time to respond to a **request**;
 - (c) under section 17 or 30 that **information** cannot be found or does not exist;
 - (d) under section 21 or 34 as to the amount of a **reproduction fee**, whether or not the **reproduction fee** has already been paid by the **requester**; or
 - (e) under section 19 or 32 not to grant access to **information** in the form requested by the **requester**, whether or not access in another form has already been provided to the **requester**.
- (2) A **third party** may apply for an internal review of a decision of an **information officer** to grant access to **information** containing **third party information**.

54 Application for internal review

- (1) A **requester** may make an **internal review request** in writing or orally to the **information officer** of the relevant body within 60 days of the receipt of a decision of an **information officer** referred to in section 53(1).
- (2) A **third party** may make an **internal review request** in writing or orally to the **information officer** of the relevant body within 10 days of the receipt of a decision of an **information officer** referred to in section 53(2).
- (3) If a **requester** or a **third party** makes an **internal review request** orally the **information officer** must reduce that oral request to writing and provide a copy thereof to the relevant party.
- (4) An **internal review request** shall identify the **request** and decision of the **information officer** which is the subject of the internal review;
- (5) If an **internal review request** referred to in subsection (1) is lodged after the expiry of 60 days the **information officer** must, upon good cause shown, allow the late lodging of the request.
- (6) As soon as possible, but in any event within 5 days after receipt of an **internal review request** the **information officer** must submit to the head of the **information holder** the:
- (a) **internal review request**;
 - (b) **information officer's** reasons for the decision;
 - (c) **information** that is the subject of the review –

and notify the **requester** in writing that the documents have been so submitted.

55 Decision on internal review

- (1) The head of the **information holder** to whom an **internal review request** is submitted in accordance with section 54 must, as soon as reasonably possible, but in any event within 15 days after the **internal review request** is received by the **information officer**:
 - (a) make a fresh decision on behalf of the body; and
 - (b) notify the **requester**, and where relevant, the **third party** of that decision in writing.

Access granted

- (1) If the head of the **information holder** determines to grant access to the **information**, the notice to the **requester** referred to in subsection (1) must state:
 - (a) the **reproduction fee** (if any) payable;
 - (b) the form in which access will be given; and
 - (c) that the **requester** may apply to the oversight mechanism under section 81 for a review of the decision in respect of the **reproduction fee** payable or the form of access and the process for lodging that appeal.
- (2) Where a **requester** has been given notice that access to the **information** has been granted, that **requester** must, subject to subsection (4):
 - (a) if a **reproduction fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** is payable, immediately
be given access to the **information**.
- (3) Notwithstanding subsection (3), where the head of the **information holder** has determined to release **information** containing **third party information**, the **requester** may not be granted access to that **information** until such time as any right of the third party to appeal the release of the **information** under section 81 has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (4) If the head of the **information holder** determines not to grant access to the **information**, the notice to the **requester** referred to in subsection (1) must state:
 - (a) adequate reasons for the refusal, including the provisions of this Act relied on; and
 - (b) that the **requester** may apply to the oversight mechanism under section 81 for a review of the decision and the process for lodging that appeal.
- (5) Where a **third party** has lodged an **internal review request** the notice referred to in subsection (1) must state –
 - (a) adequate reasons for the decision; and

- (b) that the **third party** may apply to the oversight mechanism under section 81 for a review of the decision and the process for lodging that appeal.

56 Non-delegable duty

The decision referred to in section 55 must be made by the head of the **information holder** personally and may not be delegated to any other person.

57 Deemed refusal

If the head of the relevant **information holder** fails to give a decision on an **internal review request** within the time specified in section 55 the head of the body shall be deemed to have affirmed the original decision of the **information officer**.

58 Head of information holder is information officer

Where the head of a **public body, relevant private body** or **private body** is the **information officer** of that body a **requester** shall be entitled to apply directly to the oversight mechanism under section 81 for a review of any such decision made by the **information officer**.

PART VI – OVERSIGHT MECHANISM

Division 1 – Establishment of Oversight Mechanism

59 Purpose of part

This Part establishes an independent and impartial oversight mechanism comprised of Information Commissioners for the purposes of promotion, monitoring and protection of the right of access to information.

60 Appointment

- (1) Selection and appointment of the Information Commissioners of the oversight mechanism is to be undertaken subject to the following conditions:
 - (a) the call for nominations must be made public and issued by the appropriate authority;
 - (b) identification of candidates and the interview process must be transparent and include public participation; and
 - (c) timeframes within which selection and appointment must be completed are to be stipulated by Parliament.
- (2) The head of state shall appoint Information Commissioners on the recommendation of a committee constituted of multiparty stakeholders.
- (3) Information Commissioners must -
 - (a) be fit and proper persons appropriately qualified for appointment;
 - (b) be recognised human rights advocates;
 - (c) be independent, impartial and accountable; and

- (d) have demonstrable knowledge in access to information, transparency or public and corporate governance.
- (4) Information Commissioners must not:
 - (a) have been convicted of a crime involving dishonesty or violence;
 - (b) be insolvent; or
 - (c) at the time of nomination have been occupying, or have occupied in the last five years, any position within political office or as an official of a political party.

