

# REPUBLIC OF VANUATU

## BILL FOR THE RIGHT TO INFORMATION ACT NO. OF 2016

### Explanatory Note

The Bill provides for the guarantee of the right to information of all persons and to establish practical mechanisms supportive of that right and for related matters.

#### **PART 1 PRELIMINARY MATTERS**

Clause 1 sets out the purpose of the Act to include matters such as giving effect to the right to freedom of expression under paragraph 5(1)(g) of the Constitution and establishing mechanisms to give the public the right to access to information.

Clause 2 deals with application of the Act. It provides that the Act applies to records or information created or held by a Government agency or relevant private entity on or after 30 July 1980 and any information held by a private entity that may assist in the exercise or protection of the rights of a person.

This clause further sets out different implementation periods of the Act. It provides that the Minister must specify by Order within 6 months from the commencement of the Act, certain Government agencies to which this Act applies and within 24 months from the date on which the first Order was made, certain Government agencies and relevant private bodies to implement this Act. Finally, all other Government agencies and relevant private entities will be specified by Order after the expiration of 24 months referred to above.

Clause 3 sets out the definitions of terms used throughout the Act. It defines a Government agency as including the State, the Government, a Constitutional entity and any Government agency as prescribed by the Minister. Relevant private entity is defined as a body that:

- is owned, controlled or substantially financed directly or indirectly by funds provided by the Government, but only to the extent of that financing; or
- carries out statutory or public services or functions, whether financed directly or indirectly by funds provided by the government or other source but only to the extent of the statutory or public services or functions; or

- the Minister by order designates as a relevant private body under subsection 2(4).

This clause also defines a private entity as:

- a person who carries on or has carried on a trade, business or profession; or
- a partnership which carries on or has carried on any trade or business; or
- any former or existing person or any successor in title.

Clause 4 makes it clear that the Act does not apply to any information held by the system of customs and traditions practiced throughout Vanuatu, any information of a relevant private entity relating to any function that is not public service related or funded in whole or in part by the Government and any information held by a publicly owned media body.

Clause 5 provides for a provision of this Act to override a provision of any other Act other than the Constitution, if there is a conflict. This clause further provides that the Act does not prevent a Government agency or relevant private entity to give access to information other than as required by this Act if it is required to do so by any other law, policy, practice or order of a court.

## **PART 2      DISCLOSURE AND ACCESS TO INFORMATION**

### *Division 1 – Disclosure of Information*

Clause 6 requires Government agencies and relevant private entities specified by Order to disclose or publish certain information as required under this clause.

Clause 7 requires disclosure of certain information by a Government agency.

### *Division 2 – Access to Information*

Clause 8 provides for the right to access information from a Government agency, relevant private entity or a private entity.

Clause 9 provides that an individual can access information from a private entity if the information is required for the exercise or protection of any right recognized under the laws of Vanuatu.

### *Division 3 – Right to Information Officers*

Clause 10 empowers the Public Service Commission to appoint a Right to Information Officer of a Government agency for purposes of this Act.

Clause 11 provides for the appointment of Right to Information Officers for relevant private entities and private entities.

Clause 12 provides for the functions of a Right to Information Officer which includes the function of receiving applications for information, assisting persons who seek information and the function of receiving complaints.

Clause 13 provides for the application for access to information from a Government agency, a relevant private entity or a private entity. This clause requires a person wishing to obtain certain information, to apply to the information officer of the relevant agency or entity. An application can be made orally or be in writing and can be made in any of the official languages.

Clause 14 obliges an Information Officer to acknowledge receipt of an application within 5 days of receiving the application.

Clause 15 requires a Right to Information Officer to assist an applicant free of charge, in making an application to meet the requirements of this Act if the application does not originally comply with such requirements.

Clause 16 requires a Right to Information Officer to make a decision on an application within 30 days from the date of receiving the application. However if an application concerns information that is necessary to safeguard the life or liberty of a person, the application must be determined within 48 hours of receiving the application.

Clause 17 provides that if an application for access to information is granted, the Right to Information officer must specify the reproduction fee payable, the form in which access to the information is to be given and the right of the applicant to appeal. The Right to Information Officer must provide the information within 7 days of payment of the reproduction fee or if the application concerns information necessary to safeguard the life or liberty of a person, the grant of access must be within 48 hours of receiving the application.

Clause 18 provides that if an application for access to information is denied, the Right to Information Officer must notify the applicant on the reasons for the refusal and inform the applicant of his or her right of appeal to the Information Commissioner.

Clause 19 provides that if a Right to Information Officer determines that an information requested is not necessary to safeguard the life or liberty of a person, he or she may within 48 hours of receiving the application inform the applicant of the decision and reasons of the decision and the right of appeal to the Information Commissioner.

Clause 20 provides for the circumstances in which a Right to Information Officer may extend the period for responding to an application for a period of not more than 14 days and for only 1 occasion.

Clause 21 provides that an Information Officer may transfer an application for information to the relevant Government agency or private entity if the information requested is held by that other agency or entity.

Clause 22 provides for circumstances in which a grant of access to information could be deferred for reasons being that the information requested is required to be tabled in Parliament or that the premature release of the information would be contrary to public interest.

Clause 23 provides that a Right to Information Officer must delete the exempt matter from information requested in an application before granting access to the information requested. Exempt matter refers to exempt information in a record which causes part of that record to be exempted from disclosure under this Act.

Clause 24 provides that a Right to Information Officer must notify an applicant within 30 days of receiving the application if the information requested from a Government agency or private entity cannot be found or does not exist.

Clause 25 provides for circumstances in which an application is deemed to be refused.

Clause 26 provides for circumstances in which a Right to Information Officer can refuse an application for access to information on the basis that it is a repeated application.

Clause 27 provides that a Right to Information Officer must consult with a supervisor or the principal administrative officer before deciding to defer, partially grant or deny access to a request for information.

Clause 28 provides that access to information must be provided in the form or manner requested by the applicant. It also requires that a Right to Information Officer take reasonable steps to assist an applicant prevented by disability from reading, viewing or listening to information in the manner in which it is held to make the information available in an alternative form that can be accessed by the applicant.

Clause 29 provides that access to information must be given in a particular official language requested by the applicant.

Clause 30 sets out the circumstances in which a reproduction fee is to be paid, and in what circumstances a fee is not payable.

### **PART 3      THIRD PARTY NOTIFICATION AND INTERVENTION**

Clause 31 provides that a Right to Information Officer must take reasonable steps to notify a third party of an application for information if the information contains personal or commercial and confidential material pertaining to the third party, and providing the opportunity for the third party to consent to disclosure or request that the application for access to information be denied within 14 days of being notified.

Clause 32 provides for third parties not notified under Clause 31 to consent to disclosure of information or request that the application for access be denied.

Clause 33 requires a Right to Information Officer to make a decision on the grant of access to information and notify the third party of the decision within 21 days of advising the third party of the application for access to information.

#### **PART 4      AMENDMENT OF PERSONAL INFORMATION**

Clause 34 provides that a person may apply in writing to a Government agency, relevant private entity or private entity to amend his or her personal information that is incomplete, incorrect, out of date or misleading.

Clause 35 provides for the steps to be followed by a Right to Information Officer when deciding an application to amend a personal record including to notify the applicant and any other relevant agencies of any amendments.

Clause 36 provides for the transfer of an application. The Right to Information Officer may transfer an application for an amendment to a personal record to the relevant Government agency or private entity if the personal record is held by that other agency or entity.

#### **PART 5      EXEMPTIONS**

Clause 37 provides that a Right to Information Officer may refuse to grant access to any information if one or more of the exemptions under sections 42 to 50 of this Act apply.

Clause 38 provides that if a Right to Information Officer considers that granting access to information is in the public interest, then the Officer must disclose the information, regardless of any exemptions.

Clause 39 provides that if a Right to Information Officer decides to refuse an application he or she must prove that the information is exempted from disclosure under this Act and that the interest protected by the exemption outweighs the public interest in accessing the information.

Clause 40 prevents a Government agency, relevant private entity or private entity from exempting information on the basis of a classification as confidential.

Clause 41 prevents a Right to Information Officer from denying access to information that is already publicly available.

Clause 42 provides that a Right to Information Officer may refuse to disclose information if its disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, unless the third party has consented to the disclosure or the applicant is the legal guardian of the third party.

Clause 43 provides that a Right to Information Officer may refuse to disclose information if the information is protected by legal privilege, unless such privilege has been waived.

Clause 44 provides that a Right to Information Officer may refuse to disclose information if disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities, trade secrets or inter-Government or multilateral relations.

Clause 45 provides that a Right to Information Officer may refuse to disclose information if to do so would endanger the life, health or safety of an individual.

Clause 46 provides that a Right to Information Officer may refuse to disclose information if disclosure of the information could reasonably be expected to prejudice law enforcement, the administration of justice, or investigations, audits or reviews by immigration, biosecurity or customs agencies.

Clause 47 provides that a Right to Information Officer may refuse to disclose information if the disclosure of information could reasonably be expected to prejudice the security of the Republic of Vanuatu.

Clause 48 provides that a Right to Information Officer may refuse to disclose information if the disclosure of information could reasonably be expected to prejudice the economy of the Republic of Vanuatu or the legitimate commercial or financial interests of the Government agency or entity.

Clause 49 provides that a Right to Information Officer may refuse to disclose information if to do so could reasonably be expected to prejudice the development or implementation of Government policy.

Clause 50 provides that a Right to Information Officer may refuse to disclose information if the disclosure of information could reasonably be expected to impede the protection of historical, archaeological, anthropological resources or the environment.

Clause 51 provides that exemptions under this Act do not apply for information that is more than 10 years old or as determined by the Information Commissioner in consultation with the Minister. Decisions to exempt information may be reviewed by the Information Commissioner within 2 years of being exempted, and the Information Commissioner is empowered to remove exemptions from information if the exemption no longer applies.

## **PART 6      INFORMATION COMMISSIONER**

Clause 52 provides for the appointment of an Information Commissioner by the Judicial Services Commission. Appointments to the position are for a period of 5 years. The

Information Commissioner is deemed to be a leader under the Leadership Code Act [CAP 252].

Clause 53 provides for the resignation of the Information Commissioner.

Clause 54 provides for the grounds by which the Judicial Services Commission may remove the Information Commissioner.

Clause 55 provides for the appointment of an Acting Information Commissioner by the Judicial Services Commission if the position becomes vacant.

Clause 56 provides for the functions and powers of the Information Commissioner. This includes functions and powers to hear, investigate and make decisions on appeals, monitoring and reporting on agency compliance and undertake training and awareness raising activities for officials and the general public.

Clause 57 provides that the Information Commissioner may delegate any or all of his or her functions to a staff of the Office, but not including the power of delegation.

