

DRAFT FREEDOM OF INFORMATION BILL, 2015

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DRAFT FREEDOM OF INFORMATION BILL, 2015

A BILL FOR AN ACT TO GIVE TO THE PUBLIC A GENERAL RIGHT OF ACCESS TO RECORDS HELD BY PUBLIC AUTHORITIES AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Freedom of Information Act, 2015.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and different dates may be so appointed for different provisions.

2. Interpretation.

In this Act—

- “**appointed day**” means the day appointed pursuant to section 1(2);
- “**chief officer**” means in the case of a Ministry, the Permanent Secretary and in all other cases the head of the respective public authority;
- “**Commissioner**” means the Information Commissioner referred to in section 30;
- “**days**” means a number of days, excluding Saturday, Sunday or a public holiday;
- “**exempt record**” means a record referred to in Part III;
- “**hold**” , in relation to a record under this Act, means in a public authority’s possession, custody or control;

“information manager” means the person appointed as such under section 46;

“Minister” means the Minister who has been assigned responsibility for government information;

“public authority” means —

- (a) a Ministry or Department of Government;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a public corporation which—
 - (i) is wholly owned by the Government or in which the Government holds more than fifty per cent of the shares; or
 - (ii) is specified in an Order under section 3(2);
- (d) any other body or organization specified in an Order under section 3(2);

“public corporation” means a corporation in which the government has a controlling interest and includes a subsidiary of such corporation;

“public interest” includes, but is not limited to things that may or tend to —

- (a) promote greater public understanding of the processes or decisions of public authorities;
- (b) promote the accountability of and within Government;
- (c) promote accountability for public expenditure or the more effective use of public funds;
- (d) promote justice to an individual;
- (e) facilitate public participation in decision making by the Government;
- (f) improve the quality of services provided by the Government and the responsiveness of Government to the needs of the public or any sector of the public;
- (g) deter or reveal wrongdoing or maladministration, including but not limited to the unauthorized use of public funds;'
- (h) deter or reveal abuse of authority or neglect in the performance of official duty;
- (i) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
- (j) reveal untrue, incomplete or misleading information or acts of a public authority;

“record” means information held in any form including—

- (a) a record in writing;
- (b) a map, plan, graph or drawing;
- (c) a photograph;
- (d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom,

held by a public authority in connection with its functions as such, whether or not it was created by that public authority or before the commencement of this Act;

“relevant decision” means a decision made in relation to the disclosure or otherwise of a record;

“responsible Minister” in relation to a public authority means the Minister of government who has ministerial responsibility for the public authority that holds the record.

3. Application.

- (1) Subject to subsection (2), this Act applies to—
 - (a) public authorities; but this paragraph shall not be read so as to allow access to records containing information that may not be disclosed under—
 - (i) section 38 of the Central Bank of The Bahamas Act (*Ch. 351*);
 - (ii) section 28 of the Securities Industry Act, 2011 (*No. 10 of 2011*);
 - (iii) section 74 of the Insurance Act (*Ch. 347*);
 - (iv) section 45 of the Financial Transaction Reporting Act (*Ch. 368*),and any other body or class of information which the Minister may, by Order, specify;
 - (b) records, regardless of the date when they were created.
- (2) The Minister may, after consulting the entity concerned where he considers such consultation appropriate, by Order, declare , that this Act shall apply to—

- (a) such companies, in addition to those specified in paragraph (c) (i) of the definition of “public authority”, as may be specified in the Order;
 - (b) any other body or organization which provides services of a public nature which are essential to the welfare of the Bahamian society, or to such aspects of their operations as may be specified in the Order;
 - (c) any other body or organization which receives government appropriations on a regular basis.
- (3) An Order under subsection (2) may be made subject to such exceptions, adaptations or modifications, as the Minister may consider appropriate.
- (4) The Minister may, by Order, declare that the application of this Act in relation to any public corporation specified in paragraph (c) (i) of the definition of “public authority” shall be subject to such exceptions, adaptations or modifications as the Minister may consider appropriate and such Order shall be subject to affirmative resolution of both Houses of Parliament.
- (5) This Act does not apply to—
 - (a) the judicial functions of—
 - (i) a court;
 - (ii) the holder of a judicial office or other office connected with a court;
 - (b) the security or intelligence services (as defined in subsection (7)) in relation to their strategic intelligence gathering activities or operational intelligence gathering activities;
 - (c) such statutory body or authority as the Minister may specify by Order;
 - (d) private holdings of the National Archives where the contract or other arrangements under which the holdings are held does not allow disclosure in the circumstances prescribed under this Act.
- (6) This Act applies to records of an administrative nature held in a registry or other office of a court.
- (7) In subsection (5), "security or intelligence services" includes—
 - (a) the Royal Bahamas Police Force;
 - (b) the Royal Bahamas Defence Force;
 - (c) the Department of Customs;
 - (d) the Department of Immigration;
 - (e) the Financial Intelligence Unit; and

- (f) any other statutory body or authority which the Minister, in consultation with the Minister responsible for National Security, may by Order designate.

4. Objects of this Act.

The objects of this Act are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely—

- (a) governmental accountability;
- (b) transparency; and
- (c) public participation in national decision making,

by granting to the public a general right of access to records held by a public authority, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental or commercial information.