61 Term of office

- (1) Information commissioners shall hold office for a term of four years, subject to reappointment for one further period of four years.
- (2) An information commissioner must not be appointed for any further term after the expiry of the term of reappointment in subsection (1).
- (3) The State may appoint an Interim Information Commissioner for a period not exceeding six months if –
 - (a) any Information Commissioner is incapacitated, removed from office or resigns; or
 - (b) in the period immediately after the tenure of an Information Commissioner has ended.
- (4) The head of State shall, subject to the authorisation by a two third majority of Parliament, 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;
 - (c) gross misconduct has been established; or
 - (d) on such other grounds considered appropriate.
- (4) During their term of office, Information Commissioners and Interim Information Commissioners must not occupy or engage in any other activity, profession or trade outside their office for financial gain.

62 Remuneration

- (1) The Chairperson shall receive a salary equivalent to that of a justice of the highest court in the State.
- (2) Information Commissioners shall receive a salary equivalent to that of a justice of the second highest court in the State.
- (3) The Chairperson and Information Commissioners shall receive reasonable travelling, and living expenses incurred in the course of the conduct of their duties.

- (4) The Chairperson and Information Commissioners shall be entitled to the equivalent pension benefits as that of the justice of the highest court and justice second highest court, respectively.
- (5) Any other issues relating to the payment of salaries, expenses, pensions or compensation shall be guided by legislation relevant to these issues applicable within the public service and the judiciary of the State.

Division 2 – Independence and Powers of the Oversight Mechanism

63 Independence

- (1) The oversight mechanism shall enjoy independence and autonomy in its operation and administration.
- (2) Parliament shall appropriate the budget presented by the oversight mechanism annually upon its presentation.
- (3) The oversight mechanism shall perform its functions without fear, favour or prejudice.
- (4) The oversight mechanism shall develop its own rules and procedures to regulate its affairs through a process of public consultation.
- (5) Where concurrent or other related oversight mechanisms exist, the oversight mechanism shall have the power to determine and align its rules and procedures with the existing mechanisms to the extent necessary, for the purposes of discharging its mandate.
- (6) The exercise of the oversight mechanism's powers under subsection (5) shall include formal and informal recommendations to Parliament, legislative authorities and research bodies for reform to the existing oversight mechanism model.
- (7) The oversight mechanism shall be accountable to Parliament for the execution of its mandate, operations and performance.

64 Code of conduct

- (1) The oversight mechanism shall develop its own code of conduct after public consultation.
- (2) The oversight mechanism may after public consultation, review such code of conduct from time to time.
- (3) Any code of conduct issued by the oversight mechanism or amended after review by the oversight mechanism shall be made public within 30 days of its confirmation.

65 General Powers

- (1) The oversight mechanism shall be presided over by a Chairperson who will be legally responsible for the entity.

- (2) The appointees shall determine who among them will serve as the chair of the OM and such other matters including whether the position of chair is to be fixed or rotated amongst them.
- (3) The oversight mechanism has all of the rights of a juristic person including the right to acquire, hold or dispose of property.
- (4) The oversight mechanism shall have the power to determine the nature, process and undertakings necessary to discharge its brief in terms of this Act, including all work necessary for the promotion, monitoring and protection of the right to access information in all sectors of society within the State.

66 Staff

- (1) The Information Commissioners must appoint such personnel as are necessary to fulfil the functions of the oversight mechanism.
- (2) Personnel of the oversight mechanism may be subject either to the terms and conditions of service of the public service or subject to specifically designed terms and conditions of service, which shall include confidentiality agreements.
- (3) Personnel of the oversight mechanism must undergo appropriate clearances prior to appointment.
- (4) Nothing in this Act shall preclude the oversight mechanism from appointing any expert, specialist or other necessary personnel on a temporary basis where this is deemed appropriate and necessary.
- (5) Where the oversight mechanism is subsumed into existing mechanisms, personnel appointed within the secretariat of the oversight mechanism must:
 - (a) have clear terms and conditions of service;
 - (b) have specific performance areas and lines of accountability; and
 - (c) be independent of other personnel within the existing domestic machinery or structure within which the oversight mechanism is to operate.

67 Engagement of experts

- (1) The oversight mechanism may, whenever it deems appropriate, convene a panel of specialist experts or obtain the cooperation of any body for the purposes of decision making, issuing recommendations or other work undertaken in terms of this Act.
- (2) The terms of engagement of such temporary services are to be determined by the oversight mechanism.
- (3) Any panel of experts convened must include representation from appropriate civil society organisations.

68 Indemnity of the oversight mechanism and personnel

- (1) No criminal or civil proceedings lie against the oversight mechanism, or against any person acting on behalf or under the direction of the oversight mechanism, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the oversight mechanism under the Act.
- (2) Personnel who disclose wrongdoing within the oversight mechanism shall not be subject to any detriment in the course of their employment by reason of the disclosure.

69 Regulation of procedure

- (1) Subject to this Act, the oversight mechanism shall determine the procedure to be followed in the exercise of any power, the performance of any duty or function of the oversight mechanism under this Act.
- (2) The oversight mechanism may, from time to time, after public consultation, review the procedure referred to in subsection (1).