Clause 58 provides for the independence of the Information Commissioner and it states that the Commissioner is not subject to the direction of any person or body in relation to the exercise of powers or in the performance of his or her functions under this Act.

Clause 59 provides that the Information Commissioner may appoint, suspend or dismiss staff of the Office of the Information Commissioner. Appointments made by the Information Commissioner must be transparent and based on merit and the Judicial Services Commission is to determine the conditions of employment of the staff of the Office and approve the staff manual of the Office. The Information Commissioner must inform the Judicial Services Commission on staff matters including recruitment or promotion of staff and any disciplinary action against staff.

Clause 60 provides that the funds of the Office of the Information Commissioner consists of monies appropriated by Parliament, monies provided by non Government organisations and any other funds from any other source.

Clause 61 provides that the Information Commissioner must prepare an annual report to Parliament on the implementation of this Act and agency compliance with this Act.

Clause 62 requires a Right to Information Officer in a Government agency or relevant private entity to submit a monthly report on compliance with this Act, to the Right to Information Unit.

Clause 63 provides protection from civil or criminal liability for the Information Commissioner and staff of the Office of the Information Commissioner of anything done or omitted to be done in good faith in the execution or purported execution of his or her

powers or functions under this Act, and further provides that information supplied in relation to investigations under this Act is privileged.

## **PART 7      ENFORCEMENT BY THE INFORMATION COMMISSIONER**

Clause 64 provides for the right of appeal by any applicant against a decision of a Right to Information Officer. Appeals can be made to the Information Commissioner within 20 days of notification of a decision being made by a Right to Information Officer, and the Information Commissioner must acknowledge receipt of the appeal application. This provision also sets out the matters that relate to an appeal.

Clause 65 provides that the Information Commissioner may investigate a matter on appeal and it provides what actions the Commissioner may take in carrying out an investigation.

Clause 66 provides for the Information Commissioner to conduct investigations on any matter in relation to this Act on his or her own initiative (that is, without an appeal having first been made).

Clause 67 provides that the Information Commissioner may resolve an appeal through mediation, negotiation or conciliation.

Clause 68 provides that the Information Commissioner may make a decision on an appeal within 30 days of receiving the application, and sets out the possible decisions and processes to be followed by the Commissioner following a decision. If a person does not agree with a decision of the Information Commissioner he or she may apply to the Supreme Court to review the decision, and in such cases it is up to the Government agency, relevant private entity or private entity to show it has acted properly under this Act.

## **PART 8      MEASURES TO PROMOTE ACCESS TO INFORMATION**

### *Division 1 – Right to Information Unit, guidelines and trainings*

Clause 69 establishes the Right to Information Unit and sets out the functions of the Unit.

Clause 70 provides that the Information Commissioner may issue guidelines on certain matters including how to access information, the contact details of Right to Information Officers, information about proactive publication, the appeals process and other relevant information within one year of the commencement of this Act.

Clause 71 provides that the Information Commissioner must publish a guideline for Government agencies and relevant private entities on proactive publication.

Clause 72 provides that the Right to Information Unit must publish a code of practice on records management and requires all Government agencies to maintain records in a way that will enable access to information. Government agencies must digitise and disseminate as many of their records as possible.

Clause 73 provides that Government agencies, relevant private entities and private entities must work with the Right to Information Unit to undertake trainings for the implementation of this Act.

*Division 2 – Right to Information Steering Committee*

Clause 74 establishes the Right to Information Steering Committee and sets out the composition of this Committee.

Clause 75 provides that the Chairperson of the Steering Committee will be the representative from the Office of the Prime Minister, and that the Deputy Chairperson will be elected by the committee members.

Clause 76 outlines the functions of the Right to Information Steering Committee, including its role in providing oversight, monitoring and evaluation of the implementation of Right to Information policy and to provide support and advice and receive reports from the Right to Information Unit.

Clause 77 provides for the establishment of working groups to assist the committee in its work.

Clause 78 provides for the procedures of the meetings of the committee.

Clause 79 provides that the secretariat to the Right to Information Committee will be the Right to Information Unit.

Clause 80 requires the committee to report to the Council of Ministers at least 2 times a year on implementation of this Act and make any recommendations to assist in implementing this Act.

Clause 81 provides for a transitional arrangement whereby the existing Chairperson of the Committee will continue in the role for a period of 6 months following the date of publication of this Act in the Gazette.

**PART 9 MISCELLANEOUS PROVISIONS**

Clause 82 provides that any information released under this Act, except personal information, is considered to be in the public domain.

Clause 83 ensures that a person releasing information which they believe shows evidence of wrongdoing or is a serious threat to health, safety or the environment does not commit

a civil or criminal offence and will not attract any employment related punishment if they acted in good faith.

Clause 84 provides for good faith disclosures.

Clause 85 provides that a Government agency, relevant private entity, private entity, Minister or officer with protection from actions for defamation or breach of confidence or copyright for providing access to a document. Granting of access to information under this Act is not to be taken as publication of the document under laws relating to defamation or breach of confidence or copyright.

Clause 86 provides for offences under this Act and prescribes the maximum fines of VT500,000 or a term of imprisonment of not more than 1 year.

Clause 87 provides that the Minister may make regulations in relation to proactive publication, training of officials, any reporting to be made in relation to this Act, additional fees, how reproduction fees will be worked out and any other necessary matters.

**Prime Minister**



## REPUBLIC OF VANUATU

### BILL FOR THE RIGHT TO INFORMATION ACT NO. OF 2016

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# REPUBLIC OF VANUATU

## BILL FOR THE RIGHT TO INFORMATION ACT NO. OF 2016

An Act to provide for the guarantee of the right to information of all persons and to establish practical effective mechanisms supportive of that right and for related matters.

Be it enacted by the President and Parliament as follows-

### **PART 1 PRELIMINARY MATTERS**

#### **1 Purpose of the Act**

The purpose of this Act is:

- (a) to give effect to the right to freedom of expression under paragraph 5(1)(g) of the Constitution of the Republic of Vanuatu; and
- (b) to provide access to information held by Government agencies, relevant private entities and private entities, subject to exceptions provided under Part 5 of this Act; and
- (c) to establish voluntary and mandatory mechanisms to give the public the right to access to information; and
- (d) to promote transparency, accountability, and national development by empowering and educating the public to understand and act upon their rights to information; and
- (e) to increase public participation in governance.

#### **2 Application of the Act**

(1) This Act applies to:

- (a) information held by a Government agency or a relevant private entity on or after 30 July 1980; and

- (b) information held by a private entity that may assist in the exercise or protection of the rights of a person.
- (2) The Minister may, by Order, declare that this Act applies to records or information created or held by a Government agency at a date earlier than the period referred to in paragraph (1)(a).
- (3) For the purposes of paragraph (1)(a), this Act applies to information:
- (a) held by a relevant private entity that relates to any funding provided to it by the Government; or
  - (b) relating to the public service or functions carried out by the relevant private entity whether funded in whole or in part by the Government or by another organisation.
- (4) The Minister is to specify by Order:
- (a) within 6 months from the commencement of this Act, the Government agencies, to which this Act applies; and
  - (b) within 24 months from the date on which the Order under paragraph (a) is made, any other Government agency and relevant private entities to which this Act applies; and
  - (c) all other Government agencies and relevant private entities immediately after expiration of the 24 months period as specified under paragraph (b).
- (5) For the purposes of this Act, information held by:
- (a) an official of a Government agency or an official of a relevant private entity; or
  - (b) an independent contractor engaged by a Government agency or relevant private entity in its capacity as a contractor,

is deemed to be information of that Government agency or relevant private entity.

### 3 Interpretation

In this Act, unless a contrary intention appears:

**applicant** means a person who is:

- (a) applying for information under section 13; or
- (b) appealing to the Information Commissioner under section 64;

**day** means any day other than Saturday, Sunday or a public holiday under the Public Holidays Act [CAP 114];

**Committee** means the Right to Information Steering Committee established under section 74;

**document** means any record set out in written or printed paper that bears the original, official or legal form of something and can be used as evidence or information;

**Government agency** includes:

- (a) the State; and
- (b) the Government; and
- (c) a Constitutional entity; and
- (d) any other Government agency that is prescribed by the Minister under subsection 2(4);

**exempt matter** means any exempt information that is included in a record and which causes that part of the record to be exempted from disclosure under Part 5;

**hold** in relation to information that is liable to be produced under this Act, means in the possession, custody or control of a Government agency, relevant private entity or private entity, whether or not it was created by any of them or whether created prior to the commencement of this Act;

**information** has the same meaning as **record**;

**Information Commissioner** means a person appointed under section 52;

**Minister** means the Minister responsible for the administration of this Act;

**Office** means the Office of the Information Commissioner;

**official language** means any of the three languages under subarticle 3(1) of the Constitution;

**personal information** means:

- (a) information about a person, whether living or deceased, and includes any of the following:
  - (i) information relating to the race, gender, sex, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; or
  - (ii) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the person has been involved; or
  - (iii) any identifying number, symbol or other particular assigned to the person; or
  - (iv) the address, fingerprints or blood type of the person; or
  - (v) the personal opinions, views or preferences of the person; or
  - (vii) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; or
  - (viii) the views or opinions of another individual about the person; or
  - (ix) the name of the person where it appears with other personal information relating to the person or where the disclosure of the name itself would reveal information about the person.
- (b) To avoid doubt, the definition of **personal information** under paragraph (a) does not include:

- (i) information about a person who has been dead for more than 20 years; or
- (ii) in a case where a person holds or held office as a director, or occupies or occupied a position as a member of the staff, of a Government agency, relevant private entity or private entity:
  - (A) the name of the person or information relating to the office or position; and
  - (B) the terms upon which the person holds or held that office or occupies or occupied that position or anything written or recorded in any form by the person in the course of and for the purpose of the performance of such functions; and
- (iii) in a case where the person is or was providing a service for a Government agency, relevant private entity or private entity under a contract for services:
  - (A) the name of the person or information relating to the service or the terms of the contract; and
  - (B) anything written or recorded in any form by the person in the course of and for the purposes of the provision of the service; and
- (iv) the views or opinions of the person in relation to a Government agency, relevant private entity or private entity the staff of any of them, the business, the performance of the services or functions of any of them;

**principal administrative officer** means the person who is responsible for the day to day administration of a Government agency, relevant private entity or private entity;

**private entity** means:

- (a) a person who carries on or has carried on a trade, business or profession, but only in that capacity; or
- (b) a partnership which carries on or has carried on any trade or business; or

- (c) any former or existing person or any successor in title, but does not include a Government agency or a relevant private entity;

**public services or functions** means services or functions that are essential to the welfare of the people of Vanuatu and which are provided or supported by the Government and its agencies, or by a non-government agency on behalf of the Government;

**publish** means making known or communicating information to the public through existing and innovative means including:

- (a) publication on the Government's website or the website of a Government agency or relevant private entity where available; or
- (b) notice boards of each Government agency or relevant private entity; or
- (c) public and village announcements; or
- (d) press releases; or
- (e) daily and weekly newspapers; or
- (f) media broadcasts; or
- (g) existing Government and non-government networks; or
- (h) the internet; or
- (i) any other available means for publishing information as the Minister may specify by order,

and **disseminate** has a corresponding meaning;

**record** means information held in any form or medium by a Government agency, relevant private entity or private entity, whether or not it was created by any of them or came into existence before the commencement of this Act, and includes:

- (a) a record in writing; or
- (b) a document, manuscript and file; or

- (c) a film (including microfilm), negative, microfiche and facsimile copy of a document; or
- (d) a map, plan, graph or drawing; or
- (e) a photograph; or
- (f) 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; or
- (g) an email, memo, opinion, advice, press releases, circular, order, logbook, contract, report, samples and models;

**relevant private entity** means an entity:

- (a) that is owned, controlled or substantially financed directly or indirectly by funds provided by the Government, but only to the extent of that financing; or
- (b) that carries out statutory or public services or functions, whether financed directly or indirectly by funds provided by the Government or other source but only to the extent of the statutory or public services or functions; or
- (c) which the Minister by order designates as a relevant private entity under paragraphs 2(4)(b) and (c);

**reproduction fee** means a fee prescribed by the Minister, payable by an applicant upon being given a grant of access to information by a Government agency, relevant private entity or private entity;

**right to information** means the right to information that is accessible under this Act and which is held by or under the control of a Government agency, relevant private entity or private entity, and includes, but is not limited to the right to:

- (a) take notes, extracts or certified copies of records or information; or
- (b) inspect work, documents or records; or
- (c) take certified samples of material; or

- (d) obtain information in the form of compact discs, diskettes, floppy discs, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

**Right to Information Officer** means a person appointed under section 10 or 11;

**third party** means any other person associated with information other than that person applying for information or any Government agency, relevant private entity or private entity providing such information;

**Unit** means the Right to Information Unit established under section 69.

#### **4 Application of this Act**

- (1) This Act does not apply to:
- (a) any information held by the system of custom, traditions and practices generally practiced throughout Vanuatu; or
  - (b) any information of a relevant private entity relating to any function that is not public service related or funded in whole or in part by the Government; or
  - (c) any information which for the purposes of journalism, art or literature is held by a publically owned media body in relation to its program content.
- (2) For the purposes of paragraph (1)(c), **publicly owned media** means a media body that is registered as a corporate entity under the Companies Act No. 25 of 2012 in which the Government or an agency of the Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of that company.

#### **5 Act to prevail**

- (1) If a provision of this Act conflicts with a provision of any other Act other than the Constitution, the provisions of this Act prevail.
- (2) This Act does not prevent a Government agency, relevant private entity or private entity from giving access to information other than as required by this Act where it has the discretion to do so or where it is required to do so by any other Act, policy, practice or order of a Court.

## **PART 2 DISCLOSURE AND ACCESS TO INFORMATION**

### **Division 1 – Disclosure of Information**

#### **6 Disclosure of information by Government Agency or relevant private entity**

- (1) Subject to subsection 2(4), a Government agency or a relevant private entity must publish and disseminate an initial statement of its organization in each official language, including the following:
- (a) a description of its structure and functions; and
  - (b) a list of the entities falling under it including their location, opening hours, and subjects handled; and
  - (c) the title ,business address and contact details of the Principal Administrative Officer; and
  - (d) the particulars of its finances; and
  - (e) a directory of its officers and employees and a brief description of the functions and powers of its officers and employees;
  - (f) the procedure followed in the decision making process, including channels of supervision and accountability; and
  - (g) a simple guide to its information-keeping systems; and
  - (h) a statement of the types and forms of information and categories of documents that are held by it or used by its officers and employees in the discharge of its functions; and
  - (i) relevant details concerning any services it provides directly to members of the public; and
  - (j) the content of all decisions or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them and any important background material; and

- (k) the particulars of any arrangement that exists for consultation with or representation by the members of the public in relation to the formulation of its policy or implementation of its policies; and
  - (l) the procedure to be followed in making an application for information, the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; and
  - (m) any direct application or complaints mechanisms available to members of the public regarding acts or a failure to act by that Government agency or relevant private entity, along with a summary of any applications, complaints or other direct actions by members of the public and that Government agency or relevant private entity's response; and
  - (n) the names, designations, contact details and other particulars of its Right to Information Officers; and
  - (o) such other information deemed necessary in the public interest or as may be prescribed by this Act or any other Act.
- (2) A Government agency or a relevant private entity must:
- (a) within 12 months of the publication of the initial statement under subsection (1); and
  - (b) at intervals of not more than 6 months,  
  
publish and disseminate up to date information contained in the previous statement.
- (3) In addition to its obligations under subsection (1), a Government agency or a relevant private entity is to:
- (a) publish all relevant facts, important policies or decisions which affect the public; and
  - (b) provide reasons for its administrative or quasi-judicial decisions to members of the public who will be or are likely to be directly affected by its decisions; and

- (c) prior to implementing any project, publish or disseminate to the public, or to the persons who are likely to be affected, such information as the Government agency or a relevant private entity considers necessary in the public interest, including the reasons for the project and any important background material; and
- (d) publish all information related to tenders for contracts and the process of tendering; and
- (e) publish finalised contracts (with appropriate deletions to protect confidentiality and copyright issues), and include:
  - (i) the name of the contractor; and
  - (ii) the scope and duration of the contractual services; and
  - (iii) the value of the contract; and
  - (iv) the payment schedules and criteria for payment; and
  - (v) the completion dates; and
  - (vi) the penalties due from either party to the contract in the event of any breach or non-compliance.
- (4) For purposes of paragraph (3)(c), when considering what constitutes public interest, a Government agency or a relevant private entity is to consider the factors outlined under subsections 38(3), (4) and (5).
- (5) The Minister may authorise the publication of the initial statement required to be published under subsection (1) by a Government agency or a relevant private entity, together with the statements required to be published by such other Government agencies or relevant private entities for which the first mentioned Government agency or a relevant private entity is responsible.
- (6) If a Government agency or a relevant private entity publishes information under subsection (5), the Government agency or a relevant private entity to which the information relates is to be treated as having complied with its obligation to publish under this Act.

- (7) The Information Commissioner is to publish the name of any Government agency or a relevant private entity that fails to comply with this section.
- (8) Any information required to be published under this section is to be disseminated widely and in a manner that is easily accessible to the public, taking into consideration the cost effectiveness, local language and the most effective methods of communication.

## **7 Disclosure of certain information by Government agencies**

- (1) The Government is to publish information of its functions and activities, including:
  - (a) laws, rules or guidelines applicable to elections; and
  - (b) electoral rolls for public inspection; and
  - (c) the broadcast of sessions of Parliament across Vanuatu; and
  - (d) transcripts of parliamentary proceedings; and
  - (e) copies of all Bills and subsidiary legislation; and
  - (f) terms of reference, submissions and final reports of Parliamentary Committees; and
  - (g) Court decisions.
- (2) Transcripts of parliamentary proceedings, copies of Bills and other documents that are tabled in Parliament, and terms of reference, submissions and final reports of Parliamentary Committees are to be deposited with the office of the Clerk of Parliament and the Parliamentary library for inspection and be made available for public viewing.

## **Division 2 – Access to Information**

### **8 Right to access to information**

Subject to this Act, a person may access any information from a Government agency, relevant private entity or private entity.

**9 Right to access information from a private entity**

- (1) A person may access information from a private entity if the information is to assist in the exercise or protection of any right recognized under the laws of Vanuatu.
- (2) An application made to a private entity for information that is required for the exercise or protection of any right must:
  - (a) identify the right which the applicant is seeking to exercise or protect; and
  - (b) state the reasons why the information is required to exercise or protect that right.

**Division 3 – Right to Information Officers**

**10 Appointment of Right to Information Officer for each Government agency**

The Public Service Commission must, within 6 months of being specified by an Order of the Minister under paragraphs 2(4)(a) and (b), appoint a person in writing to be a Right to Information Officer for each Government agency.

**11 Right to Information Officer for relevant private entities and private entities**

- (1) A relevant private entity or a private entity must appoint a person or persons to be its Right to Information Officer.
- (2) If a relevant private entity or a private entity fails to appoint a Right to Information Officer, the Principal Administrative Officer of that entity is to be the Right to Information Officer for the purposes of this Act.

**12 Functions of a Right to Information Officer**

- (1) A Right to Information Officer has the following functions:
  - (a) to promote, within the respective bodies, the best practices in relation to:
    - (i) the right to information, its importance and the role of officials in facilitating that right; and

- (ii) records management, archiving and disposal of records; and
  - (b) to serve as a central contact for receiving applications for information; and
  - (c) to assist persons seeking information under this Act; and
  - (d) to receive complaints under this Act; and
  - (e) to carry out any other functions as set out in this Act or any other Act.
- (2) A Right to Information Officer employed at a Government agency may request the assistance of any person employed at the Government agency as he or she considers necessary for the proper discharge of his or her functions under this Act.
- (3) A person whose assistance has been sought under subsection (3) must provide all reasonable assistance to the Right to Information Officer and for the purposes of any offences under this Act, is to be treated as a Right to Information Officer.

### **13 Application for access to information**

- (1) A person who wishes to obtain information from a Government agency, relevant private entity or private entity is to apply to the relevant Right to Information Officer for access to information held by that Government agency, relevant private entity or private entity.
- (2) An application made under subsection (1) may be made in writing, orally or through any electronic means, in any official language, and to the relevant Government agency, relevant private entity or private entity, specifying the information required.
- (3) A Government agency or a relevant private entity must not deny access to information based on:
- (a) any of the applicants reasons as to why the application is being made; or
  - (b) any opinion of an official as to the applicant's reason for applying.

- (4) An application under subsection (1) is to include the following information:
- (a) a postal address, fax number or email address to which the information may be sent; and
  - (b) a telephone number at which the applicant may be reached; and
  - (c) the form of access required in accordance with section 28; and
  - (d) the language in which the information granted is to be supplied; and
  - (e) an indication of whether the application is being made on behalf of a person and the submission of proof of the capacity in which the applicant is making the application, to the reasonable satisfaction of the Right to Information Officer; and
  - (f) if the application is being made to a private entity - an explanation of why the information may assist in the exercise or protection of any right; and
  - (g) an indication of whether the applicant believes that the information is necessary to safeguard the life or liberty of himself or herself or any other person, and the basis for that belief.
- (5) If an applicant makes an application orally, the Right to Information Officer must reproduce that oral application into written form and provide a copy to the applicant.
- (6) If a Right to Information Officer is able to provide an immediate response to an oral application and the response is to the satisfaction of the applicant, the Right to Information Officer must subsequently reduce the application to writing for documentation purposes.