PART II- RIGHT OF ACCESS

5. Publication of information by public authorities.

- (1) A public authority shall cause to be published within twelve months of—
 - (a) the appointed day;
 - (b) its establishment; or
 - (c) the coming into operation of an Order under section 3(2) which specified that authority,

whichever is later, an initial statement of its organization and functions, containing the information specified in the *Schedule*.

- (2) The *Schedule* applies for the purposes of informing the public of the information to be published by a public authority.
- (3) The information required under subsection (1) shall be published in such manner and be updated with such frequency as may be prescribed in regulations.
- (4) The Minister may by Order amend the *Schedule*.

6. General right of access.

- (1) Subject to the provisions of this Act, every—
 - (a) Bahamian citizen;
 - (b) permanent resident within the meaning of the Immigration Act (*Ch. 191*);
 - (c) body incorporated or registered under the laws of The Bahamas;

- (d) partnership or other unincorporated association formed under the laws of The Bahamas; or
- (e) person who does not fall within paragraph (b), (c) or (d) but maintains in The Bahamas an office, branch or agency through which he carries on any business activity,

shall have a right to obtain access to a record other than an exempt record.

- (2) The Minister may, by Order, at the direction of the Cabinet, extend the right to be given access to a record, other than an exempt record, to a person not referred to in subsection (1) and may set such conditions as the Minister deems appropriate.
- (3) The exemption of a record or part thereof from disclosure shall not apply after the record has been in existence for thirty years unless otherwise stated in this Act.
- (4) An applicant for access to a record shall not be required to give any reason for requesting access to the record.
- (5) Where a record is—
 - (a) open to access by the public pursuant to any other written law as part of a public register or otherwise; or
 - (b) available for purchase by the public in accordance with administrative procedures established for that purpose,access to that record shall be obtained in accordance with the provisions of that written law or of those administrative procedures.

7. Application for access.

- (1) A person who wishes to obtain access to a record shall make an application to the public authority which holds the record, using the application form set out in the *First Schedule* of the Freedom of Information (General) Regulations, 2015
- (2) An application under subsection (1)—
 - (a) shall be made in writing addressed to the information manager and may be transmitted by way of facsimile or electronic mail; and
 - (b) shall provide such information concerning the record as is reasonably necessary to enable the public authority to identify it.
- (3) A public authority shall—
 - (a) acknowledge receipt of every application made in the prescribed manner as set out in the regulations;
 - (b) if requested, assist the applicant in identifying the records to which the application relates;

- (c) where the information provided by the applicant is not reasonably adequate to identify the record, afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified.
- (4) A public authority shall respond to an application as soon as reasonably practical, but not later than—
 - (a) thirty days after the date of receipt of the application; or
 - (b) in the case of an application transferred to it by another public authority pursuant to section 8, thirty days after receipt of the application from the originating public authority,however, a public authority may extend the period for responding by one further period, not exceeding thirty days, in a case where there is reasonable cause for such extension.
- (5) Where the public authority decides to refuse, defer, or extend the response period, it shall state on the application—
 - (a) the reasons for so doing; and
 - (b) any options available to an applicant.

8. Transfer of requests.

- (1) Where an application is made to a public authority for a record—
 - (a) that is held by another public authority; or
 - (b) the subject matter of which is more closely connected with the functions of another public authority,the first mentioned public authority shall transfer the application or such part of it as may be appropriate to the other public authority, and shall inform the applicant of the transfer in such period as shall be prescribed in regulations.
- (2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen days after the date of receipt of the application.

9. Vexatious, repetitive or unreasonable requests.

- (1) A public authority is not required to comply with a request where—
 - (a) the request is vexatious;
 - (b) the public authority has recently complied with a substantially similar request from the same person;
 - (c) compliance with the request would unreasonably and substantially divert its resources;
 - (d) the information requested is already in the public domain.

- (2) The Commissioner shall publish guidelines in relation to requests under this section.

10. Forms of accessing records.

- (1) Access to a record may be granted to an applicant in one or more of the following forms—
- (a) in the case of a record in printed form, the applicant may be afforded a reasonable opportunity to inspect the record or may be provided with a copy of the record;
 - (b) in the case of a record from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;
 - (c) in the case of a record by which or in which words are—
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or
 - (ii) contained in the form of shorthand writing or in codified form,

the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that record.

- (2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.
- (3) A public authority may grant access in a form other than that requested by an applicant if the grant of access in the form requested would—
- (a) be detrimental to the preservation of the record, or be inappropriate, having regard to its physical state;
 - (b) constitute an infringement of intellectual property rights subsisting in any matter contained in the record.
- (4) Copies of records to which access is granted shall be authenticated by the information manager and in such manner as may be determined by the Attorney-General.

11. Deferment of access.

- (1) A public authority may defer the grant of access to a record—
- (a) until the expiration of any period that the law specifies as the time within which a record must be published;
 - (b) if the record was prepared for presentation to Parliament or for the purpose of being made available to a particular person or body, until it has been presented or made available to that person or body;

- (c) if it would be in the public interest to release the record after an event has occurred or a period of time has passed.
- (2) Where a public authority decides to defer access in accordance with subsection (1), it shall inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate.

