

L.D.O 24/2003

AN ACT TO PROVIDE FOR FREEDOM OF ACCESS TO OFFICIAL INFORMATION; SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; THE ESTABLISHMENT OF THE FREEDOM OF INFORMATION COMMISSION; THE APPOINTMENT OF INFORMATION OFFICERS; SETTING OUT THE PROCEDURE FOR OBTAINING OFFICIAL INFORMATION AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble. WHEREAS there exists a need to foster a culture of transparency and accountability in public authorities **and in other entities and organizations involved in rendering any public service**, by giving effect to the right of freedom of information and thereby promote a society in which the people of Sri Lanka **would be able** to more fully exercise and protect all their rights and to **actively participate in** combating corruption.

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

Short title. 1. This Act may be cited as the Freedom of Information Act, No. of 2010 and shall come into operation on the day immediately following the date of the expiration of a period of twelve months of the date of certification in terms of Article 80 of the Constitution. A notification regarding the date on which this Act is due to come into operation shall be published **in the Gazette**, not less than three months prior to such date.

Application of the Provisions of the Act

Right of access to information. 2. Subject to the provisions of section 5 of this Act, every **person** shall have a right of access to official information which is in the possession, custody or control of a public authority.

Provisions of this Act to prevail over other written law. 3. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

Duty to disclose reasons for a decision. 4. Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision.

Denial of Access to Official Information

When right of access may be denied.

5. (1) **Subject to the provisions of subsections (2) and (3) of this section** a request under this Act for access to official information shall be refused, where –

- (a) the disclosure of such information would constitute an invasion of personal privacy of any person, unless the person has consented in writing to such disclosure;
- (b) disclosure of such information –
 - (i) would cause serious harm to the defence of the State or its territorial integrity or national security;
 - (ii) would cause **serious** danger to life or safety of any person; or
 - (iii) would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State or international organization, where such information was given by or obtained from such State or international organization, in confidence;
- (c) **the information consist of memoranda or letters within a public authority or between one public authority and another, except where the request is made by a person affected or likely to be affected by the information;**
- (d) **the disclosure of such information could cause serious prejudice to the economy of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to:-**
 - (i) **exchange rates or the control of overseas exchange transactions;**
 - (ii) **the regulation of banking or credit;**
 - (iii) **taxation;**
 - (iv) **the stability, control and adjustment of prices**

of goods and services, rents and other costs and rates of wages, salaries and other incomes;

**(v) the borrowing of money by the Government;
or**

(vi) the entering onto of overseas trade agreements;

(e) the disclosure of such information would reveal any trade secrets or harm the commercial interests of any person, unless that person has consented in writing to such disclosure;

(f) the information could lead to the disclosure of any medical records relating to any person, unless such person has consented **in writing** to such disclosure;

(g) the information consist of any communication which is not permitted to be disclosed under section 126 of the Evidence Ordinance;

(h) the information is required to be kept confidential by reason of the existence of a fiduciary relationship;

(i) the disclosure of such information could:-

(i) cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or

(ii) enable the existence or identity of a confidential source of information in relation to law enforcement or national security, to be ascertained;

(j) the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;

or

(l) the information relates to an examination conducted by the Department of Examination or a Higher Educational

Institution which is required to be kept confidential, including any information relating to the results of any qualifying examination held by such Department or Institution.

(2) Where a request for official information has been refused on any of the grounds referred to in paragraphs (a), (b), (c), (d), (e), (f), or (j) of subsection (1), the Commission shall, on application made in that behalf by the person who made the request, direct the disclosure of such information, if the Commission considers that the public interest in the disclosure outweighs any damage to the interest protected under any such paragraph.

(3) Notwithstanding the provisions of subsection (1), a request for information shall not be refused on any of the grounds referred to therein, other than the grounds referred to in paragraphs (a), (f), (g) and (h) of that subsection, if the information requested for is over ten years old.

(4) Where an Information Officer is confronted with an issue connected with the grant of access to any information which is exempted from being disclosed under subsection (1), such Information Officer shall be required to seek the advice of the Commission on that issue and thereafter act according to the advice given by the Commission.

Severability under certain circumstances.

6. Where a request for information is refused on any of the grounds referred to in section 5, access may nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.

Duties of Ministers and public authorities

Public authorities to maintain and preserve its records.

7. (1) It shall be the duty of every public authority to maintain all its records in such manner and in such form as is consistent with its operational requirements, duly catalogued and indexed.