#### **14 Acknowledgement of receipt of applications**

A Right to Information Officer who receives an application under subsection 13(1) must, within 5 days of receiving the application, acknowledge the receipt and state the following in the acknowledgement:

- (a) the nature of the application; and

- (b) the date on which the application was received; and
- (c) the officer responsible for the application.

**15 Duty to assist applicants**

If an application for access to information is made, and that application does not comply with the requirements under subsection 13(4), the Right to Information Officer is to take reasonable steps to assist the person or applicant, free of charge, to make the application in a manner that complies with this Act.

**16 Decision on an applications**

- (1) Subject to this Act, a Right to Information Officer to whom an application is made under subsection 13(1) must, within 30 days of receiving the application:
  - (a) determine whether or not to grant the application; and
  - (b) notify the applicant of his or her decision in writing; and
  - (c) if the application is granted, subject to the payment of any fee, give the applicant access to the information.
- (2) Despite subsection (1), if an application relates to information that appears to be necessary to safeguard the life or liberty of a person, the Right to Information Officer must, within 48 hours of receiving the application:
  - (a) determine whether or not to grant the application; and
  - (b) notify the applicant of his or her decision in writing; and
  - (c) if the application is granted - grant the applicant access to the information.

**17 Grant of access to information**

- (1) If an application for access to information is granted, the notice to the applicant referred to in paragraph 16(1)(b) must:
  - (a) specify the reproduction fee payable; and

- (b) state the form in which access to the information is to be given; and
  - (c) inform the applicant of his or her right of appeal to the Information Commissioner in relation to:
    - (i) the fee payable or the form in which access has been granted; and
    - (ii) the procedure for applying; and
    - (iii) the applicable time limits, as set out in section 64.
- (2) Subject to subsection (3), if an applicant has been notified of a grant of access, he or she must be granted access:
- (a) within 7 days of payment of a fee - if a fee is payable or
  - (b) within 7 days of the date of notifying the applicant - if no fee is payable; or
  - (c) if a Right to Information Officer is required to respond to an application within 48 hours under subsection 16(2), and grants the application – as soon as possible, irrespective of whether any fee has been paid.
- (3) If information requested contains information relating to a third party, a Right to Information Officer may:
- (a) consider any representations made by a third party refusing to allow access under paragraph 32(a); and
  - (b) refuse to grant access to that information until:
    - (i) the time for the third party to appeal the release of the information has expired without any appeal being made; or
    - (ii) an appeal made by the third party has been finally determined in favor of the release of the information.

**18 Access to information denied**

If an application for access to information is denied, the notice to the applicant referred to in paragraph 16(1)(b) must:

- (a) state the reasons for the refusal; and
- (b) inform the applicant of his or her right of appeal to the Information Commissioner, the procedure for applying and the applicable time limits in accordance with section 64.

**19 Refusal of a 48 hour request**

If a Right to Information Officer, upon reviewing the information that is the subject of an application, considers that the information requested is not necessary to safeguard the life or liberty of a person, the Right to Information Officer must, within 48 hours of receiving the application:

- (a) provide notice of the decision to the applicant, including the reasons for the decision; and
- (b) inform the applicant of:
  - (i) his or her right of appeal to the Information Commissioner; and
  - (ii) the procedure for making an appeal; and
  - (iii) the applicable time limits under section 64.

**20 Extension of time**

- (1) A Right to Information Officer may extend the period for responding to an application for only one occasion, for a period of not more than 14 days if:
  - (a) the application is for a large amount of information or requires a search through a large amount of information and meeting the original time limit would unreasonably interfere with the activities of the Government agency, relevant private entity or private entity; or
  - (b) consultations that are necessary to comply with the application cannot be reasonably completed within the 30 day period set out in subsection 16(1).

- (2) If the period to respond to an application is being considered for extension under subsection (1), the Right to Information Officer must, within 30 days after the application is received,:
  - (a) notify the applicant of the extension of the period; and
  - (b) if the applicant agrees, make every effort to assist him or her with the modification of the application.
- (3) If the period to respond to an application is extended, the applicant is to be notified and the notice must:
  - (a) state the period of the extension; and
  - (b) provide the reasons for the extension; and
  - (c) inform the applicant of his or her right of appeal to the Information Commissioner and set out the procedure for appealing and the applicable time limits in accordance with section 64.
- (4) Despite subsection (1), if any part of the information requested is recovered by the Right to Information Officer within the 30 days period, it must be reviewed and a response must be provided to the applicant in accordance with subsection 16(1).

## **21 Transfer of application**

- (1) If an application for information requires information that is held by another Government agency or relevant private entity, the Right to Information Officer must transfer the application, or part of it as may be appropriate, to the relevant Government agency or relevant private entity.
- (2) A Right to Information Officer who transfers an application under subsection (1) must:
  - (a) make the transfer within 5 days after receiving the application; and
  - (b) immediately notify the applicant of the transfer in writing, specifying:
    - (i) the date on which the transfer is made; and

- (ii) the Government agency, relevant private entity or private entity to which the application is transferred to, its contact information and opening hours, and the name and contact details for the Right to Information Officer who will be processing the application.
- (3) A Right to Information Officer who receives a transferred application must acknowledge its receipt according to section 14.
- (4) If an application for information is transferred under subsection (1), the period for responding to that application as set out under subsection 16(1), commences from the date of the transfer.

## **22 Deferral of access**

- (1) A Right to Information Officer may defer a grant of access to the information requested in the following circumstances:
  - (a) if the information is a report that has been prepared for tabling in Parliament - the Right to Information Officer must defer the grant of access until 5 days after which it has been presented and approved by Parliament; or
  - (b) if the information constitutes a report that has been prepared for the purpose of reporting to an official or an official body - the Right to Information Officer must defer a grant of access to information until the report has been presented or made available to that person or body or upon the expiration of 45 days from the date of the application, whichever is the earlier; or
  - (c) if the publication of the information within a particular period is required under the provisions of any law relevant to that Government agency or relevant private entity - the Right to Information Officer must defer a grant of access to information until the expiration of that period; or
  - (d) if the premature release of the record would be contrary to the public interest - the Right to Information Officer must defer a grant of access to information until the occurrence of any event after which or the expiration of any period beyond which, the release of the document would not be contrary to the public interest.

- (2) If a Right to Information Officer decides to defer access under subsection (1), he or she must, within 14 days of making the decision, notify the applicant of:
- (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) the period during which the deferment is to operate; and
  - (d) his or her right to, within 14 days after the notice is given, make representations as to why the information is required before the expiration of the period of deferment.
- (3) If an applicant makes a representation under paragraph (2)(d), the Right to Information Officer must within 5 days after considering the representation, grant access to the information if there are reasonable grounds for believing that the applicant will suffer substantial prejudice if access to the information is deferred.
- (4) To avoid doubt, this section only applies to a Government agency or a relevant private entity.

**23 Partial grant of access**

- (1) If an application for access to information contains an exempt matter, the Right to Information Officer must delete the exempt matter before granting access to the information.
- (2) If access to information is granted with the deletion of the exempted matter, the applicant must be notified of:
- (a) the deletion of the exempt matter; and
  - (b) the information to which access has been granted; and
  - (c) his or her right of appeal under section 64; and
  - (d) the information to which access has been denied and the statutory provision by virtue of which the exempted matter is deleted.

- (3) Access to information granted to an applicant under subsection (2) must be made subject to sections 17 or 18.

**24 Information that cannot be found or does not exist**

- (1) If all reasonable steps have been taken by a Right to Information Officer to find information requested by an applicant and there are reasonable grounds for believing that the information:

- (a) is in the possession of that Government agency or a relevant private entity, but cannot be found; or
- (b) does not exist,

the Right to Information Officer must, within 30 days of receiving the application, notify the applicant in writing of the matters under paragraph (a) or (b) that it is not possible to grant access to the information requested.

- (2) The notice referred to in subsection (1) must give a full account of all steps taken to find the information in question or to determine whether it exists, including:

- (a) details of all locations searched for the information and the person or persons that conducted those searches; and
- (b) details of any communications with any person that the Right to Information Officer contacted in searching for the information or attempting to establish the existence of the information; and
- (c) any evidence relating to the existence of the information including:
  - (i) any evidence that the information was destroyed; or
  - (ii) the location in which the information was last known to be held.

- (3) The notice under subsection (1) is to be taken as a decision to refuse an application for access to the information concerned.

- (4) If after notice is given under subsection (1), the information in question is found, the Right to Information Officer must immediately notify the applicant in writing and must within 14 days:
- (a) determine whether to grant the application; and
  - (b) notify the applicant of the decision in writing; and
  - (c) if the application is granted, subject to the payment of any applicable reproduction fee, give the applicant access to the information in accordance with section 17; and
  - (d) if the application is partially granted, notify the applicant in accordance with section 23; and
  - (e) if the application is denied, notify the applicant in accordance with section 18.

## **25 Application deemed to be refused**

If a Right to Information Officer fails to make a decision on an application:

- (a) within the time specified in subsection 16(1); or
- (b) within the time period extended under section 20,

the Right to Information Officer is deemed to have refused the application and the applicant may appeal to the Information Commissioner under section 64.

## **26 Repeated applications**

- (1) A Right to Information Officer may refuse to grant an application for access to information if he or she is satisfied that:
- (a) the application is made by, or on behalf of, a person who, previously made an application for access to the same information;  
or
  - (b) the application was refused and the Information Commissioner or the Court, upon reviewing the decision to refuse the application, has confirmed the decision; or

- (c) there are no reasonable grounds for making the application again.
- (2) A Right to Information Officer must notify an applicant of his or her decision to refuse access to information under subsection (1), and inform the applicant of:
- (a) the reason for the refusal; and
  - (b) his or her rights to appeal to the Information Commissioner under section 64.

**27 Requirement to consult prior to deferral, partial grant or refusal to grant access**

A Right to Information Officer must consult with his or her supervisor or the principal administrative officer of the Government agency or relevant private entity, prior to making a decision on whether to defer access, partially grant access, or refuse to grant access to an applicant.