12. Partial access.

- (1) Where an application is made to a public authority for access to a record which contains exempt material, the authority shall grant access to a copy of the record with the exempt material deleted therefrom.
- (2) A public authority which grants access to a copy of a record in accordance with this section shall—
 - (a) inform the applicant that the copy contained exempt material which has been deleted; and
 - (b) inform the applicant of the statutory provision by virtue of which the deleted material is deemed to be exempt material.

13. Cost of access.

- (1) No fee shall be charged by a public authority in respect of a request for access to a record.
- (2) Access to a record is conditional upon the payment by the applicant of the prescribed fee, as set out in the Regulations, for reproducing or preparing the record.
- (3) The fees payable by the applicant shall be commensurate with the cost incurred in making the record available.
- (4) The Minister may make regulations providing—
 - (a) for fees and the manner in which fees are to be calculated;
 - (b) maximum fees payable;
 - (c) that no fee is to be charged in relation to certain cases.

14. Grant of access.

Subject to this Act, where—

- (a) an application is made in accordance with section 7 for access to a record which may be disclosed under this Act; and
- (b) the cost incurred by the public authority in granting access has been paid by the applicant,

access to the record shall be granted in accordance with this Act.

PART III- EXEMPT RECORDS

15. Public interest.

- (1) For the purposes of this Act, the test of whether the disclosure by a public authority of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.
- (2) Nothing in this Act limits any public interest considerations in favour of the disclosure of records that may be taken into account for the purpose of determining whether there is an overriding public interest against disclosure.
- (3) Public interest considerations shall be set out in regulations prescribed.
- (4) The Information Commissioner issue guidelines about public interest considerations—
 - (a) in favour of the disclosure of records held by a public authority; and
 - (b) against the disclosure of records held by a public authority,for the assistance of public authorities, based on international best practices.

16. Exempt records subject to public interest.

Notwithstanding that a record falls within sections 20, 22(1)(b) and (d), 23, 24, and 26, access shall be granted to the record if such access would be in the public interest.

17. Records affecting security, defence or international relations, etc.

Records are exempt from disclosure if—

- (a) the disclosure thereof would prejudice the security, defence or international relations of The Bahamas;
- (b) the records contain information communicated in confidence between the Government—
 - (i) and a foreign government;
 - (ii) and an international organization.

18. Records relating to law enforcement.

- (1) Records relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to—
 - (a) endanger any person's life or safety;
 - (b) affect—

- (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or
 - (ii) the trial of any person or the adjudication of a particular case;
 - (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
 - (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;
 - (e) facilitate the escape of a person from lawful detention; or
 - (f) jeopardize the security of a prison or detention facility.
- (2) This section does not apply to any record that is—
- (a) a record revealing that the scope of a law enforcement investigation has exceeded the limits imposed by the law;
 - (b) a record revealing the use of illegal methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law;
 - (c) a record containing any general outline of the structure of any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;
 - (d) a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, 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 body which, was the subject of the investigation, if it is in the public interest that access to the record should be granted under this Act.

19. Records subject to legal privilege, etc.

A record is exempt from disclosure if—

- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; or
- (b) the disclosure thereof would —
 - (i) constitute an actionable breach of confidence;
 - (ii) be in contempt of court; or

(iii) infringe the privileges of Parliament.

20. Records affecting national economy, commercial affairs and certain documents concerning the operations of public authorities.

- (1) A record is exempt from disclosure 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, 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 instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures followed or the criteria to be applied in negotiations, including financial, commercial and labour negotiations, and in the execution of contracts.
- (2) Subsections (1) (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 of 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—

- (a) with any product that is offered for sale or otherwise available to the public;
 - (b) with any substance that is released into the environment or workplace;
 - (c) with any substance that is present in food intended for human consumption;
 - (d) with any form of public transportation or 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 record referred to in subsection(1) (d) is not an exempt record if the third party has consented to its disclosure to the applicant.

21. Records revealing Government's deliberative processes.

- (1) Subject to subsection (3), a record is exempt from disclosure if it contains —
- (a) opinions, advice or recommendations prepared for;
 - (b) a record of consultations or deliberations arising in the course of, proceedings of the Cabinet or of a committee thereof.
- (2) Consultations or deliberations between the Prime Minister and the Governor-General shall be exempt from disclosure.
- (3) Subsection (1) shall not apply to documents that are appended to records under this section which contain—
- (a) material of a purely factual nature;
 - (b) analysis of factual information;
 - (c) technical data;
 - (d) statistical information.

22. Prejudice to effective conduct of public affairs.

- (1) A record is exempt from disclosure if—
- (a) its disclosure would, or is would be likely to prejudice the maintenance of the convention of collective responsibility of Ministers;
 - (b) its disclosure would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation;
 - (c) it is legal advice given by or on behalf of the Attorney-General; or
 - (d) its disclosure would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.

- (2) The initial decision regarding—
 - (a) whether a record under subsection (1)(a) is exempt from disclosure shall not be made by the information manager but by the responsible Minister;
 - (b) whether a record under subsection (1)(b), (c) and (d) shall not be made by the information manager but by the responsible Minister or the relevant chief officer.