(2) All records being maintained by every public authority, shall be preserved –

(a) in the case of new records which are opened after the coming into operation of this Act, for a period of not less than ten years from the date on which such record is opened; and

- (b) in the case of those records already in existence on the date of the coming into operation of this Act, for a period of not less than ten years from the date of the coming into operation of this Act.

Ministers duty to publish a report.

8. (1) It shall be the duty of –

- (a) every Minister to whom any subject has been assigned under paragraph (1)(a) of Article 44 of the Constitution; and
- (b) the President, in respect of any subject or function **which the President has assigned to himself and of any subject or function** of which the President remains in charge, under paragraph (2) of Article 44 of the Constitution,

to publish **annually before the 31st of March of every year, a report in such form as shall be determined by the Commission as would enable a person to exercise the right to access granted under section 2 of this Act., containing** the following particulars: –

- (i) particulars relating to the organization, functions, activities and duties of the Ministry **assigned to the President or the Ministry** of such Minister, **as the case may be**, and of all the public authorities falling within the functions **so** assigned;
- (ii) the powers, duties and functions of officers and employees of the Ministry and of the public authorities referred to in paragraph (i), and the **respective** procedures followed by them in their decision making process;
- (iii) the norms set for the Ministry and the public authorities referred to in paragraph (i), in the discharge of their functions, performance of their duties and exercise of their powers;
- (iv) rules, regulations, instructions, manuals and any other categories of records under the control of the Ministry and of the public authorities referred to in paragraph (i), which are used by its officers and employees in the discharge of their functions, performance of their duties and exercise of their powers;

- (v) the details of facilities available to citizens for obtaining official information from the Ministry and the public authorities referred to in paragraph (i); and
- (vi) the name, designation and other particulars of the Information Officer or Officers appointed to the Ministry and to the public authorities referred to in paragraph (i).

(2) Notwithstanding the provisions of subsection (1), it shall be the duty of the President and of every Minister as the case may be, within six months of the coming into operation of this Act, to publish in such **form** as may be determined by the President or such Minister, **as the case may be**, a report containing the information referred to in paragraph (i) to (vi) of that subsection.

(3) The reports referred to in subsections (1) and subsection (2) shall be:-

- (a) published in the official languages and wherever possible be made available in electronic form; and**
- (b) made available for public inspection and copies of the same may be issued to any person, on the payment of such fee as shall be determined by the Commission.**

Duty of the President and Ministers to inform public about the initiation of projects.

9. (1) **Three months** prior to the commencement of any work or activity relating to the initiation of any project, it shall be the duty of the President or the Minister as the case may be, to whom the subject pertaining to such project has been assigned, to communicate to the public generally, and to any particular persons who are likely to be affected by such project, in such manner as specified in guidelines issued for that purpose by the Commission, all information relating to the project that **is available with the President or the Minister, as the case may be**, as on the date of such communication.

For the purpose of this section, “project” means any project the value of the subject matter of which exceeds :-

- (a) in the case of foreign funded projects, one million United States dollars; and
- (b) in the case of locally funded projects, five million rupees.

(2) The President or a Minister, as the case may be, shall be required on written request made in that behalf by a member of the public, to make available updated information about a project referred to in subsection (1), throughout the period of its development and implementation. The information shall be made available on the payment of such fee, as shall be determined by the Commission for the purpose.

Duty of public authorities to submit reports etc.

10. It shall be the duty of every public authority to submit to the Commission annually, a report containing the following information –

- (a) the number of requests for information received;
- (b) the number of requests for information which were granted or refused in full or in part;
- (c) the reasons for refusal, in part or in full, of requests received;
- (d) the number of appeals submitted against refusals to grant in part or in full, requests for information received; and
- (e) the total amount received as fees for granting requests for information.

Establishment of the Freedom of Information Commission

Establishment of the Freedom of Information Commission.

11. (1) There shall be established for the purposes of this Act, a body called the Freedom of Information Commission (in this Act referred to as the “Commission”).

(2) The Commission shall by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

Constitution of the Commission.

12. (1) The Commission shall consist of three persons of eminence and integrity who have distinguished themselves in public life and who are not members of any political party and who, at the time of appointment and while functioning as a member of the Commission, **are not or do not become a Member of Parliament or of any Provincial Council or a local authority and do not** hold any public or judicial office.

(2) The members of the Commission shall be appointed by the President on the recommendations of the Constitutional Council, and

subject to the provisions of subsection (3) of this section, shall hold office for a period of five years. The President shall nominate one of the members of the Commission to be its Chairman.

