

THE FREEDOM OF INFORMATION (No.2) BILL, 1998

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EXPLANATORY NOTE

(These notes form no part of the Bill, but are intended only to indicate its general purport)

Part I of the Bill makes certain preliminary provisions.

By clause 2, the proposed Act would come into force on a date fixed by the President by Proclamation.

The object of the Bill as set out in clause 3 is to extend as far as possible the right of members of the public to access to information in the possession of public authorities by -

- (a) making available to public, information about the operations of public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices;
- (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.

Clause 4 defines a number of terms used in the Bill such as “document”, “exempt document”, “exempt information”, “official document”, “personal information” and “public authority”. The distinction between “Minister” and “Responsible Minister” should also be noted.

By clause 5, the proposed Act would not apply to the President, a commission of inquiry issued by the President or to such public authority or function of a public authority as President may, by Order subject to negative resolution of Parliament, determine. Also, matters relating to the judicial functions of a court would not be subject to the provisions of the proposed Act.

By clause 6, the proposed Act would bind the State.

Part II of the Bill furthers the object set out in clause 3(I)(a) by requiring public authorities to publish and make available to certain documents and information.

Clause 7 would require a public authority to publish certain statements such as a statement setting out the particulars of its organisation, functions and decision-making powers and the particulars of any arrangements for public consultation in the formulation of policy by the public authority. Other statements that would be required to be published include a statement of the categories of documents maintained in the possession of the public authority and a statement of the procedure to be followed by a person making a request for access to a document.

Clause 8 would require a public authority to make certain documents available for inspection and purchase by the public and to publish a statement specifying the documents that are so available and the place where copies may be inspected and purchased. The documents in question are generally manuals, rules and other similar documents provided by a public authority and used by the public authority or its officers in making decisions and enforcing any written law or scheme administered by the public authority, especially where such decisions or enforcement affect the rights of, or impose obligations on, members of the public.

Clause 9 would require a public authority to publish a statement listing the reports prepared by or for the public authority by committees or other bodies established within or outside the public authority, by an interdepartmental committee or by a consultant, and other similar reports including reports containing the results of studies, tests and surveys, reports on the performance or efficiency of the public

authority and proposals prepared by the public authority for the drafting of legislation.

If the fact of the existence of a document to which clause 9 applies cannot be referred to without exempt information being disclosed, the public authority would not be required to refer to the document in its statement.

Clause 10 would enable a person to serve upon a public authority a notice stating that in his opinion, a statement published under clause 8 or 9 does not specify a document that is required to be specified. The public authority would then have twenty-one days within which to make a decision on the matter. Where the decision is adverse to the person's claim, the public authority would state the findings on which its decision is based and inform the person of his right to apply for judicial review.

Part II of the Bill further the object set out in clause 3(I)(b) by granting members of the public a legally enforceable right to obtain, with certain essential exceptions, access to official documents held by public authorities and by providing for the procedure to be followed for enforcing that right.

Clause 11 would establish the right of access to official documents. By clause 12, the procedure provided for in this Part would not apply with respect to documents containing information which is open to public access or available for purchase or public inspection or to documents which are stored for preservation or safe custody.

Clause 13 would provide for the making of requests in the form set out in the Schedule. A request would have to identify the official document, or provide sufficient information to enable an employee of the public authority who is familiar with the relevant documents to identify the document with reasonable effort.

Clause 14 would make it the duty of a public authority to assist a person making a request for information instead of refusing to comply with the request on the grounds that the request does not sufficiently identify the document requested.

By clause 15, a public authority would have thirty days to notify a person of the approval or refusal of his request.

Clause 16 would provide for the expeditious release of information where a request is approved and any fee for the making of a copy of the relevant document is paid. Where a document contains exempt information and it is practicable for the public authority to provide a copy of the document without the exempt information and the applicant indicated his interest in such a copy, the public authority would be required to give the applicant access to such a copy.

By clause 17, there would be no fee for making a request but a fee may be prescribed for the making of copies of official documents requested.

Clause 18 sets out the various forms in which access to a document may be given to an applicant.

Clause 19 would require the deferment of access to a document if the document is yet to be presented or released.

Clause 20 would permit a public authority to refuse access to a document on the ground that the request for the document was made by the same person on a previous occasion, that the refusal of the request was confirmed by the High Court and that there are no reasonable grounds for making the request again.

Clause 21 would permit the refusal of a request on the grounds that the work involved in processing the request would substantially and unreasonably divert the resources of the public from its other operations.