**28 Form of access**

- (1) Subject to subsection (4), if an applicant has requested that access to information be provided in a particular form, then access must be given in the form or manner requested.
- (2) Access to information may be given to an applicant in 1 or more of the following forms or manner:
  - (a) a copy of the information; or
  - (b) an opportunity to inspect the information using equipment normally available to the Government agency, relevant private entity or private entity; or
  - (c) an opportunity to copy the information, using the applicant's own equipment; or
  - (d) in the case of information that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the applicant to hear or view those sounds or visual images; or

- (e) in the case of information which is held on a computer, or in electronic or machine-readable form, and from which the Government agency, relevant private entity or private entity concerned is capable of producing a printed copy of the information or part of it, by supplying such a copy; or
  - (f) in the case of information available or capable of being made available in computer readable form, by supplying a copy in that form; or
  - (g) a transcript of the content of the information, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the Government agency, relevant private entity or private entity; or
  - (h) a transcript of the information from shorthand or other codified form; or
  - (i) an inspection of works; or
  - (j) the taking of samples of materials.
- (3) If access is granted in a form or manner initially requested, an applicant may amend his or her preferred form or manner of access on receipt of notice of the reproduction fees payable.
- (4) If a Right to Information Officer is of the view that granting access to information in a form or manner indicated by the applicant would:
- (a) unreasonably interfere with the operation of the Government agency, relevant private entity or private entity; or
  - (b) be detrimental to the preservation of the information; or
  - (c) involve an infringement of the copyright of a person other than the Government agency, relevant private entity or private entity,
- he or she may offer to assist the applicant to identify another form or manner in which the access to the information may be granted.
- (5) A Right to Information Officer may:

- (a) reject an application under subsection (1,) if the offer of assistance under subsection (4) is refused; or
  - (b) proceed to assist the applicant if the offer is accepted by the applicant.
- (6) If an applicant is granted access to information in a particular form or manner and for a reason specified in subsection (4), access in that form is refused but access is given in another form or manner, the fee charged must not exceed what would have been charged if the applicant had been given access in the form initially requested.
- (7) If an applicant is prevented by a disability from reading, viewing or listening to the information concerned in the form or manner in which it is held, the Right to Information Officer must, if the applicant so requests, take reasonable steps to make the information available in a form in which it is capable of being read, viewed or heard by the applicant.

**29 Language of access**

- (1) If access to information is to be granted and the applicant requests that access be given in a particular official language, the information must be:
- (a) provided immediately - if the information already exists in that language; or
  - (b) provided in the language specified within a reasonable period of time and free of charge - if the Government agency, relevant private entity or private entity must cause a translation to be prepared.

**30 Reproduction fees**

- (1) An applicant must pay the prescribed reproduction fee if his or her request for access to information is granted.
- (2) An applicant is not required to pay any reproduction fee:
- (a) when lodging an application; or
  - (b) in relation to time spent by the Right to Information Officer in searching for the information requested; or

- (c) in relation to time spent by the Right to Information Officer in examining the information to determine whether it contains exempt matter or deleting exempt matter from the information.
- (3) An applicant must not pay a reproduction fee in the following circumstances:
- (a) for the reproduction of personal information of the applicant, or if application is made on behalf of another person of the personal information of that person; or
  - (b) if the application is made on behalf of a natural third party for whom the applicant is a guardian; or
  - (c) if the application is related to a deceased third party in respect of whom the applicant is the next of kin or the personal representative; or
  - (d) for the reproduction of information which is in the public interest; or
  - (e) if the Right to Information Officer has failed to comply with the time for responding to an application under section 16 or if an extension of time has been made under section 20, within that extended period of time.
- (4) If an applicant pays a reproduction fee and access to the information is not subsequently provided within 7 days, the whole amount of the reproduction fee previously paid is to be refunded.
- (5) A reproduction fee is not refundable if the delay is caused by factors that are beyond the Right to Information Officer's control.
- (6) In the case of Government agencies, reproduction fees are to be paid at the Government cashier in the Department of Finance.
- (7) Reproduction fees charged by Government agency, relevant private entity or private entity must not exceed VT50,000.

## **PART 3 THIRD PARTY NOTIFICATION AND INTERVENTION**

### **31 Notice to third parties**

- (1) When considering an application for access to information under section 13 that is:
- (a) personal information of a third party; or
  - (b) commercial and confidential information of a third party,
- a Right to Information Officer must take reasonable steps to ensure that the third party to whom the information relates, is informed of the application within 14 days after the application is received or transferred.
- (2) When informing a third party under subsection (1), the Right to Information Officer must:
- (a) state that the application for access to information may be for personal or commercial and confidential information and state the nature and describe the content of the application; and
  - (b) state the name of the applicant requesting the information; and
  - (c) describe the provisions of subsection 42(1), or section 44 as the case may be; and
  - (d) if the Right to Information Officer is of the opinion that the granting of access to such information is in the public interest under section 38, he or she must:
    - (i) specify under which of the circumstances referred to in section 38 that access is being granted; and
    - (ii) give reasons for his or her decision; and
  - (e) state that the third party may, within 14 days after being informed:

- (i) make written or oral representations to the Right to Information Officer as to why the application for access should be refused; or
- (ii) give written consent for the disclosure of the information to the applicant.

**32 Representations and consent by third parties not notified**

A third party who has knowledge about an application for access other than being notified under section 31 may:

- (a) make a written or oral representation to the Right to Information Officer concerned stating why the application should be refused; or
- (b) give written consent for the disclosure of the information to the applicant.

**33 Decision on representations and notice**

- (1) A Right to Information Officer must, within 21 days after a third party is informed:
  - (a) decide, after giving due regard to any representations made by a third party under section 31 or 32, whether to grant or refuse to grant the application for access; and
  - (b) notify the third party so informed, and a third party who was not informed of the application but who made representations or is located before the decision is taken, of the decision.
- (2) If after all reasonable steps have been taken as required under section 31, a third party is not informed of the application in question and the third party does not make any representations, a decision whether or not to grant the application for access must be made with due regard to the fact that the third party did not have the opportunity to make representations as to why the application should be refused.
- (3) If an application for access is granted, the notice under paragraph (1)(b) must state:
  - (a) the reasons for granting the application, including the provisions of this Act relied upon; and

- (b) that the third party may lodge an appeal with the Information Commissioner against the decision within 14 days after notice is given and the procedure for making the appeal; and
  - (c) that the applicant will be given access to the information after the expiry of the period of appeal, unless the appeal is made within that period.
- (4) If a Right to Information Officer decides to grant access, the applicant must be given access to the information after the expiry of the 14 day period set out in paragraph (3)(b).

## **PART 4 AMENDMENT OF PERSONAL INFORMATION**

### **34 Application for amendment or annotation of records**

(1) If a person claims that a record of a Government agency, relevant private entity or private entity to which access has been lawfully provided contains personal information about him or her that:

- (a) is incomplete, incorrect, out of date or misleading; and
- (b) has been used, or is available for use by the Government agency, relevant private entity or private entity, for administrative purposes,

that person may apply to the relevant Right to Information Officer for an amendment or annotation of that record.

(2) An application under this section:

- (a) is to be made in writing; and
- (b) must specify as far as practicable, the record that is claimed to require amendment or annotation; and
- (c) must:
  - (i) specify whether the information in the record is claimed to be incomplete, incorrect, out of date or misleading; and
  - (ii) indicate the applicant's basis for making that claim; and
  - (iii) specify the amendment requested by the applicant; and
  - (iv) in the case of an application for annotation, include a statement specifying the information that would make the record complete, correct, up to date or not misleading; and
  - (v) include an address in Vanuatu, including an email address, to which a notice under this Part may be delivered.

**35 Amendment or annotation of records**

- (1) A Right to Information Officer may, upon receiving an application under section 34:
- (a) amend the record concerned to make the information complete, correct, up to date or not misleading; or
  - (b) make an annotation by adding to the record an appropriate note.
- (2) An amendment of a record under subsection (1) must be made in such a manner so as to prevent the obliteration of the information as it existed prior to the amendment.
- (3) A Right to Information Officer who decides whether or not to amend or annotate a record under subsection (1) must inform:
- (a) the applicant; and
  - (b) any other Government agency, relevant private entity or private entity to which he or she is satisfied has made prior use of the record,

of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

**36 Transfer of applications for amendment or annotation**

The provisions relating to the transfer of applications under section 21 applies with such modifications as may be necessary, to an application for amendment or annotation of personal records.

## **PART 5 EXEMPTIONS**

### **37 Refusal of access to information**

A Right to Information Officer may refuse to grant access to information if the information is exempted from disclosure under sections 42 to 50.

### **38 Public interest to override exemptions**

- (1) Despite any exemptions under this Part, a Right to Information Officer must grant an application for access to information if it is in the public interest to disclose such information.
- (2) A Right to Information Officer must consider whether subsection (1) applies in relation to any information requested before refusing access on the basis of an exemption under this Part.
- (3) Subject to subsections (4) and (5), a Right to Information Officer is to consider any of the following factors when determining whether access to information is in the public interest:
  - (a) the objects of this Act;
  - (b) the prevention of the commission of offences or other unlawful acts;
  - (c) the prevention of a miscarriage of justice, abuse of authority or neglect in the performance of an official duty;
  - (d) the promotion of effective use and oversight of public funds and expenditure;
  - (e) whether the information is to be used for public debate or discussions;
  - (f) the promotion of public participation in the political process and decision-making;
  - (g) the avoidance of any danger to the health or safety of an individual or the public;
  - (h) the avoidance of unauthorised use, or misuse of public funds;

- (i) the protection of the environment;
  - (j) any other factors as the officer may consider relevant from time to time.
- (4) A Right to Information Officer must not take into account any of the following factors when deciding whether access to information is contrary to the public interest:
- (a) that access to the information could result in embarrassment to, or cause a loss of confidence in the Government of Vanuatu;
  - (b) that access to the information could result in any person misinterpreting or misunderstanding the information;
  - (c) that the author of the document was, or is of high seniority in the Government agency or relevant private entity to which the application for access to the information was made;
  - (d) that access to the information could result in confusion or unnecessary debate.
- (5) A Right to Information Officer must consider any guidelines issued by the Information Commissioner under section 70 when determining whether access to information is contrary to the public interest.

### **39 Burden of proof**

A Right to Information Officer who refuses to grant access to information must prove that:

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

### **40 Classified information**

Information is not exempted from access under this Act merely on the basis of it being classified by the Government agency, relevant private entity or private entity as confidential or given any other status to that effect.

**41 Information already publicly available**

Despite any provision in this Part, a Right to Information Officer must not refuse to communicate information requested if the information is already publicly available.

**42 Personal information**

(1) Despite the provisions of this Act, a Right to Information Officer may:

(a) refuse to indicate whether or not it holds the information requested by an applicant; or

(b) refuse to grant access to such information,

if to do so would involve a disclosure of the personal information of a third party.

(2) Subsection (1) does not apply if:

(a) the third party has consented to the disclosure of the information; or

(b) the applicant:

(i) is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; and

(ii) provides proof of the capacity in which the application is being made to the satisfaction of the Right to Information Officer; or

(c) the third party has been deceased for more than 20 years; or

(d) the third party is or was an officer of the Government agency, relevant private entity or private entity and the information relates to the third party's function.