23. Records relating to commercial interests.

- (1) A record is exempt from disclosure under this Act if its disclosure 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 paragraph (a) would be likely to expose the undertaking to a disadvantage.
- (2) Subsection (1) shall not apply where the record belongs to the applicant applying for access or a person acting on behalf of that applicant.
- (3) In deciding whether disclosure of a record would expose an undertaking to a disadvantage, for the purposes of subsection (1) (b), a public authority may take account of any of the following considerations—
 - (a) whether the record is generally available to the competitors of such undertaking;
 - (b) whether the record would be an exempt record if it were generated by a public authority;
 - (c) whether the record could be disclosed without causing substantial harm to the competitive position of the undertaking;
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking,and any other considerations which the public authority deems relevant.
- (4) Prior to determining if the disclosure of a record will expose an undertaking to a disadvantage, a public authority shall notify the undertaking that the authority has received a request for access to the record and shall—
 - (a) seek the undertaking's views as to whether the disclosure should occur; and
 - (b) notify the undertaking where the public authority has decided to disclose the record and shall notify the undertaking of the right to appeal to the Supreme Court under this Act.

- (5) A record is an exempt record 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 a disadvantage; or
 - (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 in an incomplete state would be reasonably likely to expose a business, commercial or financial undertaking unreasonably to disadvantage;
 - (iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the public authority unreasonably to disadvantage.

24. Records relating to heritage sites, etc.

- (1) Subject to subsection (2), a record is exempt from disclosure if its disclosure would, or could reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of—
- (a) any historical, archaeological or anthropological resources;
 - (b) anything which is eligible for preservation under The Bahamas National Trust Act (*Ch. 391*) or any other written law relating to the preservation of the heritage of The Bahamas;
 - (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;
 - (d) any commercially important species;
 - (e) any traditional knowledge held in confidence by a public authority;
 - (f) any other rare or endangered living resource.
- (2) Records relating to matters under subsection (1) (a) through (f) shall be exempt for seventy-five years.

25. Records relating to personal data.

- (1) A public authority shall refuse to disclose any record that contains personal data or sensitive personal data as defined under section 2 of Data Protection (Privacy of Personal Information) Act, (*Ch. 324A*).

- (2) All requests for personal data or sensitive personal data shall be made in writing pursuant to section 8 of the Data Protection Act (Privacy of Personal Information) Act, (*Ch. 324A*).
- (3) Records relating to personal data and sensitive personal data shall be exempt without limitation as to time.

26. Records likely to endanger health and safety.

A record is exempt from disclosure if its disclosure will or is likely to—

- (a) endanger the physical or mental health of an individual; or
- (b) endanger the safety of an individual.

27. Decisions and reasons to be made public.

A public authority shall make its best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Act.

PART IV- INTERNAL REVIEW

28. Application for internal review.

- (1) Subject to subsection (3), an applicant requesting access to a record may apply to the responsible Minister or chief officer for an internal review of a decision by a public authority to—
 - (a) refuse to grant access to the record;
 - (b) grant access only to some of the records specified in an application;
 - (c) defer the grant of access to the record.
- (2) A failure to make a decision on any of the matters referred to in subsection (1) shall be regarded as a refusal to do so.
- (3) An application for an internal review may only be made if the decision in relation to the application was made by a person other than the responsible Minister or a chief officer of the relevant public authority.

29. Procedure for internal review.

- (1) An internal review shall be conducted—
 - (a) by the responsible Minister for records under sections 17, 18 and 20;
 - (b) in any other case, by the chief officer in the relevant public authority whose decision is subject to review,

but no review shall be conducted by the same person who made the decision or a person junior in rank to him.

- (2) An application for internal review shall be made—
 - (a) within thirty days after the date of a notification to the applicant of the relevant decision, or within such further period, not exceeding thirty days, as the public authority may permit; or
 - (b) where no such notification has been given, within thirty days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the public authority.
- (3) A person who conducts an internal review—
 - (a) may take any decision in relation to the application which could have been taken on an original application;
 - (b) shall take that decision within a period of thirty days after the date of receipt of the application.

PART V- INFORMATION COMMISSIONER

30. Office of Information Commissioner.

- (1) For the purposes of this Act there shall be a person who shall be known as the Information Commissioner who shall perform the functions conferred on him by this Act.
- (2) The Commissioner shall be a corporation sole.
- (3) The Commissioner shall be appointed by the Governor General acting on the advice of the Prime Minister after consultation with the Leader of the Opposition.
- (4) The Commissioner shall be paid a salary equal to the salary of a Supreme Court Justice other than the Chief Justice.
- (5) The Commissioner shall be appointed for a period of five years and may on the expiration of the first or any subsequent term of office be re-appointed for a period not exceeding five years.
- (6) The Commissioner must—
 - (a) be a fit and proper person appropriately qualified for appointment;
 - (b) be independent, impartial and accountable; and
 - (c) have demonstrable knowledge in access to information, transparency or public and corporate governance.
- (6) The Commissioner must not—
 - (a) have been convicted of a crime involving dishonesty or violence;

- (b) been adjudged or otherwise declared bankrupt under any law; or
- (c) within five years of the date of his nomination, have—
 - (i) not held any political office; or
 - (ii) not served as an official of a political party.