By clause 22, a decision in respect of a request must be made, on behalf of the public authority, by a Responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority. A Responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer could arrange for an officer of the public authority to make decisions in respect of requests for information.

Clause 23 would require public authorities to give reasons for refusing requests and inform persons making such requests of their right to apply to the High Court for judicial review and of the time within which the application for review is required to be made.

Part IV of the Bill specifies those documents which are exempt documents. These include Cabinet documents, documents containing information the disclosure of which would be likely to prejudice the defence of Trinidad and Tobago, the lawful activities of the security or intelligence services, international relations and law enforcement activities.

Documents containing matter in the nature of opinion, advice or recommendation prepared by an officer or Minister of Government or in the nature of consultation or deliberation between officers, Ministers of Government or between an officer and a Minister of Government would also be exempt if its disclosure would be contrary to the public interest. Such matter would not include, however, factual information, statistical surveys and a number of other categories of information listed in clause 27(2).

Documents protected by legal professional privilege and documents whose disclosure would involve the unreasonable disclosure of personal information of an individual (including a deceased individual) would also be exempt documents. Further, exemptions would apply to documents containing trade secrets, material obtained in confidence or information which should not be disclosed in the interest of the economy or business or commercial affairs.

By clause 35, access to an exempt document could be given in special circumstances if such access is justified in the public interest.

The miscellaneous provisions of Part V of the Bill include provisions to apply for the correction of personal information held by a public authority, to protect public authorities from actions for defamation, breach of confidence and infringement of copyright, for the hearing of applications for judicial review by a Judge in Chambers, for the submission of annual reports on the operation of the proposed Act by the Minister to Parliament and for the making of regulations.

THE FREEDOM OF INFORMATION (No.2) BILL, 1998

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SCHEDULE

A BILL

AN ACT to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I - PRELIMINARY

Short title 1. This Act may be cited as the Freedom of Information Act, 1998.

Commencement 2. This Act comes into force on such date as is fixed by the President by Proclamation.

Object of Act 3.(1) The object of this Act is to extend as far as possible the right of members of the public to access to information in the possession of public authorities by –

(a) making available to the public information about the operations of public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices; and

(b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs persons in respect of whom information is collected and held by public authorities.

(2) The provisions of this Act shall be interpreted so

as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

Interpretation

4. In this Act –

“applicant” means a person who has made a request in accordance with section 13;

“designated officer”, in relation to a public authority, means the person referred to in section 7(1)(a)(vi);

“document” means information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;

“exempt document” means a document which, by virtue of a provision of Part IV, is an exempt document;

“exempt information” means information the inclusion of which in a document causes the document to be an exempt document;

“Minister” means the Minister of Government to whom responsibility for information is assigned;

“official document” means a document held by a public authority in connection with its functions as such, whether or not it was created by that authority, and whether or not it was created before the commencement of this Act and, for the purposes of this definition, a document is held by a public authority if it is in its possession, custody or power;

“personal information” means information about an individual, including –

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, telephone number, fingerprints or blood type of the individual;
- (e) the personal opinions or views of the individual except where they relate to another individual;
- (f) correspondence sent to a public authority by the individual that is implicitly or explicitly or a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual; and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

“prescribed” means prescribed by the Minister by regulations made under section 41;

“public authority” means –

Act No. 21 of 1990

Act No. 5 of 1994

- (a) Parliament, a Joint Select Committee or Parliament or a committee of either House of Parliament;
- (b) subject to section 5(2), the Court of Appeal, the High Court or a court of summary jurisdiction;
- (c) a Ministry or a department or division of a Ministry;
- (d) the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;
- (e) a municipal corporation established under the Municipal Corporations Act, 1990;
- (f) a regional health authority established under the Regional Health Authorities Act, 1994;
- (g) a statutory body, responsibility for which is assigned to a Minister or Government;
- (h) a company incorporated under the laws of Trinidad and Tobago which is owned or controlled by the State;
- (i) A Service Commission established under the Constitution or other written law; or
- (j) a body corporate or unincorporated entity
 -
 - (i) in relation to any function which it exercises on behalf of the State;
 - (ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or

- (iii) which is supported, directly or indirectly, by Government funds or over which Government is in a position to exercise control;

“Responsible Minister”, in relation to a public authority means -

- (a) the Minister of Government to whom responsibility for the public authority is assigned; or
- (b) such Minister of Government as the President may, by Order, declare to be the Responsible Minister of the public authority for the purposes of this Act;

“Tobago House of Assembly” means the Tobago House of Assembly established under the Constitution.