Division 3 - Monitoring

70 Monitoring

- (1) **Public bodies, relevant private bodies, and private bodies** are obliged to provide such reports as required by the Act to the oversight mechanism.
- (2) The oversight mechanism shall, following public consultation, develop and publicise guidelines which detail the reporting requirements including the manner, means and timeframes that apply to **public bodies, relevant private bodies and private bodies**.
- (3) The oversight mechanism retains the discretion to request any further information from the **public body, relevant private body or private body** to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

71 Publication of information manual

- (1) The oversight mechanism shall require every **public body and relevant private body** to submit to it within 18 months of the commencement of this Act an initial report detailing its:
 - (a) operational plan to implement its obligations under this Act; and
 - (b) an information publication plan in respect of its proactive disclosure responsibilities in section 6.
- (2) The report referred to in subsection (1) must include -
 - (a) budgetary projections for implementation against available resources for implementation;

- (b) personnel estimates per capita of its service base and identification of said personnel;
 - (c) processes, mechanisms and policies to facilitate and enhance implementation of the legislation, including measures to secure optimal responsiveness to requests for information and records management;
 - (d) mechanisms it will use to monitor and track applications, notifications and responses;
 - (e) steps to secure continued capacity building and compulsory training plans for personnel;
 - (f) clear plans for community outreach, information sharing and awareness raising;
 - (g) plans for public consultation in its processes;
 - (h) plans for and frequency of self initiated implementation audits and review; and
 - (i) for the purpose of section 71(1)(b) –
 - (i) policies and plans for the purposes of realising its proactive disclosure obligations, including information classification processes; and
 - (ii) measures to ensure frequent and accurate proactive disclosure of information.
- (3) The oversight mechanism may, of its own accord from time to time, call for further plans or amended plans at its discretion.
 - (4) The oversight mechanism may issue recommendations on specific plans for enhanced implementation.
 - (5) Recommendations of the oversight mechanism referred to in subsection (5) must be complied with and no appeal shall lie against such recommendations.
 - (6) The oversight mechanism may require the initial report produced in terms of clause 71(1) to be reviewed within such timeframes and at such frequencies as it deems necessary.

72 **Compulsory deposit and publication of certain information**

- (1) As soon as possible but in any event within 2 years of the commencement of this Act, all **public bodies, relevant private bodies** and **private bodies** will be required to prepare information manuals to be deposited in all places of legal deposit and with the office of the oversight mechanism. These manuals shall include categories of information that are proactively disclosed and those which may be made available only through the formal request process.
- (2) With regard to proactively disclosed information the oversight mechanism shall from time to time determine:
 - (a) measures to be undertaken to ensure accessibility of information;
 - (b) accessibility guarantees in terms of medium, format and language;
 - (c) measures to ensure accuracy of information; and

- (d) additional categories of information not listed in section 6 that must be proactively disclosed.
- (3) With regard to all other **information**, the oversight mechanism shall determine -
 - (a) measures and means to be adopted to ensure periodic and frequent updating of all categories of **information** including those listed in subsection (2) above;
 - (b) measures to be undertaken to ensure accessibility of information;
 - (c) accessibility guarantees in terms of medium, format and language; and
 - (d) measures to ensure accuracy of information.
- (4) The information manual shall, together with the information required in terms of subsections (2) and (3), include the following information about the body -
 - (a) description of the structure and function;
 - (b) contact details of persons to whom requests must be directed;
 - (c) contact details of the Information Officer;
 - (d) plain language guide to assist the user to lodge a request and obtain further assistance if necessary;
 - (e) the description of any arrangement or provision for a person through consultation, making recommendations or otherwise to participate or influence the formulation of policy or the exercise of powers or performance of duties by the body;
 - (f) a description of remedies available in respect of an act or failure to act by the body; and
 - (g) the manner of payment of **reproduction fees**.
- (5) **Public bodies, relevant private bodies** and **private bodies** will be required -
 - (a) to update and republish the information manuals whenever material changes to the information therein occur but at a minimum every 2 years; and
 - (b) to submit updated information manuals to the oversight mechanism.

73 **Effect of non-compliance**

- (1) The oversight mechanism may impose a fine on non-compliant **public bodies** and **relevant private bodies** and private bodies that fail to comply with their obligations under this Division 3.
- (2) The imposition of a fine under subsection (1) may be appealed to the appropriate court on a question of law.

74 **Auditing powers of Oversight Mechanism**

- (1) The office of the oversight mechanism shall retain the right to audit compliance with this Act of any **public body**, **relevant private body** or **private body**.

- (2) The powers of the oversight mechanism to conduct an audit under subsection (1) include -
- (a) the right to conduct inspections in loco;
 - (b) the right to undertake any investigation it deems appropriate in furtherance of the audit;
 - (c) to engage with personnel of the body;
 - (d) to request copies of any information;
 - (e) to access any information it deems necessary to undertake the audit; and
 - (f) to penalise non compliance with its recommendations.
- (3) The obligations of the oversight mechanism in this regard shall include:
- (a) a duty to notify the entity of the audit;
 - (b) a duty to issue time bound recommendations to the body which is audited;
 - (c) the provision of a full report of audit findings in its annual report to Parliament;
 - (d) monitoring of implementation of its recommendations; and
 - (e) investigation of reasons for non compliance, if any.