31. Removal of Information Commissioner.

The Commissioner may be removed from Office by the Governor-General for—

- (a) misbehaviour;
- (b) incapacitation by physical or mental illness; or
- (c) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause).

32. Deputy and Assistant Information Commissioners.

- (1) The Governor General may on the recommendation of the Commissioner appoint one or more Deputy Information Commissioners and Assistant Information Commissioners.
- (2) Subject to this section Commissioners under subsection (1) shall hold office for a term not exceeding five years and may on the expiration of the first or any subsequent term of office be re-appointed for a period not exceeding five years.

33. Independence and powers.

- (1) The Commissioner is not to be regarded as a public officer under the Public Service Act (*Ch. 39*).
- (2) The Commissioner shall have all powers, direct and incidental, as are necessary to undertake his functions as provided for under this Act, and for this purpose may establish a Freedom of Information Unit.
- (3) The Commissioner shall enjoy independence and autonomy in operating and administering the Freedom of Information Unit.
- (4) The Commissioner shall develop his own rules and procedures to regulate its affairs through a process of consultation.
- (5) In the exercise of his powers, the Commissioner shall be responsible to Parliament.

34. Funding for Freedom of Information Unit and Accounting.

All salaries, allowances and other expenditures payable or incurred under this Act in respect of the Freedom of Information Unit shall be payable out of money appropriated by Parliament for those purposes.

35. Staff.

The Governor-General acting on the advice of the Public Service Commission may appoint such officers and employees from within or outside the public service as are necessary to enable the Commissioner to perform his functions.

36. Additional powers and responsibilities of Commissioner.

In addition to any other powers and responsibilities provided for in this Act, the Commissioner may—

- (a) hear, investigate and rule on appeals filed under this Act;
- (b) monitor and report on the compliance by public authorities with their obligations under this Act;
- (c) make recommendations for reform both of a general nature and directed at specific public bodies;
- (d) refer to the appropriate authorities cases where it appears that a criminal offence has been committed;
- (e) make guidelines for the effective carrying out of the purposes of this Act; and
- (f) publicise the requirements for access to information under this Act and the rights of individuals under it.

37. Reports.

- (1) The Commissioner shall, as soon as practicable after the end of each year, lay before Parliament—
 - (a) a report of the operation of this Act during the year, containing the matters specified in subsection (2) and may from time to time submit such other reports as he thinks appropriate;
 - (b) audited accounts.
- (2) The matters referred to in subsection (1) are those relating to compliance by the Commissioner's office with this Act and otherwise relating to the activities of his office including but not limited to—
 - (a) the number of applications for access received, granted, deferred, refused or granted subject to deletions;
 - (b) the categories of exemptions claimed and the numbers of each category;
 - (c) the number of—
 - (i) applications for internal review of relevant decisions;
 - (ii) appeals against relevant decisions, and the rate of success or failure thereof.

- (3) A public authority shall from time to time and in any case by the end of the year send to the Commissioner a written report containing the details contained in subsection (2) to the extent that such information is in their custody or control.

38. Exemption from liability.

- (1) Neither the Commissioner, the staff of his Office nor Information Managers shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Act unless it is shown that the act or omission was in bad faith.
- (2) For the purposes of the law of libel or slander, anything said or any record supplied pursuant to an investigation under this Act is privileged, unless that record is shown to have been said or supplied maliciously.

PART VI - ENFORCEMENT BY COMMISSIONER

39. Appeal to Commissioner.

- (1) A person who has exhausted the internal review procedure provided for under Part IV of this Act may, in writing, apply to the Commissioner for a decision that a public authority has—
 - (a) failed to indicate whether or not it holds a record;
 - (b) failed to communicate the information contained in a record within the time allowed by this Act or at all;
 - (c) failed to respond to a request for a record within the time limits established in this Act;
 - (d) failed to provide a notice in writing of its response to a request for a record;
 - (e) charged a fee that is in contravention of this Act; or
 - (f) otherwise failed to comply with an obligation imposed under this Act.
- (2) An appeal—
 - (a) shall be made within thirty days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
 - (b) shall, where no notification has been given, be given within the period required by this Act, within thirty days after the expiration of that period.

- (3) Where an appeal is not made within the period specified in subsection (2), the Commissioner may extend that period if he is satisfied that the appellant's delay in doing so is not unreasonable.
- (4) On the consideration of an appeal, the Commissioner may make any decision which could have been made on the original application.

40. Decision on appeal.

- (1) The Commissioner shall, subject to subsection (3), decide an appeal under this Act as soon as is reasonably practicable, and in any case within thirty days, after giving both the appellant and the relevant public authority an opportunity to provide its views in writing.
- (2) The Commissioner may, for good cause, extend the period under subsection (1) for one further period not exceeding thirty days provided that written notice is given to the parties prior to the expiration of the initial thirty days, indicating the reasons for the extension.
- (3) In any appeal under section 39, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Act.
- (4) In his decision pursuant to subsection (1), the Commissioner may—
 - (a) reject the appeal;
 - (b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the Act;
 - (c) in cases of egregious or wilful failure to comply with an obligation under this Act, refer the matter to the appropriate disciplinary authority.
- (5) The Commissioner shall serve notice of his decision, including any rights of appeal, on both the appellant and the public authority.
- (6) For the purposes of sections 40 and 41, the appropriate disciplinary authority shall be the disciplinary committee as prescribed in the Regulations.