Non-application of Act

5.(1) This Act does not apply to -

- (a) the President;
- (b) a commission of inquiry issued by the President; or
- (c) such public authority or function of a public authority as President may, by Order subject to negative resolution of Parliament, determine.

(2) For the purposes of this Act –

- (a) in relation to its or his judicial functions, a court or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a public authority;
- (b) in relation to those matters which relate to the judicial functions of the court, a registry or other office of a court, and the staff of such a registry or other office in their capacity as members of that staff,

shall not be regarded as part of a public authority.

Act binds the State

6. This Act binds the State.

PART II - PUBLICATION OF CERTAIN DOCUMENTS
AND INFORMATION

**Publication of
information
concerning
functions, etc. of
public authorities**

7.(1) A public authority shall, with the approval
Minister –

(a) cause to be published in the Gazette and
in a daily newspaper circulating in
Trinidad and Tobago as soon as
practicable after the commencement of
this Act -

(i) a statement setting out the
particulars of the organisation and
functions of the public authority,
indicating, as far as practicable,
the decision – making powers and
other powers affecting members
of the public that are involved in
those functions and particulars of
any arrangement that exists for
consultation with, or
representation by, members of the
public in relation to the
formulation of policy in, or the
administration of, the public
authority;

(ii) a statement of the categories of
documents that are maintained in
possession of the public authority;

- (iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;
- (iv) a statement listing the literature available by way of subscription services;
- (v) a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority;
- (vi) a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, notices under section 10, requests for access to documents under section 13 and applications under section 36;
- (vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes or whose meetings are available for public inspection; and
- (viii) if the public authority maintains a library or reading room that is available for public use, a statement of that fact including

details of the address and hours of opening of the library or reading room; and

- (b) during the year commencing on 1st January next following the publication, in respect of a public authority, of the statements under paragraph (a) that are the statements first published under the paragraph, and during each succeeding year, cause to be published in the Gazette and in a daily newspaper circulating in Trinidad and Tobago statements bringing up to date information contained in the previous statements.

(2) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of a public authority would cause the document to be an exempt document.

(3) Subsection (1) applies to a public authority on or after the commencement of this Act as if references in that subsection to the commencement of this Act were references to the day on which the public authority became a public authority.

Certain documents to be available for inspection and purchase

8.(1) This section applies to documents that are provided by a public authority for the use or guidance of the public authority or its officers –

- (a) in making decisions or recommendations, or in providing advice to persons outside the public authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, being –
 - (i) documents containing interpretations or particulars of

written laws or schemes administered by the public authority, not being particulars contained in another written law; or

(ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the public authority, or similar documents containing rules, policies, guidelines, practices or precedents; and

(b) in enforcing written laws or schemes administered by the public authority where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of the written laws or schemes.

(2) A public authority shall –

(a) as soon as practicable after the commencement of this Act –

(i) cause copies of all documents to which this section applies in respect of the public authority to be made available for inspection for purchase by members of the public; and

(ii) with the approval of the Minister, cause to be published in the Gazette and in a daily newspaper

circulating in Trinidad and Tobago, a statement (which may be in the form of an index) specifying the documents that are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

- (b) during twelve months after the publication of the first statement under paragraph (a) and thereafter at intervals of twelve months, with the approval of the Minister cause to be published in the Gazette and in a daily newspaper circulating in Trinidad and Tobago, statements bringing up to date the information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that a document of the kind

referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.

(6) A public authority that comes into existence on or after the commencement of this Act shall comply -

- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which it came into existence and not later than twelve months after that day; and
- (b) with provisions of subsection (2)(b) as if the reference to “first publication” in that subsection were reference to first publication in compliance with this subsection.