(3) A member of the Commission shall cease to be a member, where -

- (a) he **or she** resigns his **or her** office earlier by writing addressed to the President;
- (b) he **or she** is removed from office by the President on the Constitutional Council forming an opinion that such member is physically or mentally incapacitated and is unable to function further in office;
- (c) he **or she** is convicted by a court of law for any offence involving moral turpitude; or
- (d) he **or she** is deemed to have vacated office by absenting himself **or herself** from three consecutive meetings of the Commission, without obtaining prior leave of the Commission.

Appointment of officers and employees of the Commission.

13. (1) The Commission may appoint such officers and other employees as it considers necessary to assist the Commission in the discharge and performance of its duties and functions under this Act.

(2) The officers and other employees appointed under subsection (1), shall be subject to such terms and conditions of service as shall be determined by the Commission and be paid such remunerations as determined by the Commission in consultation with the Minister in charge of the subject of Finance.

Duties and functions of the Commission.

14. The duties and functions of the Commission shall be, to –

- (a) monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act;
- (b) make recommendations for reform both of a general nature and directed at any specific public authority;
- (c) hear and determine any appeals made to it by any aggrieved person under section 32 **and applications made to it under subsection (2) of section 5** of this Act;

- (d) lay down guidelines **based on reasonableness, for determining fees to be levied by public authorities** for the release of any official information by them under the provisions of this Act;
- (e) **determine the circumstances in which information may be provided by an Information Officer, without the payment of a fee;**
- (f) **lay down guidelines specifying the manner in which information and updated information on the development and implementation of a project is to be made available to the public;**
- (g) co-operate with or undertake training activities for public officials on the effective implementation of this Act; and
- (h) publicise the requirements of this Act and the rights of individuals under it.

Powers of the commission

15. For the purpose of performing its duties and discharging its functions under this Act, the Commission shall have the power to hold inquiries and require any person to appear before it and to examine such person or to require such person to produce any official information which is in that person's possession or power.

Fund of the Commission.

16. (1) The Commission shall have its own Fund into which shall be credited all such sums of money as may be voted upon from time to time by Parliament for the use of the Commission and any money that may be received by the Commission by way of donations, gifts or grants from any source whatsoever, whether in or outside Sri Lanka.

(2) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the discharge and performance of its duties and functions.

Financial year and audit of accounts.

17. (1) The financial year of the Commission shall be the calendar year.

(2) The Commission shall cause proper books of accounts to be maintained of the income and expenditure and all other transactions of the Commission.

(3) The provisions of Article 154 of the Constitution relating to

the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

Part II of Finance Act, 38 of 1971 to apply.

18. The provisions of Part II of the Finance Act, No. 38 of 1971 shall, *mutatis mutandis* apply to the financial control and accounts of the Commission.

Members etc, of the Commission deemed to be public officers.

19. The members and officers and all other employees of the Commission shall be deemed to be public officers within the meaning and for the purposes of the Penal Code and every inquiry held by the Commission under this Act shall be deemed to a judicial proceeding within the meaning of the Code of Criminal Act, No. 15 of 1979.

Application of the Bribery Act.

20. The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

Exemption from prosecution.

21. No criminal or civil proceedings shall lie against or any member of the Commission or any officer or other employees appointed to assist the Commission, for any act which in good faith is done or omitted to be done in the course of the discharge and performance of their duties and functions under this Act.

Procedural requirements to be published.

22. The Commission shall within six months of its establishment, formulate and give adequate publicity to the procedural requirements for the submission of appeals to the Commission under section 32 **and for the submission of applications under subsection (2) of section 5 of this Act.**

Appointment of Information Officers and Procedure for gaining Access to official information

Appointment of an Information Officers and their duties.

23. (1) Every public authority shall for the purpose of giving effect to the provisions this Act, appointment, **within three months of the coming into operation of this Act**, one or more officers as Information Officers of such public authority.:

Provided that until such time that an Information Officer is appointed under this subsection, the Head or Chief Executive Officer of a public authority shall be deemed to be the Information Officer of such public authority, for the purposes of this Act.

(2) It shall be the duty of an Information Officer to deal with requests for information made to the public authority of which he has

been appointed its Information Officer, and render all necessary assistance to any person making such request to obtain the information being request for.

(3) The Information Officer may seek the assistance of any other officer as he may consider necessary, for the proper discharge of the duty imposed on him under subsection (2), and where assistance is sought from any such officer, it shall be the duty of such officer to render the assistance requested for by the Information Officer.

Procedure for obtaining official information.