41. Implementation of decision.

- (1) The Commissioner may, after giving a public authority an opportunity to provide its views in writing, decide that the public authority has failed to comply with an obligation under this Act.
- (2) In his decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Act, and in exercise of this power, may—

- (a) order the publishing of certain information or categories of information;
 - (b) recommend the making of certain changes to the practices of the public authority concerned in relation to the keeping, management and destruction of records, and the transfer of records to the national archives, but such recommendations shall not be at variance with any written law for the time being in force in relation to such matters;
 - (c) recommend the provision of training to the public authority's officials on the right of access to records; or
 - (d) refer a matter to the appropriate disciplinary authority where there has been an egregious or wilful failure to comply with an obligation under this Act.
- (3) The Commissioner shall serve notice of his decision on the public authority concerned and the person who was seeking access to records, which notice shall include a statement of the right of appeal.

42. Commissioner's powers generally to investigate.

- (1) In coming to a decision pursuant to section 40 or 41, the Commissioner shall have the power to conduct a full investigation, including—
- (a) issuing orders requiring the production of evidence;
 - (b) compelling witnesses to testify;
 - (c) calling for and inspecting an exempt record, however, he shall take such steps as are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to the matter.
- (2) The Commissioner may, during an investigation, examine any record to which the Act applies so that no such record shall be withheld from the Commissioner on any grounds.

43. Investigations on Commissioner's initiative.

Notwithstanding the provisions of this Act relating to appeal, the Commissioner may on his own initiative conduct an investigation into any matter and where he does so, the matter shall be treated as an appeal to the extent practicable.

44. Appeal from Commissioner's decisions and orders.

- (1) The complainant or the relevant public authority may, within forty-five days, appeal to the Supreme Court on a decision of the Commissioner pursuant to section 40 or 41 or an order pursuant to section 42(1).

- (2) In any appeal from a decision pursuant to section 40 the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under the Act.

45. Decisions and orders of Commissioner binding.

Upon expiry of the forty-five day period for an appeal under section 44, the Commissioner may certify in writing to the court any failure to comply with a decision made under section 40 or 41, or an order under section 44(1), and the court may consider such failure under the rules relating to contempt of court.

PART VII- MEASURES TO PROMOTE OPENNESS

46. Information manager.

- (1) Every public authority shall appoint an information manager who, in addition to any duties specifically provided for under this Act, shall, under the general and specific supervision of the head of the authority concerned —
 - (a) promote in the public authority best practices in relation to record maintenance, archiving and disposal; and
 - (b) receive requests for records, assist individuals seeking access to records, paying special attention to people with relevant disabilities, and receive complaints regarding the performance of the public authority relating to information disclosure.
- (2) The public authority concerned shall ensure that members of the public know the name, function, contact details and such other information relating to the information manager as the authority may consider necessary or expedient to make available to the public.
- (3) The information manager may be full-time or be appointed from among staff performing other functions for the public authority concerned.

47. Whistle-blower.

- (1) No person may be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as he acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing or a serious threat to health, safety or the environment.
- (2) For the purposes of subsection (1), “wrongdoing” includes but is not limited to—

- (a) the commission of a criminal offence;
- (b) failure to comply with a legal obligation;
- (c) miscarriage of justice; or
- (d) corruption, dishonesty, or serious maladministration.

48. Guidance on duty to publish.

The Permanent Secretary in the Ministry with responsibility for government information shall—

- (a) publish a code on minimum standards and best practices regarding the duty of a public authority to publish information pursuant to section 5; and
- (b) upon request, provide guidance to the public authority regarding the duty to publish.

49. Maintenance of records.

- (1) Every public authority shall maintain its records in a manner which facilitates access to information under this Act and in accordance with the code of practice provided for in subsection (2).
- (2) The Permanent Secretary in the Ministry with responsibility for government information shall, after consultation with interested parties and upon the recommendation of the Archivist, issue from time to time a code, which shall contain practices relating to—
 - (a) record keeping, management and disposal of records, as well as the transfer of records to the National Archives.

50. Training of officials.

Every public authority shall ensure that training is provided for its officials regarding the right to information and the effective implementation of this Act.

PART VIII- MISCELLANEOUS

51. Protection from liability regarding defamation, breach of confidence and intellectual property rights.

- (1) Nothing in this Act shall be construed as authorizing the disclosure of any official record—
 - (a) containing any defamatory matter; or
 - (b) the disclosure of which would be in breach of confidence or of intellectual property rights.

- (2) Where access to a record referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Act, no action for defamation, breach of confidence or breach of intellectual property rights shall lie against —
 - (a) the Government, a public authority, Minister or public officer involved in the grant of such access, by reason of the grant of access or of any re-publication of that record; or
 - (b) the author of the record or any other person who supplied the record to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the record.
- (3) The grant of access to a record in accordance with this Act shall not be construed as authorization or approval—
 - (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the record or its contents by the person to whom access is granted;
 - (b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the record.