Statement of possession of certain documents to be published

9.(1) This section applies, in respect of a public authority, to any document that is –

- (a) a report, or a statement containing the advice or recommendations, of a body or entity established within the public authority;
- (b) a report, or statement containing the advice or recommendations, of a body or entity established outside the public authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the public authority or to the Responsible Minister of that public authority;

- (c) a report, or a statement containing the advice or recommendations, of an inter-departmental committee whose membership includes an officer of the public authority;
- (d) a report, or a statement containing the advice or recommendations, of a committee established within the public authority to submit a report, provide advice or make recommendations to the Responsible Minister of that public authority or to another officer of the public authority who is not a member of the committee;
- (e) a report (including a report concerning the result of studies, surveys or tests) prepared for the public authority by a scientific or technical expert, whether employed within the public authority or not, including a report expressing the opinion of such an expert on scientific or technical matters;
- (f) a report prepared for the public authority by a consultant who was paid for preparing the report;
- (g) a report prepared within the public authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility or establishing a new or proposed Government policy, programme or project;
- (h) a report on the performance or efficiency

of the public authority, or of an office, division or branch of the public authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the public authority;

- (i) a report containing final plans or proposals for the re-organisation of the functions of the public authority, the establishment of a new policy, programme or project to be administered by the public authority, or the alteration of an existing policy, programme or project administered by the public authority, whether or not the plans or proposals are subject to approval by an officer of the public authority, another public authority, the Responsible Minister of the public authority or Cabinet
- (j) a statement prepared within the public authority and containing instructions for the drafting of legislation;
- (k) a report of a test carried out within the public authority or on a product for the purpose of purchasing equipment;
- (l) an environmental impact statement prepared within the public authority; and
- (m) a valuation report prepared for the public authority by a valuator, whether or not the valuator is an officer of the public authority.

(2) A public authority shall, with the approval of the

Minister –

- (a) cause to be published in the Gazette and in daily newspaper circulating in Trinidad and Tobago as soon as practicable after the commencement of this Act, a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of this Act and are in the possession of the public authority;
- (b) within twelve months after publication of the statement required under paragraph (a) and thereafter at intervals of twelve months, cause to be published in the Gazette and in a daily newspaper circulating in Trinidad and Tobago, statements bringing up to date the information contained in the previous statement.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.

(4) A public authority that comes into existence on or after the commencement of this Act shall comply -

- (a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the public authority comes into existence and not later than twelve months after that day; and
- (b) with the provisions of subsection (2)(b)

as if the reference to “first publication” in the subsection were a reference to first publication in compliance with the subsection.

Notice requiring to specify a document in the statement

10.(1) A person may serve upon a public authority, a notice in writing stating that, in the opinion of the person, a published by the public authority under section statement 8(2)(a) or (b) or section 9(2)(a) of (b) does not specify a document as described in section 8(1) or 9(1) that was required to be specified in the statement.

(2) The public authority shall –

- (a) make a decision within twenty- one days of receiving a notice as to whether to specify in the next statement to be published under section 8(2)(b) or section 9(2)(b), as the case may be, the document referred to in the notice; and
- (b) cause the person to be given notice in writing or its decision.

(3) Where the decision is adverse to the person’s claim, the notice shall –

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and
- (b) inform the person of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

Right of access

11.(1) Subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document.

(2) Nothing in this Act shall prevent a public authority from -

- (a) giving access to documents or information;
- (b) amending documents,

other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a court.

Access procedure no to apply to certain documents

12. A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to –

- (a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another written law, where that access is subject to a fee or other charge;
- (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;
- (c) a document that is available for public inspection in a registry maintained by the Registrar General or other public authority;
- (d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.

**Requests for access
Schedule**

13.(1) A person who wishes to obtain access to an official document shall make a request in the form set out in the Schedule, to the relevant public authority for access to the document.

(2) A request shall identify the official document, or provide sufficient information to enable the designated officer of the public authority, or an employee of the public authority who is familiar with the relevant documents, to identify the document with reasonable effort.

(3) A request may specify in which of the forms described in section 18 the applicant wishes to be given access.

(4) Subject to section 21, a request under this Section may be made for access to all records of a particular description or all records relating to a particular subject.

**Duty to assist
applicants**

14.(1) A public authority shall take reasonable steps to assist any person who –

(a) wishes to make a request under section 13; or

(b) has made a request which does not comply with the requirements of section 13(2),

to make a request in a manner which complies with that section.

(2) Where a request in writing is made to a public authority for access to an official document, the public shall not refuse to comply with the request on the ground that the request does not comply with section 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to making or a request in a form that does comply with the section.

(3) Without prejudice to section 21, a public authority shall take reasonable steps to assist any person in the exercise of any other right under this Act.

Time-limit for determining requests

15. A Public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.

Giving of access and deletion of exempt information

16.(1) Subject to this Act, where –

- (a) a request is duly made by an applicant to a public authority for access to an official document;
- (b) the request is approved by the public authority; and
- (c) any fee prescribed under section 17 that is required to be paid before access is granted has been paid,

the public authority shall forthwith give the applicant access to the official document

(2) Where –

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the public authority shall give the applicant access to such a copy of the document.