24. (1) **Any person who is** desirous of obtaining any official information under this Act shall make a request in writing to the appropriate Information Officer, specifying the particulars of the information requested for:

Provided that, where any **person** making a request under this subsection is unable due to any reason to make such request in writing, he shall be entitled to make the request orally and it shall be the duty of the appropriate Information Officer to **reduce such request to writing** on behalf of the person making the request.

(2) For the purpose of this section –

“writing” includes writing done through electronic means; and

“appropriate Information Officer” means the Information Officer appointed to the public authority from which the information is being requested for.

Decision on requests submitted under section 24.

25. (1) An Information Officer shall, as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 24, make a decision either to provide the information requested for on the payment of a fee or to reject the request on any one or more of the grounds referred to in section 5 of this Act and shall forthwith communicate such decision to the person who made the request. Where a decision is made to provide the information requested for, access to such information shall be granted **within fourteen days of arriving at such decision:**

Provided that where the request for information concerns the life and personal liberty of the person making such request, the response to it shall be made within forty-eight hours of the receipt of the request.

(2) Where providing the information requested for requires the payment of any fee in addition to the fee referred to in subsection (1), the Information Officer shall request for the payment of such additional fee giving details of the fee and specifying the date before which such additional payment should be made by the person concerned.

(3) Notwithstanding the requirement made for the payment of a fee under subsections (1) and subsection (2) of this section, the Commission may determine the circumstances in which information may be provided by an Information Officer, without the payment of a fee.

Public authority to display fees to be charged.

26. A public authority shall be required to display in a conspicuous place within its official premises, a notice specifying the fees being charged for obtaining any official information from such public authority. The fees so specified shall be determined by the public authority on the guidelines issued by the Commission for the purpose.

Manner in which official information is to be provided.

27. (1) Where decision has been made to grant a request for information, such information shall be provided in the form in which it is requested for, unless the Information Officer is of view that providing the information in the form requested for would be detrimental to the safety or preservation of the relevant document or record in respect of which the request was made.

(2) Where an Information Officer is unable to provide the information in the manner requested for, it shall be the duty of such officer to render all possible assistance to the person who made the request, to facilitate compliance with such request.

Refusal of a request to be communicated.

28. Where a request for information is refused by an Information Officer, it shall be the duty of such Officer to specify the following information in the communication sent under subsection (1) of section 25, to the person who made the request—

- (a) the ground or grounds on which such request is being refused; and
- (b) the period within which and the person to whom an appeal against such refusal may be preferred.

Where information requested for was supplied by a third party.

29. (1) Where a request made to an Information Officer by any **person** to disclose official information relates to, or has been supplied by a third party and such information has been treated as confidential at the time the information was supplied, the Information Officer shall, **within seven days of the receipt of such request**, invite such third party by notice issued in writing, to make his or her representation for or against such disclosure, within seven days of the receipt of the notice.

(2) An Information Officer shall be required in making his decision on any request made for the disclosure of official information which relates to or has been supplied by a third party, to take into consideration the representations made by such third party under subsection (1), and shall, where any objections are raised by such third party, deny access to the information requested for:

Provided however, **the Commission may, on application made in that behalf by the person making the request, direct the disclosure of the information in question notwithstanding any objections raised by the third party against its disclosure, where the Commission considers that the public interest in the disclosure outweigh any damage that may be caused to the third party concerned by its disclosure.**

(3) **Notwithstanding anything to the contrary in section 25, an information Officer shall within thirty days of the receipt of the request for information, and where third party concerned having been issued with a notice under subsection (1) has failed to respond within the time granted for making representations, make a decision as to whether or not to disclose the information requested for and give notice in writing of such decision, to the third party concerned.**

Protection against action.

30. Where access to any information has been granted by an Information Officer under this Act, no action **or proceedings, civil or criminal** shall lie against such Officer or the public authority concerned by reason of granting access to such information.

Granting access not to constitute an authorization for publication.

31. The granting of access to any information in consequence of a request made under this Act shall not be taken to constitute an authorization or approval **granted by a public authority or the Commission**, of the publication of such information by the **person** to whom the access was granted.

Appeals Against Rejections

Appeals against a rejection of a request.

32. (1) Any **person** whose request for official information is refused by an Information Officer may, within thirty days of receipt of the communication relating to such refusal under subsection (2) of section 28, prefer an appeal to the person referred to in such communication, being the person designated to hear any such appeal.

(2) **The right of a person to prefer an appeal under subsection (1) shall be without prejudice to his her right to make an**

application to the Commission under subsection (2) of section 5.