**43 Legal privilege**

A Right to Information Officer may refuse to indicate whether or not he or she holds information, or refuse to communicate information, if the information is

privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

**44 Commercial and confidential information**

(1) A Right to Information Officer may refuse to communicate information if:

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence; or
- (b) the information was obtained in confidence from a third party and:
  - (i) contains a trade secret; or
  - (ii) its communication would likely seriously prejudice the commercial or financial interests of that third party; or
  - (iii) the information was obtained in confidence from another State or an international organization, and to communicate it would seriously prejudice relations with that State or the international organization.

(2) To avoid doubt, in the case of trade secrets protected by law, disclosure may be allowed if the public interest in the disclosure outweighs any possible harm or injury to the interests of that third party.

**45 Health and safety**

A Right to Information Officer may:

- (a) refuse to indicate whether or not he or she holds certain information; or
- (b) refuse to grant access to information,

if to do so would likely endanger the life, health or safety of an individual.

**46 Law enforcement**

A Right to Information Officer may refuse to indicate whether or not he or she holds information, or refuse to grant access to information, if to do so would likely cause serious prejudice to:

- (a) the prevention or detection of crime; or
- (b) the apprehension or prosecution of offenders; or
- (c) the administration of justice; or
- (d) the assessment or collection of any tax or duty; or
- (e) the operation of immigration, biosecurity and Customs controls; or
- (f) an assessment of whether a civil or criminal proceeding, or regulatory action pursuant to any Act, is justified.

**47 Defence and security**

A Right to Information Officer may:

- (a) refuse to indicate whether or not he or she holds information; or
- (b) refuse to grant access to information,

if to do so would, or would be likely to, cause serious prejudice to the defense or national security of the Republic of Vanuatu.

**48 Economic interests of the State**

- (1) A Right to Information Officer may refuse to indicate whether or not it holds information or refuse to grant access to information if to do so would likely cause serious prejudice to:
  - (a) the ability of the Government to manage the economy of the Republic of Vanuatu; or
  - (b) the legitimate commercial or financial interests of the Government agency, relevant private entity or private entity.
- (2) Subsections (1) does not apply if the application relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

**49 Policy making and operations of Agencies**

- (1) A Government agency or relevant private entity may refuse to indicate whether or not it holds information, or refuse to grant access to information, if to do so would likely:
- (a) cause serious prejudice to the effective formulation or development of Government policy; or
  - (b) adversely affect the implementation of a policy, by the premature disclosure of that policy.
- (2) Subsection (1) does not apply to facts, analyses of facts, technical data or statistical information.

**50 Information relating to protected sites and the environment**

A Right to Information Officer must not grant access to information if its disclosure would reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of:

- (a) any historical, archaeological or anthropological resources; or
- (b) anything declared to be a national monument, designated as protected national heritage or otherwise protected under any relevant laws of Vanuatu; or
- (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable; or
- (d) any other rare or endangered living resource.

**51 Time limit for exemptions**

- (1) Information that is exempted from disclosure under this Part ceases to be exempt if it is more than 10 years old commencing from the date on which it was made, or such other period as may be determined by the Information Commissioner after consultation with the Minister.
- (2) Subsection (1) does not apply to the personal information of a natural third party.

- (3) The Information Commissioner may, in consultation with the Minister, review any exempted information under this Part within 2 years of it being exempted.
- (4) Subject to subsection (3), the Information Commissioner may remove the exception status of information if it is no longer applicable.
- (5) A review made under subsection (3) must be made according to this Act.

## **PART 6 INFORMATION COMMISSIONER**

### **52 Appointment of Information Commissioner**

- (1) The Judicial Service Commission is to appoint a person to be the Information Commissioner.
- (2) The Information Commissioner is to hold office for a period of 5 years and is eligible for reappointment for 1 term only.
- (3) A person is not to be appointed as an Information Commissioner unless his or her appointment has undergone a fair and transparent selection process and is based on merit.
- (4) A person must not be appointed as the Information Commissioner if:
  - (a) he or she exercises a position of responsibility in a political party;  
or
  - (b) he or she is a member of Parliament, Municipal Council or a Provincial Government Council; or
  - (c) he or she has been convicted of a crime of violence or a crime of dishonesty or theft, for which he or she has not been pardoned; or
  - (d) he or she is declared bankrupt by a Court.
- (5) The Information Commissioner must be a person who:
  - (a) has a knowledge, understanding and appreciation of the Ni-Vanuatu culture, traditions and values; and
  - (b) is of high integrity and competence; and
  - (c) has an appropriate academic qualification and suitable experience in the public or private sector; and
  - (d) is politically independent; and
  - (e) is capable of discharging his or her functions without fear or favour; and

- (f) is of high standing in the community.
- (6) During his or her term in office, the Information Commissioner must not occupy or engage in any other activity, profession or trade outside his or her office for financial gain.
- (7) The Information Commissioner is deemed to be a leader under the Leadership Code Act [CAP 240].

**53 Resignation of Information Commissioner**

The Information Commissioner may resign at any time, by giving 3 months notice in writing to the Chairperson of the Judicial Service Commission.

**54 Removal of Information Commissioner**

- (1) The Judicial Service Commission may remove a person as the Information Commissioner if it is satisfied that the person:
  - (a) is incapacitated by physical or mental illness; or
  - (b) is declared bankrupt by a Court; or
  - (c) has been convicted and sentenced by a Court for an offence not being a road traffic offence; or
  - (d) has performed unsatisfactorily or ineffectively for a significant period of time; or
  - (e) is the holder of a public office; or
  - (f) exercises a position of responsibility in a political party; or
  - (g) engages during his or her term in office in any paid employment outside the functions of his or her office; or
  - (h) has acquired such financial or other interest as is likely to affect his or her functions as an Information Commissioner under this Act.

**55 Appointment of Acting Information Commissioner**

- (1) The Judicial Service Commission may appoint a person to be the Acting Information Commissioner for a period not exceeding 6 months if:
- (a) the person occupying the position of the Information Commissioner has been removed by the Judicial Service Commission or resigned from office; or
  - (b) the term of office of the person occupying the position of the Information Commissioner has expired.
- (2) The Judicial Service Commission may, on the expiry of the period referred to in subsection (1), extend the Acting appointment if the position remains vacant.

**56 Functions and powers of the Information Commissioner**

- (1) In addition to any other functions and powers provided for in this Act, the Information Commissioner has the following functions and powers:
- (a) to hear, investigate and make a decision on an appeal filed under this Act; or
  - (b) to monitor and report on the compliance by Government agencies, relevant private entities and private entities with their obligations under this Act; or
  - (c) to review the exempt status of information and make appropriate recommendations; or
  - (d) to make recommendations for reform both of a general nature related to the administration of the Act and directed at specific bodies; or
  - (e) to refer to the appropriate authorities cases, where it appears that a criminal offence has been committed; or
  - (f) to collaborate with or undertake training activities for officials on the right to information and the effective implementation of this Act; or

- (g) to conduct educational programs to advance the understanding of the public, in particular of disadvantaged communities; or
  - (h) to publicise the requirements of this Act and the rights of individual persons under it.
- (2) In carrying out his or her functions or exercising his or her powers, the Information Commissioner may consult with representatives of the legal profession and any other person.

**57 Delegation by Information Commissioner**

- (1) The Information Commissioner may, in writing, delegate to a staff of the Office, any of the Information Commissioner's powers or functions under this Act, other than the power of delegation.
- (2) A delegation may be in relation to a particular matter or a class of matters.
- (3) The Information Commissioner may at any time revoke or vary a delegation.
- (4) The Information Commissioner may exercise a function or power despite delegating the function or power under this section.

**58 Independence of Information Commissioner**

- (1) The Information Commissioner is not subject to the direction or control of any person or body in the exercise of his or her functions or powers under this Act or any other Act.
- (2) The Information Commissioner is accountable to Parliament for the execution of his or her mandate, operations and performance.

**59 Staff of the Office**

- (1) The Information Commissioner may appoint the staff of the Office as he or she considers necessary for the proper and efficient performance of the functions of the Office.
- (2) The Judicial Service Commission is to determine the terms and conditions of the employment of the staff of the Office.

- (3) The appointment of a staff of the Office must follow a fair and transparent selection process and must be based on merit.
- (4) The Information Commissioner may, with the approval of the Judicial Service Commission, prepare the staff manual of the Office.
- (5) The Information Commissioner may, according to the disciplinary procedures set out in the staff manual, suspend or dismiss a staff of the Office.
- (6) The Information Commissioner is to inform the Judicial Service Commission on matters involving the staff of the Office including but not limited to:
  - (a) the recruitment or promotion of a staff; or
  - (b) the disciplinary action taken against a staff.

**60 Funds of the Office of the Information Commissioner**

The funds of the Office of the Information Commissioner consists of:

- (a) monies appropriated to it by Parliament; and
- (b) funds provided by non-Government Organisations; and
- (c) any other funds received from any other source.

**61 Annual report**

- (1) The Information Commissioner must, within 6 months after each financial year, provide an annual report to the Parliament on the following:
  - (a) the general operation of this Act, and compliance by Government agencies, relevant private entities and private entities to this Act; and
  - (b) the activities and audited accounts of the Office for the previous financial year.
- (2) The annual report must also include all of the following:

- (a) the number of applications for information made to each Government agency, relevant private entity or private entity; and
- (b) the number of applications for access to information that were granted, granted subject to deletions, deferred or refused; and
- (c) the provisions of the Act under which these decisions were made and the number of times each provision was invoked; and
- (d) the number of transfers made; and
- (e) the number of applications received for the amendment or annotation of personal records; and
- (f) the number of applications for review of decisions under this Act and the outcome of those applications; and
- (g) the number of complaints made to the Information Commissioner with respect to the operation of this Act and the nature of those complaints; and
- (h) the number of notices served by the Information Commissioner in respect of compliance with the Act and the number of decisions made by Government agencies, relevant private entities or private entities, which were adverse to an application made under this Act; and
- (i) the particulars of any disciplinary action taken against any officer in respect of the administration of this Act; and
- (j) the amount of fees, fines and penalties collected under this Act; and
- (k) particulars of any reading room or other facility provided by a Government agency, relevant private entity or private entity, for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility; and
- (l) any other facts which indicate an effort by the Government agency, relevant private entity or private entity to administer and implement this Act.

- (3) Despite subsection (1), the Information Commissioner may submit interim reports to Parliament and make recommendations to any entity or officials as he or she deems appropriate.
- (4) Any report tabled in Parliament under subsection (1) or (3) must be made publically available after its tabling in Parliament.