Fees for access to documents

17.(1) No fee shall be charged by a public authority for the making of a request for access to an official document.

(2) Where access to an official document is to be given in the form of printed copies, or in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee.

Forms of access

18.(1) Where a document to which access is required to be given under this Act is held by a public authority in printed form, the public authority shall give access to it by supplying a copy of it to the applicant or, if the applicant so requests, by making it available to the applicant for inspection.

(2) Where a document to which access is required to be given under this Act is held by public authority other than in printed form, the public authority shall, if the applicant so requests, give access to it -

- (a) by supplying a copy of it to the applicant;
- (b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the applicant to hear or view those sounds or visual images;
- (c) in the case of a document 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, by supplying

a printed transcript of the words recorded or contained in the document.

(3) Subject to this section and to section 16(2), where the applicant has requested access in a particular form, access shall be given in that form.

- (4) If the form of access requested by the applicant -
- (a) would interfere unreasonably with the operations of the public authority;
 - (b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or
 - (c) would involve an infringement of copyright subsisting in a person other than the State,

Access in that form shall be refused but access may be given in another form.

Deferment of access

19.(1) A public authority which receives a request may defer the provision of access to the document concerned if the document has been prepared –

- (a) for presentation to Parliament;
- (b) for release to the media; or
- (c) solely for inclusion, in the same or in an amended form, in a document to be prepared for a purpose specified in paragraph (a) or (b),

And the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment

will operate.

Repeated requests

20.(1) A public authority dealing with a request under this Part for access to documents, or an application under section 36 for the correction of personal information, may refuse to grant access to documents, or to correct information, in accordance with the request or application, without having caused the processing of the request or application to have been undertaken or at any later time, if the public authority is satisfied that –

- (a) the request or application is made by, or on behalf of, a person who, on at least one previous occasion, has made a request or application to the public authority, or to a predecessor of the public authority, for access to the same documents or for the same correction;
- (b) the request or application was refused and the High Court, on reviewing the decision to refuse the request or application, confirmed the decision; and
- (c) there are no reasonable grounds for making the request or application again.

(2) A public authority shall give notice of a refusal under subsection (1) and shall inform the applicant of -

- (a) the reason for the refusal; and
- (b) the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

Requests may be refused in certain cases

21.(1) A public authority dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the

work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations.

(2) Subject to subsection (3) but without limiting the matters to which a public authority may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relates, the public authority is to have regard to the resources that would have to be used –

- (a) in identifying, locating or collating the documents within the filing system of the public authority; or
- (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used –
 - (i) in examining documents; or
 - (ii) in consulting with any person or body in relation to the request; or
- (c) in making a copy, or an edited copy of the documents; or
- (d) in notifying any interim or final decision on the request.

(3) The public authority shall not have regard to any maximum amount prescribed in regulations, payable as a fee in relation to the request.

(4) In deciding whether to refuse, under subsection (1), to grant access to documents, a public authority shall not have regard to –

- (a) any reasons that the applicant gives for requesting access; or

- (b) the public authority's belief as to what are the applicant's reasons for requesting access.

(5) A public authority may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document if -

- (a) it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents; and

(b) either –

- (i) it is apparent from the nature of the documents as so described that no obligation would arise under section 16(2) in relation to any of those documents to grant access to an edited copy of the document; or
- (ii) it is apparent from the request or as a result of consultation by the public authority with the applicant, that the applicant would not wish to have access to an edited copy of the document.

(6) A public authority shall not refuse to grant access to a document under subsection (1) unless the public authority has -

- (a) given the applicant a written notice –
 - (i) stating the intention to refuse access; and

- (ii) identifying an officer of the public authority with whom the applicant may consult with a view to making the request in a form that would remove the ground for refusal;
- (b) given the applicant a reasonable opportunity to consult; and
- (c) as far as is reasonably practicable, provide the applicant with any information that would assist the making of the request in a form that would remove the ground for refusal.

(7) For the purposes of section 15, the period commencing on the day an applicant is given notice under subsection (6)(a) and ending on the day the applicant confirms or alters the request following the consultation referred to in subsection(6) is to be disregarded in the computation of the thirty day period referred to in section 15.

**Decision to be made
by authorised
person**

22.(1) A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the Responsible Minister, a Permanent Secretary, a Head of Department a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the Responsible Minister, a Permanent Secretary, A Head of Department or a Chief Executive Officer.