75 Annual reports to the oversight mechanism

- (1) The **information officer** of each **public body** and **relevant private body** must annually submit to the oversight mechanism a report stating in relation to the body -
- (a) the number of **requests** for access received;
 - (b) the number of **requests** for **personal information**;
 - (c) the number of **requests** for access granted in full;
 - (d) the number of **requests** for access granted in terms of the public interest override in section 36;
 - (e) the number of **requests** for access refused –
 - (i) in full; and
 - (ii) in part;
 - (f) the number of times each provision of Part IV was relied on to refuse access in full or part;
 - (g) the number of cases in which the periods stipulated in section 13 were extended in terms of section 14;
 - (h) the number of internal appeals lodged with the relevant authority;
 - (i) the number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 16;

- (j) the number of cases in which, as a result of an internal appeal, access was given to **information**;
 - (k) the number of appeals referred to the oversight mechanism and the outcome of those appeals;
 - (l) the number of appeals referred to the appropriate court and the outcome of those appeals;
 - (m) a description of the steps or efforts taken by the head of the body to encourage all officers of that body to comply with the provisions of this Act;
 - (n) any facts which indicate an effort by the body to administer and implement the spirit and intention of the Act according to its submitted plan;
 - (o) particulars of any penalties issued against any person under this Act;
 - (p) particulars of any disciplinary action taken against any person under this Act;
 - (q) particulars of any difficulties encountered in the administration of this Act in relation to the operations of the body including issues of staffing and costs; and
 - (r) recommendations for reform, or amendment of this Act, other legislation, common law, sector regulation or practise relevant to the optimal realisation of the objectives of this Act.
- (2) The oversight mechanism may impose penalties on **public bodies** and **relevant private bodies** which do not comply with the annual reporting obligation.
 - (3) **Public bodies** will further be required to produce the annual report in terms of this provision to the national Parliament in their annual reports to Parliament.

76 Reports by the oversight mechanism to regional or sub regional bodies

- (1) The oversight mechanism shall be obliged to produce such reports on the state of implementation of access to information and any such further access to information matter as may be required by the African Commission, African Union or any of its bodies.
- (2) In addition to the reporting obligation in subsection (1), the oversight mechanism shall report to such other regional or sub regional bodies in terms of any request or obligation requiring such response.

Division 4: Promotion

77 Promotion

- (1) The mandate of promoting awareness, education and popularising of the right of access to information, shall rest with the oversight mechanism and shall include **information holders** in terms of the directives of the oversight mechanism.
- (2) In promoting the right of access to information the oversight mechanism shall-

- (a) assess all operational plans required in terms of section 71 to ensure entities have clear obligations and processes which support awareness raising and education interventions at community level including disadvantaged groups;
- (b) ensure that consultation with civil society and platforms for their engagement are provided in the pursuance of interventions in its own promotional activities;
- (c) provide recommendations and guidelines to **public bodies**, **relevant private bodies** and **private bodies** for internal training of personnel;
- (d) monitor internal training of personnel within **public bodies** and **relevant private bodies** and issue notices for mandatory training where necessary;
- (e) assist both **requestors** and **information holders** on matters of interpretation of the Act;
- (f) develop such material as it deems necessary to advance promotion of access to information;
- (g) provide training on request, if resources are available;
- (h) secure means through collaboration to advance training and awareness raising via any medium it deems appropriate; and
- (i) use any means necessary both locally and internationally to promote the objectives of access to information.

78 **Research and law reform**

- (1) The oversight mechanism shall take such measures as are necessary to ensure that all emerging legislation of any status, regulatory codes and industry practices are aligned to the Act.
- (2) The oversight mechanism must in regard to its obligations under subsection (1), submit recommendations for reform on emerging legislation to the relevant authorities.
- (3) The oversight mechanism may participate in any fora, meeting, or consultative process to achieve alignment and harmonization of any other legislation with this Act.
- (4) Parliament shall consult the oversight mechanism with regard to any proposed legislation that has implications on the right of access to information.
- (5) The oversight mechanism may undertake or commission any research it deems necessary or appropriate for the attainment of the objectives of this Act.
- (6) Reports of recommendations for reform and any research undertaken by the oversight mechanism must be presented to Parliament in the annual report of the oversight mechanism.

Division 5 - Enforcement

79 General Powers and Duties of oversight mechanism in matters before it

- (1) The oversight mechanism shall have the discretion and power to:
 - (a) resolve a matter through negotiation, conciliation or mediation where it deems such recourse appropriate;
 - (b) determine the need for, form of and type of investigation required for the determination of any matter;
 - (c) make any such determination as it considers just and equitable including issuing such fines, recommendations and/or penalties in matters before it as it considers appropriate;
 - (d) authorise and/or undertake any such action it deems necessary or appropriate for the execution of its brief in terms of this Act;
 - (e) dismiss a matter it considers vexatious, frivolous or clearly unwarranted;
 - (f) dismiss a matter where the applicant has failed to use any effective and timely internal appeal mechanisms provided by the relevant **information holder**; and
 - (g) grant condonation where appropriate on the facts of the matter.
- (2) The oversight mechanism shall have a duty to:
 - (a) report annually to Parliament;
 - (b) conduct reviews with as little technical or formalities and as expeditiously as possible;
 - (c) pay heed to the needs of persons who wish to make protected disclosures and minors and other vulnerable groups;
 - (d) hold hearings in public unless it deems it inappropriate to do so;
 - (e) publish its findings each quarter.
- (3) The oversight mechanism shall develop rules of procedure, guidelines and regulations consonant with the rules of process for domestic courts and tribunals within the state as it deems appropriate.
- (4) The oversight mechanism shall:
 - (a) determine and issue general directions for the hearing of a matter including notification of parties;
 - (b) issue specific directions where issues of sensitivity to the State are concerned;
 - (c) issue specific directions in matters concerning confidential information or minors or circumstances which it deems appropriate for such action;
 - (d) decide on all matters relating to the need for, form of, issuing and service of notices and communications; and
 - (e) decide on issues of representation where this is necessary.