**62 Monitoring and reporting relationships**

- (1) A Right to Information Officer of a Government agency or a relevant private entity must submit a monthly report to the Right to Information Unit established under section 69 on the activities of his or her respective organization.
- (2) A monthly report submitted under subsection (1) must include the following information:
  - (a) the number of applications for information received, granted in full or in part, deferred and refused; and
  - (b) how often and which provisions of the Act were relied upon to refuse, in full or in part, applications for information; and
  - (c) the number of transfers made; and
  - (d) the number and nature of complaints; and
  - (e) the amount of fees charged; and
  - (f) particulars of any disciplinary action taken against any officer in respect to the administration of this Act; and
  - (g) compliance with statutory duties related to records management; and
  - (h) its activities in relation to the training of its officers; and
  - (i) its activities related to the duty to publish information under this Act; and
  - (j) any recommendations for reform.

- (3) The Information Commissioner may at any time direct a Right to Information Officer of a private entity to provide a report on any of the matters listed in subsection (2).
- (4) The Right to Information Unit is to submit to the Information Commissioner quarterly and other interim reports as may be required by the Information Commissioner, containing the information provided under paragraphs (2)(a) to (j), and such other additional information as the Information Commissioner deems necessary.

**63 Protection from liability**

- (1) A civil or criminal liability action is not to be taken against the Information Commissioner or any staff of the Office of the Information Commissioner in respect of anything done or omitted to be done in good faith in the execution or purported execution of his or her functions and powers under this Act.
- (2) In addition to subsection (1), any information supplied pursuant to an investigation under this Act is privileged unless that information is shown to have been supplied with malice.

**PART 7 ENFORCEMENT BY THE INFORMATION COMMISSIONER**

**64 Appeal to Information Commissioner**

- (1) A person who is not satisfied with a decision of a Right to Information Officer may within 20 days of being notified, appeal against that decision to the Information Commissioner.
- (2) The Information Commissioner must within 5 days of receiving an appeal, acknowledge the receipt of the appeal.
- (3) An appeal may relate to any of the following matters:
  - (a) refusal of access to information; or
  - (b) refusal to indicate whether or not the Government agency, relevant private entity or private entity holds information requested; or
  - (c) refusal to communicate information regarding categories of information in its statement of organization; or
  - (d) refusal to grant access to information within 48 hours for the protection of life or liberty; or
  - (e) failure to respond to an application for information within the time limits specified under the Act; or
  - (f) extending the time period for responding to an application; or
  - (g) failing to provide a notice in writing of its response to an application for information; or
  - (h) charging a fee, or an excessive fee; or
  - (i) failing to transfer an application or transferring an application to an incorrect Government agency, relevant private entity or private entity; or
  - (j) failing to communicate information regarding third party consent;  
or

- (k) providing insufficient, incomplete, inaccurate, misleading or false information; or
  - (l) failing to communicate information in the form requested; or
  - (m) failing to appoint an Right to Information Officer or the refusal of an Right to Information Officer to accept an applicant's application for information or appeal under this Act; or
  - (n) disputing the partial grant of access; or
  - (o) in respect of any other matter under this Act.
- (4) If an appeal is not made within the period specified in subsection (1), the Information Commissioner may extend the period if he or she is satisfied that the applicant's delay in doing so was reasonable.

**65 Powers in relation to appeals**

- (1) The Information Commissioner may investigate a matter on appeal and may carry out any or all of the following:
- (a) summon any person or witness and compel them to give oral or written evidence on oath and to produce any record or information;
  - (b) summon expert witnesses if appropriate;
  - (c) allow interested parties on application to join proceedings;
  - (d) provide assistance to applicants if appropriate;
  - (e) allow relevant persons to participate in hearings through any medium they may choose or any medium that is appropriate to facilitate the investigation;
  - (f) require the discovery and inspection of documents;
  - (g) receive evidence by sworn statements;
  - (h) requisition any public record or copies thereof from any Court or office;

- (i) receive any such evidence as he or she deems necessary under oath or on affidavit;
  - (j) enter private premises after notifying the owner of his or her intention to do so;
  - (k) require the production of records and information relevant to the requirements of this Act and to make and take copies of such records and information;
  - (l) interview any person for the purposes of inspection;
  - (m) exercise any other powers conferred to him or her under this Act or any other Act.
- (2) The Information Commissioner may, during an investigation, examine any record or information to which this Act applies, and no such record or information may be withdrawn from him or her on any grounds.
- (3) The Information Commissioner may administer an oath or affirmation to a person appearing as a witness before him or her, and may examine the witness on oath or affirmation.
- (4) No statement made by, or answer given to, a person in the course of any enquiry by, or any proceedings before, the Information Commissioner is admissible in evidence against that person or any other person in any court, enquiry or other proceedings, except on the trial of that person for perjury.
- (5) No evidence in respect of proceedings before the Information Commissioner is to be given against any person, including the person under enquiry.

**66 Powers to investigate**

- (1) Despite the provisions of this Act relating to appeals, the Information Commissioner may on his or her own initiative, investigate any matter in relation to this Act that he or she deems necessary.
- (2) Section 65 applies to an investigation carried out under this section.

**67 Negotiation, conciliation or mediation**

- (1) The Information Commissioner may, at any time when considering an appeal, decide to resolve a matter through negotiation, conciliation or mediation and may suspend the proceedings at any time to allow the parties to negotiate on the granting of access to information.
- (2) If the parties decide to resolve a matter through negotiation, conciliation or mediation, the right to representation, public hearing and general rules of process under this Part may be waived with the prior consent of the parties.
- (3) A recommendation or agreement agreed to by the parties under this section is binding on the parties and the Information Commissioner has the right to determine an appropriate order in the event of unjustifiable non-compliance by any party within the terms of the recommendation or agreement.
- (4) For the purpose of this section, **agreement** means an agreement endorsed through a process of negotiation, conciliation or mediation.

**68 Decision on appeal and publication of decisions**

- (1) The Information Commissioner must within 30 days after receiving an appeal, make a decision on the appeal after giving the parties an opportunity to present their arguments in writing.
- (2) In any appeal to the Information Commissioner, the burden of proof is on the Right to Information Officer of the Government agency, relevant private entity, or private entity to show that he or she acted according to this Act.
- (3) In deciding an appeal, the Information Commissioner may:
  - (a) reject the appeal and confirm the decision made by the Right to Information Officer of the Government agency or relevant private entity or private entity; or
  - (b) vary the type of information originally granted or requested; or
  - (c) vary the method in which the information is to be accessed or granted; or

- (d) set aside the decision of a Right to Information Officer and make a new decision; or
- (e) require the Government agency, relevant private entity or private entity to take such steps as may be necessary to bring it into compliance with its obligations under the Act, including:
  - (i) appointing a Right to Information Officer; or
  - (ii) publishing certain information or categories of information; or
  - (iii) making certain changes to its practices in relation to the keeping, management and destruction of records, or the transfer of records to the National Archives; or
  - (iv) complying with the Deposit of Books Act [CAP 88]; or
  - (v) enhancing the provision of training on the right to information for its officers; or
  - (vi) providing him or her with a report.
- (4) The Information Commissioner must as soon as practicable, notify the parties of his or her decision, including any rights of appeal.
- (5) A decision made by the Information Commissioner under this section must be published.
- (6) A person who is not satisfied with the decision of the Information Commissioner under this section may within 21 days of being notified of the decision, apply to the Supreme Court to review that decision.
- (7) In any appeal to the Supreme Court, the burden of proof is on the Government agency, relevant private entity or private entity to show that it acted in accordance with its obligations under this Act and such failure may be then considered under the rules relating to contempt of Court.

## **PART 8 MEASURES TO PROMOTE ACCESS TO INFORMATION**

### **Division 1 – Right to Information Unit, guidelines and trainings**

#### **69 Establishment of a Right to Information Unit**

- (1) The Right to Information Unit is established.
- (2) The Unit has the following functions:
  - (a) to provide secretariat support to the Right to Information Steering Committee;
  - (b) to serve as a central resource for Right to Information Officers and officers;
  - (c) to develop and monitor the National Implementation Plan;
  - (d) to train Right to Information Officers and officers;
  - (e) to engage with civil society to promote the use and understanding of the Act by the public;
  - (f) to develop educational materials for officers and the general public;
  - (g) to develop and execute public education activities suited to Vanuatu socio-economic context;
  - (h) to develop a National Code of Practice on information and records management;
  - (i) to establish and refine reporting and monitoring mechanisms between itself, Agencies or Entities and the office of the Information Commissioner.

#### **70 Information Commissioner to issue guidelines**

- (1) The Information Commissioner must, as soon as practicable, and no later than 12 months after the commencement of this Act:

- (a) compile in each official language, a guideline containing practical information to facilitate the effective exercise of rights under this Act; and
  - (b) disseminate the guideline widely in an accessible form.
- (2) The guideline is to include the following information:
- (a) the objects of this Act; and
  - (b) the name, title, postal address, contact details and, if available, electronic mail address of the Right to Information Officers appointed by Government agencies, relevant private entities and private entities; and
  - (c) details on how to make an application for access to information to Government agency, relevant private entity or private entity; and
  - (d) details on the assistance available from the Information Commissioner, the Unit or Right to Information Officers regarding such applications; and
  - (e) all available remedies in law regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Information Commissioner; and
  - (f) the provisions providing for the proactive disclosure of information; and
  - (g) any notices regarding fees to be paid in relation to applications for access to information; and
  - (h) any regulations or circulars made or issued in relation to obtaining access to information in accordance with this Act;
  - (i) such other information as may be required by this Act or any other Act.
- (3) The Information Commissioner must update and publish the guideline at intervals of not more than 2 years.

- (4) Despite subsection (3), the Information Commissioner must ensure that the particulars of the Right to Information Officers provided under paragraph (2)(b) are:
- (a) published at least once each year in every telephone directory issued for general use by the public; and
  - (b) published at least once each year or as many times as may be deemed necessary in a daily or weekly newspaper published in Vanuatu; and
  - (c) posted at least once each year on all available notice boards of Agencies; and
  - (d) made available to the public through radio broadcasts and on Government websites.
- (5) For the purpose of paragraph (4)(d), **government's website** means the official portal used by the Government to disseminate and publish information about its activities.

#### **71 Information Commissioner's guideline on proactive publication**

The Information Commissioner may, within 12 months of his or her appointment publish a guideline on minimum standards and best practices regarding the duty of a Government agency or relevant private entity to proactively publish information according to sections 6 and 7; and

#### **72 Code of practice on information and records management**

- (1) A Government agency, relevant private entity or private entity must maintain its records in a manner which facilitates the right to information under this Act, and in accordance with the Code of Practice.
- (2) The Unit must, after consulting all relevant and interested parties, and on the recommendation of the Archivist appointed under section 5 of the Archives Act [CAP 216], issue within 12 months of the commencement of this Act, a Code of Practice relating to:
- (a) the creation, keeping, management and disposal of records; and
  - (b) the transfer of records to the National Archives.