(2) Where a request is made to a public authority for a document, and no arrangements in respect of documents of that type have been made and published under the regulations, a decision on that request shall, for the purpose of enabling an

application for judicial review to be made, be deemed to have been made by the Responsible Minister of the public authority.

**Reasons to be given
for deferment or
refusal**

23.(1) Where in relation to a request for access to a document of a public authority, a decision is made under this is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall -

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;
- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 16(2), state that the document is a copy of a document from which exempt information has been deleted;
- (d) inform the applicant of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made;
- (e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.

(2) In a notice under subsection (1), a public authority

- (a) is not required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;
- (b) if the decision relates to a request for access to a document which is an exempt document under section 24, 25 or 28 or which, if it existed, would be an exempt document under section 24, 25 or 28, may state the decision in terms which neither confirm or deny the existence of any document.

PART IV - EXEMPT DOCUMENTS

Cabinet documents

24.(1) A document is an exempt document if it is –

- (a) the official record of any deliberation or decision of Cabinet;
- (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;
- (d) a document that is a copy or draft of, or

- contains extracts from, a document referred to in paragraph (a), (b) or (c); or
- (e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence.

(3) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.

(4) For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1), establishes that, if such a document exists, it is an exempt document.

(5) In this section –

- (a) “Cabinet” includes a committee or subcommittee of Cabinet;
- (b) a reference to a document includes a reference to a document whether created before or after the commencement of this Act.

Defence and security documents

25.(1) A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago.

(2) A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the lawful activities of the security or intelligence services.

(3) For the purposes of this Act, a certificate signed by the Minister certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1) or (2), established that if such a document exists, it is an exempt document.

International relations documents

26. A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure –

- (a) would prejudice relations between the Government of the Republic of Trinidad and Tobago and the government of any other State;
- (b) would prejudice relations between the Government of the Republic of Trinidad and Tobago and an international organisation of States or a body thereof;
- (c) would divulge any information or matter communicated in confidence by or on behalf of the government of another State to the Government of the Republic of Trinidad and Tobago or to a person receiving a communication on behalf of the government of that State; or
- (d) would divulge any information communicated in confidence by or on behalf of an international organisation of States or a body thereof to the Government of the Republic of Trinidad and Tobago or to a person receiving a

communication on behalf of that international organisation or body.

Internal working documents

27.(1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act -

- (a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister of Government, or consultation or deliberation that has taken place between officers, Ministers of Government, or an officer and a Minister of Government, in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority; and
- (b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in section 8(1), the matter referred to in subsection (1)(a) does not include -

- (a) matter that is provided for the use or guidance of, or is used or may be used for, the purpose of making decisions or recommendations, or enforcing written laws or schemes, referred to in section 8(1);
- (b) factual information;
- (c) the analysis, interpretation or evaluation of, or any projection based on factual information;
- (d) a statistical survey;
- (e) a report by a valuator, whether or not the valuator is an officer of the public authority;

- (f) an environmental impact statement or similar record;
- (g) a report of a test carried out on a product for the purpose of purchasing equipment for a public authority or a consumer test report;
- (h) a report or study on the performance or efficiency of a public authority, whether the report or study is of a general nature or is in respect of a particular programme or policy;
- (i) a feasibility or other technical study, including a cost estimate, relating to a policy or project of a public authority;
- (j) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (k) a final plan or proposal to change a programme of a public authority, or for the establishment of a new programme, including a budgetary estimate for the programme, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to Cabinet or a committee or subcommittee of Cabinet;
- (l) a report of an interdepartmental committee task force within a public authority, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to Cabinet or a committee or subcommittee of Cabinet;
- (m) a report of a committee, council or other body which is attached to a public

authority and which has been established for the purpose of undertaking inquiries and making reports and recommendations to the public authority;

- (n) the reasons for a final decision, order or ruling of a public authority made during or at the conclusion of the exercise of discretionary power conferred by or under a written law or scheme administered by the public authority, whether or not the written law or scheme allows an appeal to be taken against the decision, order or ruling, and whether or not the reasons –
 - (i) are contained in an internal memorandum of the public authority or in a letter from an officer or employee of the public authority; or
 - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order ruling.

(3) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 23 shall state the public interest considerations on which the decision is based.

(4) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence.

documents

document if its disclosure under this Act would, or would be reasonably likely to –

- (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the identity of a confidential source or information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.