52. Offences.

- (1) A person commits an offence, if in relation to a record to which a right of access is conferred under this Act—
 - (a) he alters or defaces;
 - (b) he blocks or erases;
 - (c) he destroys; or
 - (d) he conceals,the record with the intention of preventing its disclosure.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (3) Where access to a record is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.

53. Regulations.

The Minister after consultation with the Information Commissioner may, make regulations—

- (a) for anything that is required or permitted under this Act;
- (b) prescribing the period of time for the doing of any act under this Act; and
- (c) providing for such matters as are contemplated by or necessary for the for giving full effect to this Act and for their due administration.

54. Fees.

- (1) Fees shall be paid in respect of the several matters mentioned in the *Third Schedule* of the Freedom of Information (General) Regulations, 2015
- (2) The Minister may by order, amend the *Third Schedule* of the Freedom of Information (General) Regulations, 2015 for the purpose of varying the services or fees specified therein and any such order shall be exempt from the provisions of section 31 of the Interpretation and General Clause Act (*Ch. 2*) but shall be subject to an affirmative resolution of the House of Assembly.
- (3) In subsection (2) “affirmative resolution of the House of Assembly” in relation to subsidiary legislation means that such legislation does not come into operation unless and until affirmed by a resolution of the House.

55. Review of Act by Parliamentary Committee.

- (1) This Act shall be reviewed from time to time by a committee of Parliament appointed for that purpose.
- (2) The first such review shall be conducted not later than eighteen months after the appointed day.

56. Act to bind Crown.

This Act binds the Crown.

57. Repeal.

The Freedom of Information Act, *No. 10 of 2012* is hereby repealed.

SCHEDULE

(Section 5)

INFORMATION TO BE PUBLISHED BY PUBLIC AUTHORITIES

1. The information referred to in section 5 of this Act is—
 - (a) a description of the functions of the public authority;
 - (b) a list of the departments and agencies of the public authority and—
 - (i) subjects handled by each department and agency;
 - (ii) the locations of departments and agencies;
 - (iii) opening hours of the offices of the authority and its departments and agencies;
 - (c) the title and business address of the information manager;
 - (d) a statement of the records specified in sub paragraph (e) being records that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of, any written law or scheme administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;
 - (e) the records referred to in sub paragraph (d) are—
 - (i) manuals or other records containing policies, interpretations, rules, guidelines, practices or precedents;
 - (ii) records containing particulars of a scheme referred to in subparagraph (d), not being particulars contained in any written law or published under this Act.
2. The information manager of the authority—
 - (a) shall cause copies of such of the records specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) may within twelve months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not more than twelve months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.
3. The information manager is not required to comply fully with paragraph 2 (a) before the expiration of twelve months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.
4. This Schedule does not require a record of the kind specified in paragraph 1(e) containing an exempt material to be made available in accordance with paragraph 2, but, if such a record is not so made available, the information manager shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding record, altered only to the extent

necessary to exclude the exempt material, and cause the record so prepared to be dealt with in accordance with paragraph 2.

5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Act, or has been specified by Order under section 3(2) of the Act as if the references in paragraph 2 to the appointed day were references to the day on which the authority comes into existence or has been so specified.

OBJECTS AND REASONS

This Bill seeks to reinforce and give effect to certain fundamental principles underlying the system of constitutional democracy, that is, governmental accountability, transparency and public participation in national decision-making by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance the right of access against the non-disclosure of governmental or commercial information where non-disclosure is in the public interest.

Part I of the Bill, which covers clauses 1 through 4, deals with preliminary matters.

Of note is the meaning of “public authority” and “record”. A “public authority” means a Ministry, statutory body, a public corporation or any other body or organization specified by Order. (Clause 2).

A “record” means a record in writing; a map, plan, graph or drawing, a photograph, a disc, tape, sound track or other device in which sounds or other data are embodied. (Clause 2)

Clause 3 of the Bill provides that the proposed Freedom of Information Act does not apply to the judicial functions of a court or the holder of a judicial office, the Royal Bahamas Police Force, the Royal Bahamas Defence Force, the Department of Customs, the Department of Immigration, or the Financial Intelligence Unit in relation to their strategic or operational intelligence-gathering activities, and such statutory body or authority as the Minister may designate by Order.

Clause 4 of the Bill deals with the objects of this Act which are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely—

- (a) governmental accountability;
- (b) transparency; and
- (c) public participation in national decision making,

by granting to the public a general right of access to records held by a public authority, subject to exemptions which balance that right of access against non- disclosure of governmental or commercial information in the public interest.

Part II of the Bill, which covers clauses 5 to 14, deals with the right of access to information.

Clause 5 of the Bill covers the information which public authorities must publish.

Clause 6 of the Bill declares that the classes of persons who shall have a right to obtain access to a record other than an exempt record under this Act. An application for access to a record will not require a reason for requesting access to the record. Additionally, clause 6 provides that the Minister may, by Order, extend the right to be given access to records to persons other than the classes of persons listed under this clause and the Minister may set such conditions he deems appropriate.

Clause 7 of the Bill makes provision for a person who wishes to obtain information to make an application to the public authority that holds the record. The public authority is required to respond to an application not later than 30 days after the date of the receipt of the application. .