- (5) The oversight mechanism shall have the following powers and duties with regard to evidence, parties and witnesses for the purposes of investigation or deciding a matter:
 - (a) summon witnesses, heads of organs of state or any person where necessary;
 - (b) summon expert witnesses where appropriate;
 - (c) allow interested parties on application to join proceedings;
 - (d) provide assistance to applicants where appropriate;
 - (e) allow relevant persons to participate in the hearings through any medium they chose;
 - (f) compel any witness or evidence it considers necessary for the resolution of a matter; and
 - (g) administer oaths and receive any such evidence it deems necessary under oath or on affidavit.
- (6) The oversight mechanism shall have full access to all **information** regardless of its classification status where such **information** is the basis of a request or audit to reach a final decision for the purposes of mediation, preliminary investigation, other investigation or to make a finding on a matter before it.
- (7) The oversight mechanism shall have the power of:
 - (a) issuing written orders obliging the production of **information**;
 - (b) reproducing, taking extracts from or holding the **information** for as long as is necessary;
 - (c) requiring the production of **information** where access is refused on the basis of an exemption for the purpose of deciding whether it is an **exempt document**;
 - (d) limiting access to **information** by the parties if this is appropriate;
 - (e) entry, search and seizure necessary for the execution of its mandate; and
 - (f) taking any such other action or notice as may be appropriate for the resolution of any matter before it.

80 Referral to an appropriate Court

- (1) The oversight mechanism shall have the power to make direct referrals to an appropriate court on questions of law or such other matters it considers appropriate.
- (2) The oversight mechanism has the right to bring actions in its own name before an appropriate court or join proceedings where it deems necessary.

Division 6 - Procedure

81 Applications to the Oversight Mechanism

- (1) **Requesters** may apply to the oversight mechanism for a review of a decision of an **information holder** –

- (a) refusing access;
- (b) refusing access after an internal appeal;
- (c) refusing to communicate information regarding categories of **information** in its information manual;
- (d) failing to respond to a **request** for **information** within the time limits established in the Act;
- (e) failing to provide a notice in writing of its response to a **request** in accordance with section 13 or 27;
- (f) failing to communicate information regarding **third party** consent;
- (g) failing to transfer a **request** or transferring a **request** to the incorrect **information holder**;
- (h) providing insufficient or inaccurate or inadequate information;
- (i) relating to **reproduction fees**;
- (j) failing to communicate information in the form requested;
- (l) for condonation where the time for lodging an application for internal appeal or to the oversight mechanism has run out;
- (m) to extend the time period for responding to a **request**; or
- (n) regarding any other matter under this Act.

82 Direct Access

- (1) Any person may make application to the oversight mechanism without exhausting internal appeal mechanisms in the following instances:
 - (a) the **information** requested is the **personal information** of the **requestor** and the initial request to the **information holder** has been refused;
 - (b) the **information** requested was previously in the public domain; or
 - (c) where the person is within the employ of a **public body** or **relevant private body** and wishes to report wrong doing relating to access to information.

83 Instances where life or liberty is threatened

- (1) A **requestor** who requests access to **information** reasonably believed to be necessary to safeguard life or liberty of a person and is –
 - (a) refused access to the record within 48 hours of its request, or
 - (b) receives no notice of the decision of the **information officer** within 48 hours of the request being lodged –
 may apply directly to the oversight mechanism for review of the decision refusing access.

- (2) The oversight mechanism shall upon an assessment of the facts elect to determine the matter summarily or undertake further investigations if necessary before such determination.

84 Timeframes

Regulations governing timeframes must take account of the following considerations relevant to the formulation of rules of process relating to time -

- (a) the issuing of binding summary orders from the oversight mechanism;
- (b) direct access matters;
- (c) applications brought in terms of the 48 hour rule;
- (d) requests of extension of time from **information holders**;
- (e) the power of the oversight mechanism to impose such conditions as it deems appropriate where requests for extensions are made by **information holders**;
- (f) transferring of matters to appropriate **information holders**;
- (g) the power to grant extensions to **requestors** where factors indicate such an extension is appropriate;
- (h) referrals to a higher court;
- (i) right of response to notices, pleadings and communications;
- (j) right to oppose applications for extensions of time;
- (k) notification of parties including notifications of any requests for extensions of time;
- (l) considerations of time to permit all relevant parties in the proceedings to be heard before a determination is made, where this is applicable;
- (m) if the application relates to a request by a person for access to a record, it shall be made within [insert days] after the day on which the person receives a notice of a refusal under section 13(1), (2) or (6) or 27(1), (2), (6), is given access to all or part of the record or, in any other case, becomes aware that grounds for the complaint exist; and
- (n) or any other relevant factor on issues of time.

85 Onus of proof

- (1) The **information holder** bears the onus of proof in all applications and investigations.
- (2) Without limiting the generality of subsection (1), an **information officer** who refuses to grant access to **information** requested has the burden of proving:
 - (a) such **information** is exempt from disclosure under this Act; and
 - (b) the public interest in the disclosure of the **information** does not outweigh the harm to the interest protected under the relevant exemption.