(2) This section does not apply to any document that

is -

- (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
- (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigation, or dealing with

matters arising out of, breaches or evasions of the law;

- (c) a document containing any general outline of the structure of any programme adopted by a public authority for investigating breaches or, or enforcing or administering the law;
- (d) a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, or enforcing or administering, the law;
- (e) a report prepared in the course of routine law enforcement inspections or investigations by a public authority which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
- (f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation,

if it is in the public interest that access to the document should be granted under this Act.

Documents affecting legal proceedings or subject to legal professional privilege

29.(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in section 8(1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of the matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).

**Documents affecting
personal privacy**

30.(1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to the person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

(4) Nothing in this Act shall be taken to require a public authority to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section.

**Documents relating
to trade secrets**

31.(1) A document is an exempt document if its disclosure under this Act would disclose information acquired by a public authority from a business, commercial or financial

undertaking, and –

- (a) the information relates to trade secrets or other matters of a business, commercial or financial nature; or
- (b) the disclosure of the information under this Act would be likely to expose the undertaking to disadvantage.

(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of paragraph (b) of subsection (1), a public authority may take account of any following considerations:

- (a) whether the information is generally available to competitors of the undertaking;
- (b) whether the information would be exempt information if it were generated by a public authority;
- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance the public interest in evaluating aspects of regulation by a public authority of corporate practices or environmental controls,

and of any consideration or considerations which in the opinion of the public authority is or are relevant.

(3) Prior to making a determination under subsection (1) as to whether the disclosure of information would expose an

undertaking to disadvantage, a public authority shall notify the undertaking which has supplied the relevant document or documents that the public authority has received a request for access to the document and shall -

- (a) seek the undertaking's view as to whether disclosure should occur; and
 - (b) notify the undertaking where the public authority after consultation has decided to disclose the document and in such a case notify the undertaking of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.
- (4) A document is an exempt document if –
- (a) it contains -
 - (i) a trade secret of a public authority; or
 - (ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature, that would if disclosed under this Act be likely to expose the public authority to disadvantage;
 - (b) it contains the results of scientific or technical research undertaken by a public authority, and -
 - (i) the research could lead to a patentable invention;
 - (ii) the disclosure of the results of an incomplete state under this Act would be reasonable likely to

expose a business, commercial or financial undertaking unreasonably to disadvantage; or
(iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the public authority unreasonably to disadvantage; or

(c) it is an examination paper, a paper submitted by a student in the course of an examination, an examiner's report or similar document and the use or uses for which the document was prepared have not been completed.

Documents containing material obtained in confidence

32.(1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and –

- (a) the information would be exempt information if it were generated by a public authority; or
- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information –

- (a) authority from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters or a business, commercial or financial nature.

**Documents affecting
the economy,
commercial affairs
and certain
documents
concerning
operations of public
authorities**

33.(1) A document is an exempt document if –

- (a) its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Trinidad and Tobago, including but not limited to, the premature disclosure of proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;
- (b) its disclosure under this Act would be contrary to the financial interests of the public authority by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public authority for the acquisition or disposal of property or the supply of goods or services;
- (c) its disclosure under this Act, by revealing information to a competitor of the public authority, would be likely to prejudice the lawful commercial activities of the public authority;
- (d) subject to subsection (4), it contains information obtained by a public authority from a third party who has consistently treated it as confidential and the disclosure of that information to a competitor of a third party, would be likely to prejudice the lawful commercial

or professional activities of the third party;

- (e) its disclosure under this Act would be contrary to the public interest by reason that this would disclose instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personal management and assessment interests of the State or of a public authority.

(2) Subsections (2)(c) and (d) do not apply to the disclosure of information which –

- (a) relates to the quality, suitability or safety of the goods or services supplied by the public authority if the prejudice referred to in subsection (1)(c) or (d), as the case may be, would be likely to result from the exercise to the more informed choice by persons seeking to acquire those goods or services; or
- (b) consists of the results of any investigation carried out by, or any information supplied to, the public authority concerning a public safety hazard.

(3) For the purposes of subsection (2)(b), “public safety hazard” includes the hazard to the public associated with

any product which is offered for sale or otherwise available to the public, or with any substance which is released into the environment or workplace or is present in food intended for human consumption, or with any form of public transport, or with any installation or manufacturing process or substance used therein, and for the purposes of this subsection “the public” includes persons in their place of work.

(4) A document referred to in subsection(1)(d) is not an exempt document if the third party has consented to its disclosure to the applicant.