- (3) Subject to the availability of resources, a Government agency or a relevant private entity must, within a reasonable time, cause as many records as possible to be digitized and made available through a country-wide network.

### **73 Training of officials**

A Government agency, relevant private entity or private entity must ensure the allocation of resources and make arrangements with the Unit for the training of its officials on the right to information and the effective implementation of this Act.

## **Division 2 – Right to Information Steering Committee**

### **74 Right to Information Steering Committee**

- (1) The Right to Information Steering Committee is established.
- (2) The Committee consists of the following persons who are to be appointed by the Prime Minister:
- (a) a representative of the Office of the Prime Minister, nominated by the Director General of the Office of the Prime Minister;
  - (b) a representative of the Ministry of Justice and Community Services, nominated by the Director General of Ministry of Justice and Community Services;
  - (c) a representative of the Office of the Government Chief Information Officer nominated, by the Chief Information Officer;
  - (d) a representative of the Ministry of Finance and Economic Management, nominated by the Director General of the Ministry of Finance and Economic Management;
  - (e) a representative of the Office of the Public Service Commission, nominated by the Secretary of the Public Service Commission;
  - (f) a representative of the Office of the Ombudsman, nominated by the Ombudsman;

- (g) a representative of the National Council of the Chambers of Commerce and Industry, nominated by the President of the National Council of Chambers of Commerce and Industry;
  - (h) 2 representatives of civil society nominated by the President of the Vanuatu Association of Non Government Organisations;
  - (i) a representative of the Media Asosiesen blong Vanuatu, nominated by the President of the Media Asosiesen blong Vanuatu.
- (3) To avoid doubt:
- (a) the representatives of the Offices listed in paragraphs (2)(a) to (f), must be the staff members or employees of these respective Offices;
  - (b) the representatives of the Organisations listed in paragraphs (2)(g) to (i) must be members of these respective Organisations.
- (4) Subject to subsection (6), a member is to be appointed for a period of 3 years and may be reappointed.
- (5) In nominating or appointing a member under subsection (2), regard must be made to a balanced gender representation.
- (6) If the Minister is satisfied that a member appointed under subsection (2):
- (a) is or becomes a member of Parliament, a Provincial Government Council or a Municipal Council; or
  - (b) has been absent from 2 consecutive meetings of the Committee without the consent of the Chairperson; or
  - (c) is incapacitated by physical or mental illness; or
  - (d) has been convicted of an offence and sentenced to a term of imprisonment of 6 months or more, whether or not it is a suspended sentence; or
  - (e) ceases to hold a position as an employee or member of the nominating agency or organisation; or

(f) is otherwise unable or unfit to discharge the function of a member, he or she may remove the person as a member of the Committee.

(7) A member of the Committee may resign at any time by giving 2 weeks notice in writing to the Prime Minister.

#### **75 Chairperson and Deputy Chairperson of the Committee**

- (1) The representative of the Office of the Prime Minister is to be the Chairperson of the Committee.
- (2) The members are to elect from amongst themselves a Deputy Chairperson who is to be appointed for a period of 1 year.
- (3) Despite subsection (2), the members may at any time remove a Deputy Chairperson.
- (4) The Chairperson is to direct the Committee in discharging its functions set out in section 76 by:
  - (a) assisting the Committee in preparing and presenting its advice, opinions, proposals and recommendations to the Government or a competent body;
  - (b) providing information and advice on matters within the Committee's responsibilities to the Government;
  - (c) acting as the Committee's spokesperson when the circumstances require.

#### **76 Functions of the Committee**

The Committee has the following functions:

- (a) to provide direction for, and oversight of, the implementation of the Right to Information Policy;
- (b) to assist with the monitoring and evaluation of the implementation of the Right to Information Policy, the Right to Information Unit and this Act;

- (c) to advise the Government on the development of necessary Regulations and any amendments to any legislation in order to ensure consistency with the intentions of the Right to Information Policy and this Act;
- (d) to receive reports on the progress of Right to Information implementation and the achievement of milestones under the Right to Information Implementation Plan, and review and make recommendations on the findings of these reports to the Minister, including but not limited to, risk management and further policy or planning needs in relation to right to information;
- (e) to provide a forum for the identification and consideration of issues arising in the implementation of this Act, including other significant issues in relation to the right to information brought forward by committee members or the organisations they represent;
- (f) to advise and guide the Right to Information Unit on the development of a broad training strategy for Right to Information in the public service;
- (g) to advise and guide the Right to Information Unit on proactive publication, particularly in relation to innovative and effective means of disseminating information;
- (h) to monitor and make recommendations to the Right to Information Unit for the development of sound record management practices to facilitate access to information;
- (i) to advise the Right to Information Unit on the development of communications strategies to sensitise civil servants on the right to information and the provisions in the Right to Information Act, and increase public awareness and understanding of the right to information and their rights under this Act.

## **77 Working groups**

The Committee may, in consultation with the Right to Information Unit, establish thematic working groups to undertake specific tasks.

**78 Meetings of the Committee**

- (1) The Committee is to meet at least 4 times a year, at a place and time determined by the Chairperson, and may hold such other meetings as are necessary for the performance of its functions under this Act.
- (2) The Committee may also conduct its meetings through electronic correspondence.
- (3) A meeting of the Committee is to be presided by the Chairperson, or in the Chairperson's absence, by the Deputy Chairperson.
- (4) At any meeting of the Committee, a quorum consists of:
  - (a) the Chairperson or the Deputy Chairperson if the Chairperson is for any reason unable to attend or preside at the meeting; and
  - (b) 4 members,present at that meeting.
- (5) Any matters arising at a meeting of the Committee is to be decided by a majority of the members present and voting, and in the case of an equality of votes, the Chairperson is to have a casting vote.
- (6) After consultation with members, the Chairperson may invite any person to attend and assist the Committee in any of its meetings.
- (7) To avoid doubt, the person invited under subsection (6), has no right to vote in a meeting of the Committee.
- (8) Subject to this Act, the Committee may determine and regulate its own procedures.

**79 Secretariat of the Committee**

- (1) The Right to Information Unit is the Secretariat of the Committee.
- (2) The Right to Information Unit is to:
  - (a) prepare and circulate agenda and issue papers for meetings of the Committee; and

- (b) take minutes of meetings of the Committee and circulate to the members of the Committee within 3 weeks after each meeting; and
- (c) coordinate and facilitate the implementation of the decisions of the Committee.

**80 Reporting requirements**

- (1) The Committee is to report to the Council of Ministers at least 2 times a year on the progress of the implementation of this Act.
- (2) Despite subsection (1), the Committee may provide further reports at the request of the Council of Ministers or if the Committee considers necessary.
- (3) Reports prepared by the Committee under this section are to include recommendations for changes to legislation, policy or regulations, and any other recommendations as the Committee determines, to further the objectives of this Act.

**81 Transitional provision of Chairperson**

A person who was appointed as Chairperson or a member of the Right to Information Steering Committee immediately before the commencement of this Act, is to continue as a Chairperson or member for a period of 6 months from the date on which this Act is published in the Gazette.

## PART 9 MISCELLANEOUS PROVISIONS

### 82 Information released in public domain

- (1) Subject to subsection (2), information to which an applicant is granted access under this Act must be regarded as information that is in the public domain.
- (2) If an applicant is granted access to their personal information or the personal information of their next of kin or someone for whom they are a guardian or legal personal representative, that information is not to be treated as having entered the public domain.

### 83 Whistleblowers

- (1) A person is not liable to any civil or criminal action or any administrative or employment related sanction or detriment for:
  - (a) releasing information on any wrongdoing; or
  - (b) releasing information which would disclose a serious threat to health, safety or the environment,

as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

- (2) For the purposes of subsection (1), **wrongdoing** includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious mal-administration regarding a Government agency, relevant private entity or private entity.

### 84 Good faith disclosures

A Right to Information Officer or any person assisting the Right to Information Officer is not liable to any civil or criminal action, or any administrative or employment related sanction or detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty under this Act.

**85 Protection against liability for defamation, breach of confidence or copyright**

- (1) This Act is not to be construed as authorizing the disclosure of any information:
- (a) containing any defamatory matter; or
  - (b) the disclosure of which would be in breach of confidence or of copyright.
- (2) If access to information 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 copyright is to be taken against:
- (a) a Government agency, relevant private entity or private entity, any Minister or any officer involved, by reason of the grant of access or of any republication of that information; or
  - (b) the author of the information or any other person who supplied the information to the Government agency, relevant private entity or private entity, any Minister or any officer 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 information in accordance with this Act is not to 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; or
  - (b) for the purposes of the Copyright and Related Rights Act No. 42 of 2000, of the doing by that person of any act comprised within the copyright in any work contained in the information.

**86 Offences**

- (1) A person who:
- (a) refuses to receive an application for information; or

- (b) in bad faith, denies an application for information; or
- (c) knowingly gives incomplete, misleading or wrong information; or
- (d) destroys information, without lawful authority; or
- (e) obstructs access in any way to any information; or
- (f) obstructs the performance of a Government agency, relevant private entity or private entity from carrying out a duty under this Act; or
- (g) interferes with or obstructs the work of the Information Commissioner, a Right to Information Officer or any other officer assisting the Information Commissioner or the Right to Information Officer; or
- (h) directs, proposes, counsels or causes any person in any manner to do any of the above,

commits an offence punishable on conviction by a fine not exceeding VT500,000 or by a term of imprisonment not exceeding 1 year, or both.

(2) If a Right to Information Officer, without reasonable cause:

- (a) refuses to receive an application; or
- (b) has not responded to an application within the time specified in this Act; or
- (c) has vexatiously denied an application; or
- (d) has given incorrect, incomplete or misleading information; or
- (e) refuses to render any assistance under this Act; or
- (f) obstructed in any manner the release of information,

he or she commits an offence punishable on conviction by a fine of VT500,000.

- (3) A person who fails to make a deposit of books under subparagraph 68(3)(e)(iv), commits an offence punishable on conviction by a fine of VT10,000.
- (4) An officer on whom a penalty under subsections (1), (2) or (3), is imposed is liable to appropriate disciplinary action and the Information Commissioner or the Court may refer the case to the appropriate authority to deal with the matter accordingly.

### **87 Regulations**

- (1) The Minister may make Regulations prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) that are necessary or convenient to be prescribed for the carrying out or giving effect to the provisions of this Act.
- (2) Without limiting subsection (1) the Minister may, after consulting the Information Commissioner, make Regulations relating to:
  - (a) the proactive publication of information;
  - (b) the training of officials;
  - (c) reports required to be made under this Act;
  - (d) additional fees to be charged;
  - (e) the manner in which reproduction fees are to be calculated.

### **88 Commencement**

This Act comes into force on the date on which it is published in the Gazette.