- (3) The standard of proof in matters relating to the exempted categories of information in terms of Part IV are determined by the respective sections of that Part.

86 Notice of intention to investigate and/or hear a matter

Notwithstanding section 79(3)(a), the oversight mechanism shall notify the head of the **public body, relevant private body** or **private body** concerned of the intention to carry out an investigation or hearing and shall inform the head of such entity of the substance of the application referred to in sections 81, 82 or 83, as is appropriate, before commencing an investigation or hearing under this Act.

87 Applications to the Oversight Mechanism to be in writing

- (1) An application under this Act may be made to the oversight mechanism orally or in writing.
- (2) If an application is made orally, the oversight mechanism must reduce the oral application to writing and provide a copy thereof to the **requester**.

88 Right to make representations

- (1) In the course of an investigation or hearing of a complaint by the oversight mechanism, a reasonable opportunity to make representations shall be given to -
 - (a) the person who made the complaint;
 - (b) the head of the public body concerned; and
 - (c) a third party if -
 - (i) the oversight mechanism intends to recommend the disclosure of all or part of a record that contains — or that the oversight mechanism has reason to believe might contain — information subject to third party exemptions in terms of Part IV of this Act or information the disclosure of which the oversight mechanism can reasonably foresee might result in unfair prejudice to the third party; and
 - (ii) the third party can reasonably be located.
- (2) The right to be present during a hearing shall be upheld except when in the view of the oversight mechanism the circumstances dictate the holding of in camera processes.

89 Notices and communications

- (1) The oversight mechanism may issue directions on the matter of service of notices and communications.
- (2) The oversight mechanism shall serve notice of the finding of an investigation, audit, summary finding, application or decision on a hearing or of a referral to an appropriate court, including any rights of appeal, on both the complainant, any **third party** and the **information holder**.

- (3) Where in the view of the oversight mechanism service of the notice of the finding shall cause prejudice based on the sensitive nature of exempt information, such finding shall be amended in a manner considered appropriate by the oversight mechanism to cure its effect.
- (4) The oversight mechanism may in appropriate circumstances decide to dispense with notification and or communication where it may-
 - (a) prejudice conduct of an investigation of a breach or possible breach of the law;
 - (b) prejudice the enforcement or administration of the law;
 - (c) endanger the life or physical safety of a person;
 - (d) cause substantial unjustifiable prejudice to the commercial interests of a private business or private individual; or
 - (e) impair the relation between states.

90 Notice to third parties

- (1) The head of a **public body, relevant private body** or **private body** must immediately on receipt of a notice of a hearing or investigation from the oversight mechanism, inform the oversight mechanism of all third parties to whom the information relates.
- (2) The oversight mechanism shall issue such directions as are necessary to ensure third parties in matters before it are notified of the proceedings or investigations.
- (3) Notwithstanding subsection (2), the oversight mechanism has a discretion to dispense with notification to third parties where it is of the view that such a response is appropriate on the facts of the matter.

Division 7 - Investigations

91 Powers and duties of oversight mechanism in carrying out investigations

- (1) For the purposes of resolving complaints and decision making the oversight mechanism shall have the power to conduct preliminary investigations of a matter or for the purposes of resolution through negotiation, conciliation or mediation.
- (2) The oversight mechanism may chose to conduct any such further investigations as it deems appropriate both for the resolution of matters before it or matters it chooses to investigate of its own accord.
- (3) Where the oversight mechanism is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to information including records under this Act, the oversight mechanism may initiate a complaint in respect thereof to the relevant parties.
- (4) Where the oversight mechanism is satisfied that there are reasonable grounds to investigate a matter relating to non-compliance by a **public body** or **relevant private body** with recommendations issued by the oversight mechanism, audit recommendations, publishing obligations or training

obligations the oversight mechanism may initiate a complaint in respect thereof.

- (5) The oversight mechanism may continue an investigation or enquiry even when a complaint has been withdrawn or settled.
- (6) The oversight mechanism may refer non compliance with its recommendations to the appropriate Minister for implementation through notice or chose to impose an appropriate penalty in terms of section 96 for non-compliance where wilful non compliance is evident.
- (7) The oversight mechanism must detail complaints about offences noted during investigations under this Act in its annual report to Parliament.

92 Evidence Gathering Powers during an Investigation

The oversight mechanism may:

- (a) summon and enforce the appearance of persons before the oversight mechanism and compel them to give oral or written evidence on oath and to produce such documents and things as the oversight mechanism deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
- (b) receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the oversight mechanism sees fit, whether or not the evidence or information is or would be admissible in a court of law;
- (c) enter, search and seize any premises;
- (d) converse in private with any person in any premises entered pursuant to paragraph (c) and otherwise carry out therein such inquiries within the authority of the oversight mechanism under this Act as the oversight mechanism sees fit; and
- (e) examine or obtain copies of or extracts from books or other information including information found in any premises entered pursuant to paragraph (c) containing any matter relevant to the investigation.