Clause 13 provides for the cost of access to records.

Part III of the Bill, which covers clauses 15 through 27, deals with exempt records.

Clause 15 provides for public interest considerations.

Clause 16 provides that notwithstanding matters that are exempt, access will be granted to certain records if it is in the public interest.

Clause 17 seeks to provide that records are exempt from disclosure if such disclosure would prejudice the security, defence or international relations of The Bahamas.

Clause 18 of the Bill seeks to provide that records relating to law enforcement are exempt from disclosure if such disclosure would endanger a person's life or safety or affect the conduct of an investigation or prosecution and so on. Additionally, clause 18 seeks to identify the circumstances under which records relating to law enforcement are subject to disclosure.

Clause 19 seeks to provide for records subject to legal privilege to be exempt from disclosure.

Clause 20 seeks to provide for the exemption from disclosure of records affecting the national economy, commercial affairs and certain documents concerning the operations of public authorities.

Clause 21 of the Bill provides that records revealing the Government's deliberative process are exempt from disclosure. Additionally this clause provides that certain documents that are appended to such records are subject to disclosure.

Clause 22 seeks to provide that a record is exempt from disclosure if it prejudices the effective conduct of public affairs.

Clause 23 seeks to provide that a record is exempt from disclosure if such disclosure would reveal trade secrets or if it contains information concerning the commercial interests of any person or organization and such disclosure would prejudice those interests.

Clause 24 of the Bill seeks to provide that a record is exempt from disclosure if such disclosure would result in the destruction, damage or interference with the conservation of any historical, archaeological or anthropological resources; or any species of plant or any animal life that is endangered, threatened or otherwise vulnerable.

Clause 25 provides for the exemption of records relating to personal data.

Clause 26 seeks to make a record exempt from disclosure if such disclosure would endanger the physical or mental health of an individual or endanger the safety of an individual.

Clause 27 seeks to provide that a public authority shall make its best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Act.

Part IV of the Bill, which covers clauses 28 through 29, deals with the internal review of decisions of public authorities.

Clause 28 seeks to make provision for application for the internal review of a decision by a public authority.

Clause 29 seeks to establish the procedure for an internal review, which will be conducted by the responsible Minister in respect of certain records and in other cases by the chief officer of the relevant public authority.

Part V of the Bill, which covers clauses 30 through 37, deals with the office of the Information Commissioner.

Clause 30 of the Bill seeks to establish the position of Information Commissioner, who shall be appointed by the Governor General acting on the advice of the Prime Minister after consultation with the Leader of the Opposition.

Clause 31 seeks to provide the conditions for the removal of the Information Commissioner.

Clause 32 provides for the appointment of one or more Deputy Information Commissioners and Assistant Commissioner.

Clause 33 seeks to establish the independence and powers of the Information Commissioner, who shall be responsible to Parliament.

Clause 34 of the Bill provides for the funding of the Freedom of Information Unit.

Clause 35 of the Bill provides that the Governor General acting on the advice of the Public Service Commission may appoint officers and employees as are necessary to enable the Commissioner to perform his functions.

Additional powers and responsibilities of the Commissioner are outlined in clause 36 of the Bill. The Commissioner may hear, investigate and rule on appeals filed under this Act.

Clause 38 The Commissioner and members of his staff are not liable for anything done in the discharge of their functions unless it is shown that the act or omission was in bad faith.

Part VI of the Bill, which includes clauses 39 through 45, deals with enforcement by the Commissioner.

Clause 39 provides that a person who has made a request for a record and has exhausted the internal review procedure may appeal to the Commissioner a decision of a public authority.

Clauses 40 and 41 of the Bill provide for decisions on appeal and for the implementation of the Commissioner's decision respectively.

Clause 42 seeks to empower the Commissioner to conduct investigations, independently of the Minister, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

Clause 43 provides for the Commissioner to conduct an investigation on his own initiative.

Clause 44 provides that a complainant or a public authority may appeal to the Supreme Court for review of a decision of the Commissioner.

Part VII of the Bill, which covers clauses 46 to 50, deals with measures to promote openness.

Clause 46 provides that every public authority will appoint an information manager, who shall promote in the public authority best practices in relation to record maintenance, archiving and disposal and receive requests for records and complaints regarding the performance of the public authority relating to information disclosure.

Clause 47 seeks to make provision to enable a person to release information on a public authority's wrongdoing.

Guidance on the duty to publish is provided for under clause 48. Clauses 49 and 50 seek to make provision for the maintenance of records and for the training of officials under this Act respectively.

Part VIII of the Bill, which clauses 51 to 56, deals with miscellaneous matters.

Clause 51 provides that nothing in the Act shall be construed as authorizing the disclosure of any official record containing any defamatory matter; or the disclosure of any record which would be in breach of confidence or of intellectual property rights.

Clause 52 provides for offence under this Act and the penalty.

Clause 53 of the Bill provides that the Minister after consultation with the Information Commissioner may make regulations under this Act.

Clause 54 provides for fees to be paid in respect of services rendered under this Act.

Clause 55 of the Bill seeks to establish a Parliamentary Committee which shall review the Act from time to time and shall do so no later than eighteen months after the Act comes into effect.