**Documents to which
secrecy provisions
apply**

34. A document is an exempt document if there is in force a written law applying specifically to information of a kind contained in the document an prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject or exceptions or qualifications.

**Disclosure of exempt
document in the
public interest**

35. A public authority shall give access to an exempt document where there is reasonable evidence that significant –

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds,

has or likely to have occurred and if in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

PART V - MISCELLANEOUS

Correction of

36.(1) Where a document(whether or not it is one to

**personal
information**

which access has been given under this Act) contains personal information of an individual and that individual alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that individual, correct the information.

(2) In subsection (1), “inaccurate” means incorrect, incomplete, misleading or not relevant to the purpose for which the document is held.

(3) For the purpose of this section, information may be correct by amending, supplementing or deleting it.

**Broadcasting
Management**

37. Notwithstanding any other provision of this Act, where a request is made for access to a document held by the International Communications Network, that company shall not be required to give access under this Act to –

- (a) any part of the document which consists of information obtained in the course of making any programme or broadcast or discloses the source of any such information; or
- (b) any recording of images or sound which was made or obtained for the purpose of being broadcast.

**Protection against
action for
defamation**

38.(1) Where access to a document has been given in accordance with the requirements of this Act or in the belief that it was required to be given in accordance with this Act –

- (a) no action for defamation, breach of confidence or infringement of copyright may be brought against the public authority or against the Responsible Minister, or an officer or employee of,

the public authority as a result of the giving of access;

- (b) no action for defamation or breach of confidence may be brought, in respect of any publication involved in the giving of access by the public authority, against –
 - (i) any person who was the author of the document; or
 - (ii) any person as a result of that person having supplied the document or the information contained in it to the public authority;
- (c) no person shall be guilty of an offence by reason only of having been involved in the giving of the access.

(2) The giving of access to a document, including an exempt document, in consequence of a request shall not be taken for the purposes of the law relating to defamation, breach of confidence or copyright, to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

(3) Nothing in this Act affects any privilege, whether qualified or absolute, which may attach at common law to the publishing of a statement.

Judicial review

39.(1) For the removal of doubt, a person aggrieved by a decision of a public authority under this Act may apply to the High Court for judicial review of the decision.

(2) Notwithstanding any other law to the contrary,

where an application for judicial review of a decision of a public authority under this Act is made to the High Court, that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of parties, directs otherwise.

**Report to
Parliament**

40.(1) The Minister shall, as soon as practicable after the end of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament.

(2) Each Responsible Minister shall, in relation to the public authorities within his portfolio, furnish to the Minister such information as he requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

(3) A report under this section shall include in respect of the year to which the report relates the following:

- (a) the number of requests made to each public authority;
- (b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
- (c) the number of applicants for judicial review of decisions under this Act and the outcome of those applications;
- (d) the number of complaints made to the Ombudsman with respect to the operation of this Act and the nature of those complaints;

- (e) the number of notices served upon each public authority under section 10(1) and the number of decisions by the public authority which were adverse to the person's claim;
- (f) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- (g) the amount of charges collected by each public authority under this Act;
- (h) particulars of any reading room or other facility provided by each public authority for use by applicants or members of the public, and the publications, documents or other information regularly on display in the reading room or other facility; and
- (i) any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act.

Regulations

41.(1) The Minister may make regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.

SCHEDULE

(Section 13)

THE FREEDOM OF INFORMATION ACT, 1998

**Request for Access to Official Document (s)
(pursuant to section 13)**

- 1. Name of Public Authority
- 2. Name of Applicant
- 3. Address of Applicant
-
-
- 4. Telephone Number of Applicant

5.	Doc. No.	Description of Document(s) Requested	Form of Access
----	-----------------	---	-----------------------

- 1.
- 2.
- 3.

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

Continue on a separate page if necessary.

Subject to the provisions of the Act, access to a document may be granted by supplying a printed copy of it or by making it available for inspection or, if appropriate, by supplying a copy of a tape, disk, film or other material containing the information, by supplying a transcript of such tape, disk, film or other material or by making arrangements for the hearing or viewing of such tape, disk, film or other material.)

6. Assuming that all documents requested are exempt documents, give the Doc. No. of the documents described above of which you would like to have access to an edited version , if possible.

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

Date of Application

Signature of Applicant

Passed in the House of Representatives this day of 1998

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 1998.

Clerk of the Senate

I confirm the above.

President of the Senate