93 Parties to proceedings and investigations

- (1) Subject to this Act, the oversight mechanism shall receive and investigate where appropriate, applications from:
 - (a) persons who have been refused access to **information requested** under this Act;
 - (b) third parties against a decision adverse to them made by the **information holder**;
 - (c) personnel in the employ of **public bodies, relevant private bodies or private bodies** with regard to any matter relating to access to information;
 - (d) any other party which has a **substantial interest** in an access to information matter;

- (e) persons who have **requested** access to **information** in respect of which time limits have been extended where they consider the extension unreasonable;
 - (f) persons who have not been given access to **information** or a part thereof in the official language or medium requested by the person or in the format stipulated;
 - (g) persons who have not been given access to **information** or a part thereof in an alternative format pursuant to a **request** made or have not been given such access within a period of time that they consider appropriate;
 - (h) in relation to fees that they consider unreasonable;
 - (i) in respect of any publication which **public bodies, relevant private bodies** and **private bodies** are required to produce in terms of this Act or other legislation;
 - (j) in respect of any other matter relating to requesting or obtaining access to **information** under this Act; or
 - (k) any other matter which in the view of the oversight warrants any form of investigation.
- (2) Nothing in this Act precludes the oversight mechanism from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized to act on behalf of the requestor.
 - (3) Notwithstanding the provisions above, the oversight mechanism shall have the discretion to initiate any form of investigation of its own accord, and may continue with investigations of its own accord even where a matter has been withdrawn.

94 Notification of investigation and findings

- (1) The oversight mechanism has a duty to notify the **information holder** as soon as is reasonably practicable:
 - (a) of the intent to conduct an investigation; and
 - (b) the results of, and reasons for, any recommendations resulting from the investigation.
- (2) The oversight mechanism must also provide a copy of the investigation notice to the applicant and retains the discretion to exempt content which is protected under the Act from disclosure both in the notice and subsequent investigation findings where appropriate.
- (3) The oversight mechanism must allow parties to make comments on the findings within specific timeframes.

Division 8 – Decisions of the Oversight Mechanism and duty to publish

95 Negotiation, Conciliation and Mediation

- (1) The oversight mechanism may where appropriate agree to resolve a matter before it through negotiation, conciliation or mediation.

- (2) In these instances the provisions applicable to notification of parties, the right to representation, public hearings and general rules of process may be waived at the discretion and on agreement by the parties.
- (3) Any recommendation or agreement emanating from such process is binding upon the parties.
- (4) The oversight mechanism shall have the right to determine an appropriate order in the event of unjustifiable non compliance by any party with the terms of an agreement endorsed through a process of negotiation, conciliation or mediation.

96 Orders and decisions

- (1) The oversight mechanism may issue any of the following binding orders or recommendations appropriate to an application, hearing, audit, process or investigation it undertakes, including:
 - (a) affirming the decision of the **information holder**;
 - (b) varying the type of access originally granted or requested;
 - (c) setting aside the decision of the information holder and making a ruling;
 - (d) requiring the information holder to take such steps as may be necessary to secure compliance with its obligations under the Act;
 - (e) in cases of repeated, egregious or wilful failures to comply with an obligation under the Act, imposing a fine and an order to comply on the **information holder**;
 - (f) summary orders if in its discretion the matter can be decided without the presence of the parties or summary orders are appropriate in terms of its rules of process;
 - (g) contempt orders;
 - (h) cost orders;
 - (i) rulings on any matter relating to the execution of warrants and search and seizure; or
 - (j) any other order it considers just and equitable.
- (2) The oversight mechanism may issue such directives it deems necessary to enforce its decisions.

97 Content and publication of decisions

- (1) The oversight mechanism must produce a statement of facts, findings and reasoning for decisions on matters before it.
- (2) All decisions emanating from the oversight mechanism must be published.

98 Witness costs

Any person summoned to appear before the oversight mechanism pursuant to this section is entitled to reasonable costs of attendance at the discretion of the oversight mechanism.

PART VII – JUDICIAL REVIEW

99 Application for judicial review

- (1) An application may be made to the appropriate court for judicial review of a decision of the oversight mechanism.
- (2) An application referred to in subsection (1) must be made within 60 days of the receipt of the decision from the oversight mechanism.

[Note – it is anticipated that the general procedures and powers of the relevant court or tribunal would apply and that only any necessary additional matters would be included in this Act. Some examples of additional provisions that may be required are as follows:

The appropriate court may, for the purpose of deciding whether information is exempt information, require the relevant information holder to produce the information for inspection by members of the court.

In any proceeding before the court the onus of proving that a refusal to grant access to information was justifiable under this Act shall be on the information holder.

The court hearing an application may grant any order that is just and equitable, including orders:

- (a) confirming, amending or setting aside the decision which is the subject of the application;*
or
- (b) requiring an information holder to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;*
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation; or*
- (d) as to costs.]*

PART VIII – TRANSITIONAL PROVISIONS

100 Extended period for dealing with requests during the first 2 years

For –

- (a) 12 months from the date that Parts II and III take effect, the reference to:
 - (i) 30 days in section 13 and any other reference to that period in other provisions of this Act; and
 - (ii) 30 days in section 27 and any other reference to that period in other provisions of this Act -must be construed as a reference to 60 days.
- (b) 12 months following the 12 months referred to in paragraph (a), the reference to:

- (i) 30 days in section 13 and any other reference to that period in other provisions of this Act; and
 - (ii) 30 days in section 27 and any other reference to that period in other provisions of this Act;
- must be construed as a reference to 45 days.

PART IX – MISCELLANEOUS PROVISIONS

101 Operation of the law

This Act applies to **information** of **public bodies**, **relevant private bodies** and **private bodies** regardless of whether the **information** came into existence before the operation of this Act.