(3) The decision on any appeal preferred under subsection (1) shall be made by the person designated to hear such appeal, within one month of the receipt such appeal. **The failure to give a decision within such period shall be regarded as a rejection of the appeal.**

Appeals to the Commission.

33. Any person aggrieved by:-

- (a) the decision made in appeal under subsection (1) of section 32, may within two weeks of the communication of such decision; or
- (b) the failure to obtain a decision on any appeal made within the time specified for giving the same under subsection(3), may within two weeks of the expiry of the period so specified,

appeal against that decision or the failure, as the case may be, to the Commission and the Commission may **within thirty days of the receipt of such appeal** affirm, vary or reverse the decision appealed against and remit the request back to the Information Officer concerned for necessary action.

Appeal may be made on behalf of an aggrieved party.

34. An appeal under section 32 or section 33, as the case may be, may be made by any other person on behalf **of an aggrieved party**, where such person is duly authorized in writing by the aggrieved party to prefer the same.

General

Commission to prepare a report of its activities.

35. (1) The Commission shall cause to be prepared a report of its activities as often as it may consider necessary, so however, that it shall prepare at least one report in each calendar year. The Commission shall **transmit a copy of every report prepared to the President, who shall cause a copy each of the reports so transmitted to be placed before Parliament.**

(2) A copy of the report prepared under subsection (1) shall, within two weeks of it being placed before Parliament, be made available for public inspection at the office of the Commission **and wherever possible, a copy of the same may be made available on its website.**

Offences.

36. (1) Any Information Officer who –

- (a) refused a request made for information without giving reasons for such refused;
- (b) refused a request made on any ground other than a ground specified in subsection (1) of section 5 of this Act; or
- (c) fails without any reasonable cause to make a decision on a request made within the time specified under this Act for making such decision,

shall be guilty of an offence under this act and shall on conviction **after summary trial by a Magistrate** be liable to a fine not less than five thousand rupees.

(2) Every person who without cause:-

- (a) fails or refuses to appear before the commission when requested to do so by the Commission;**
- (b) appears before the Commission, and fails or refuses to be examined by the Commission or to produce any official information which is in that persons possession or power;**
- (c) fails or refuses to comply with or give effect to a decision of the Commission;**
- (d) resists or obstructs the Commission or any officer or other employee of the Commission, in the exercise of any power conferred on the Commission or such officer or employee, by this Act,**

shall be guilty of an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not less than five thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) Any officer whose assistance was sought for by an Information Officer under subsection (3) of section 23 and who fails without reasonable cause to provide such assistance, shall be guilty of an offence under this Act, and shall on conviction **after summary trial by a Magistrate** be liable to a **fine not less than** five thousand rupees.

(4) A fine imposed for the commission of an offence referred to in subsection (1), (2) **or (3)** of this section, shall be in addition and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so, for the failure to carry out a duty imposed under this Act.

Release or disclosure of official information by an employee of a public authority.

37. Notwithstanding any legal or other obligation to which a person may be subject to by virtue of being an **officer or** employee of any public authority, no **officer or** employee of a public authority shall be subjected to any punishment, disciplinary or otherwise, for releasing or disclosing any official information which is permitted to be released or disclosed on a request submitted under this Act.

Regulations.

38. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed **or in respect of which regulations are necessary to be made in order to give effect to the provisions of the Act.**

(2) Every regulation made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, forthwith after its publication in the *Gazette* be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Interpretation.

36. In this Act, unless the context otherwise requires –

"Higher Educational Institution" means a University, Campus or University College established or deemed to be established or made by the Universities Act, 16 of 1978;

“Information Officer” means an Information Officer appointed under section 23 of this Act;

"local authority" means a Municipal Council, Urban Council or a Pradeshiya Sabha and includes any authority created or established by or under any law to exercise, perform and

discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

“official information” includes any correspondence, memorandum, draft legislation, book, plan map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;

“person” means a citizen of Sri Lanka or any body of persons, whether corporate or unincorporated or registered in Sri Lanka;

“public authority” means –

- (a) a Ministry of the Government;
- (b) any body or office established by or under the Constitution other than the Parliament and the Cabinet of Ministers;
- (c) a Government Department;
- (d) a public corporation;
- (e) a Higher Educational Institution;**
- (e) a company incorporated under the Companies Act, No.17 of 1982, in which the State, **or a public corporation or the State and a public corporation together hold a majority of the shares;**
- (f) a local authority;
- (g) a private entity or organization rendering any public service; and**
- (h) any department or other authority or institution established or created by a Provincial Council;
and

"public service" means.....

**Sinhala text to
prevail in
case of
inconsistency.**

37. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.