102 Information released is in public domain

- (1) Subject to subsection (2), **information** to which a **requester** is granted access under this Act shall thereafter be **information** in the public domain.
- (2) Notwithstanding subsection (1), where a **requester** is granted access to their **personal information** or **personal information** of their next of kin or someone for whom they are the legal personal representative, that **information** will not be in the public domain only by reason of that grant of access.

103 Protection against criminal and civil liability

- (1) No **person** shall be criminally or civilly liable for the disclosure or authorisation of the disclosure in good faith of any **information** under this Act.
- (2) No **person** shall be subjected to any detriment in the course of their employment by reason of the disclosure or authorisation of the disclosure in good faith of any **information** under this Act.

104 Offences

- (1) A **person** who with intent to deny a right of access to **information** under this Act:
 - (a) destroys, damages or alters **information**;
 - (b) conceals **information**; or
 - (c) falsifies **information** or makes a false **record**; or
 - (d) obstructs the performance by a **public body**, **relevant private body** or **private body** of a duty under this Act; or
 - (e) interferes or obstructs the work of the oversight mechanism;
 - (f) directs, proposes, counsels or causes any **person** in any manner to do any of the above -

commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine not less than [insert amount].

- (2) Where a person, without reasonable cause:
- (a) refuses to receive a **request**;
 - (b) has not responded to a **request** within the time specified in sections 13, 27 or 55 or where that time period has been extended in accordance with sections 14 or 28, as applicable, within any extended period of time;
 - (c) has vexatiously denied the **request**;
 - (d) has given incorrect, incomplete or misleading information; or
 - (e) obstructed in any manner the release of **information** –
- the oversight mechanism or the appropriate court may impose a minimum penalty of [insert amount] each day until the request is received or determined.

105 Amendment of existing legislation

[State parties will need to amend any existing legislation in the state to align with the Act. In particular state parties will need to consider privacy and whistleblower legislation.]

State parties must also consider whether existing legislation in the state provides the capacity for personal information held by bodies to be amended in the event that it is incorrect. If there is no provision in existing legislation for such amendments then this legislation would be an appropriate place to include such provisions.]

106 Short title and commencement

[to be determined by state party]

APPENDIX

ACHPR/Res.167 (XLVIII)2010

Resolution on Securing the Effective Realisation of Access to Information in Africa

The African Commission on Human and Peoples' Rights (the African Commission) meeting at its 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010;

Recalling its mandate to promote and protect human and peoples' rights under *the African Charter on Human and Peoples' Rights* (the African Charter);

Underscoring that the right of access to information is enshrined in Article 9 of the *African Charter*, and other international human rights instruments, including Article 19 of the *Universal Declaration of Human Rights (UDHR)*, and the *International Covenant on Civil and Political Rights (ICCPR)*;

Recognising that the right of access to information is an important tool for promoting accountability and transparency in Africa, and ensuring the effective realisation of all rights, in particular, socio-economic rights;

Aware that existing legislative provisions on the continent are used by governments, either directly or indirectly, to restrict the right of access to information in their countries;

Recalling ACHPR/Res.62 (XXXII) 02 on the adoption of the *Declaration of Principles on Freedom of Expression in Africa (the Declaration)* of 2002, which elaborates on the scope of Article 9 of the *African Charter*;

Underscoring Principle IV (1) of the Declaration, which provides that “*public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law,*” and Principle IV (2) which stipulates that “*the right to information shall be guaranteed by law in accordance with the principles*” set out in the Declaration;

Recalling Resolution ACHPR/Res.122 (XXXII) 07, adopted during its 42nd Ordinary Session held from 15 to 28 November 2007, in Brazzaville, Republic of Congo, which expanded the mandate of the Special Rapporteur on Freedom of Expression in Africa, to include access to information;

Noting Article 9 of the AU Convention on Preventing and Combating Corruption (AU Convention on Preventing Corruption), adopted in Maputo, Mozambique on 11 July 2003 which provides that “*each State Party shall adopt such legislative and other measures to give effect to the right to access to any information that is required to assist in the fight against corruption and related offences*”;

Recalling that one of the objectives of the African Charter on Democracy, Elections and Governance (the African Charter on Democracy) adopted on 30 January 2007 is the “*establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs*”;

Cognizant of the absence of a model law in Africa, to guide States Parties in the development or revision of their access to information legislation;

Recognizing the need for such a model law, including guidelines on implementation, taking into consideration institutional, legal and structural differences in various States Parties;

Mindful of the constraints that may hamper the ability of States Parties to draft access to information legislation that

meets with the global best practice;

Deeply concerned that of all the fifty-three (53) AU Member States in the continent, only a few have adopted access to information laws;

Commending countries that have adopted access to information laws, namely: the Republic of Angola; Republic of Ethiopia; Republic of Liberia; Republic of South Africa; Republic of Uganda; and Republic of Zimbabwe;

- ***Decides*** to start the process of developing a model access to information legislation for Africa, including guidelines for its effective implementation through its Special Rapporteur on Freedom of Expression and Access to Information (the Special Rapporteur);
- ***Urges*** States Parties, civil society and other stakeholders, to collaborate with the Special Rapporteur by contributing to the process of drafting the model law;
- ***Requests*** the Special Rapporteur to report the progress made on the model law at its next Ordinary Session.

Done in Banjul, The Gambia, 24 November 2010