

DRAFT MODEL LAW

ON

ACCESS TO INFORMATION

FOR AFRICA

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

IN PARTNERSHIP WITH

THE CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA



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Preamble

The African Commission on Human and Peoples' Rights

Reaffirming the right of access to information, guaranteed by article 9 of the **African Charter on Human and Peoples' Rights** (African Charter) and further elaborated by the **Declaration of Principles on Freedom of Expression in Africa**, as a fundamental and inalienable human right and an indispensable component of democracy and development, including socio-economic development;

Recognising the right of access to information as an international human right expressed in various international human rights instruments including in article 19 of both the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights**;

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

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

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

Encouraged by the express recognition by African Union member states of the significance of the right of access to information as expressed in article 9 of the **African Union Convention on Preventing and Combating Corruption** requiring state parties to adopt legislative and other means to *'give effect to the right of access to any information that is required to assist in the fight against corruption'*, the **African Charter on Democracy, Elections and Governance**, which lists as one of its objectives *'the establishment of the necessary conditions to foster citizen participation, transparency, access to information...'*; and the **African Charter on Values and Principles of Public Service and Administration**, which lists as two of its principles *'Institutionalising a culture of accountability and integrity and transparency in public service and administration'* and the *'Effective, efficient and responsible use of resources'* and provides in article 6 for the right of access to information;

Encouraged further that several other African Union instruments such as the **African Youth Charter**, the **African Charter on Statistics** and the **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa** explicitly recognise the importance of access to information;

Welcoming the fact that some Regional Economic Communities have adopted, or are in the process of adopting, legal instruments obliging African Union member states to promote and protect the right of access to information;

Concerned that, despite the potential of access to information legislation to foster good governance through enhancing transparency, accountability and the participation of persons

in public affairs, including exposing corruption and issues associated with underdevelopment on the continent, there is a dearth of access to information legislation in Africa;

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

Hereby endorses the following model law on access to information for adoption by African states.

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ACCESS TO INFORMATION
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PART I - PRELIMINARY

1. Definitions

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

commercial or confidential information of a third party means information in section 42;

economic interests of the state means economic interests of the state as defined in section 46 of this Act;

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

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

information includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the **information holder** to whom a request has been made under this Act;

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

information officer means a person designated as the **information officer** of a **public body, relevant private body or private body** in accordance with section 10 or 25, as applicable;

inspect means to view, manually take notes or make an audio recording of any **information**;

internal review request means a request made by a requester or a third party for an internal review of a decision of an **information officer** in accordance with section 55;

international organisation means an international organisation of states or established by the governments of states;

international relations means any international relations as defined in section 45 of this Act;

national security and defence means security or defence of the state as defined in section 44 of this Act;

oversight mechanism means the body contemplated in section 59 of this Act;

person means a natural person or a juristic person;

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

persons with disabilities includes those who have physical, mental, intellectual, or sensory impairments;

private body means:

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

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

public body means any body:

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

publish means to make available in a form and manner which is easily accessible to the public and includes providing copies or making information available through broadcast and electronic means of communication;

reasonable reproduction cost means the minimum market rate cost of reproduction;

relevant private body means any body that would otherwise be a **private body** under this Act that is:

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

reproduction fee means the fee payable by a **requester** to an **information holder** for access to **information** calculated by the relevant body in accordance with sections 23 or 37, as applicable;

request means an application made under section 13 or 28;

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

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

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

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

translation fee means the translation fee payable by a requester to an information holder in accordance with section 23(4) or 37(4), as applicable.

2 Principles of Act

The right to **information** is hereby guaranteed in accordance with the following principles –

- (a) Every person has the right to access **information** of **public bodies** and **relevant private bodies** expeditiously and inexpensively.
- (b) Every person has the right to access **information** of **private bodies** that may assist in the exercise or protection of any right expeditiously and inexpensively.

- (c) This Act and any other law, policy or practise creating a right of access to **information** must be interpreted and applied on the basis of a presumption of disclosure. Non-disclosure is permitted only in exceptionally justifiable circumstances as set out in this Act.
- (d) **Public bodies, relevant private bodies and private bodies** must accede to the authority of the oversight mechanism in all matters relating to access to **information**.
- (e) Any refusal to disclose **information** is subject to appeal.
- (f) **Public bodies and relevant private bodies** must proactively **publish information**.
- (g) No one is subject to any sanction for releasing **information** under this Act in good faith.

3 Objectives of Act

- (1) The objectives of this Act are to -
 - (a) give effect to the right of access to information as guaranteed by the African Charter on Human and Peoples' Rights, to -
 - (i) any **information** held by a **public body** or **relevant private body**; and
 - (ii) any **information** held by a **private body** that may assist in the exercise or protection of any right;
 - (b) establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to **information** in a manner which enables persons to obtain access to accurate **information of public bodies, relevant private bodies and private bodies** as swiftly, inexpensively and effortlessly as is reasonably possible;
 - (c) ensure that in keeping with the duty to promote access to **information, public bodies, relevant private bodies and private bodies** create, organise and maintain **information** in a form and manner that facilitates the right of access to **information**;
 - (d) promote transparency, accountability, effective governance and development by empowering and educating every person to understand his or her rights in terms of this Act.

4 Primacy of Act

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

5 Interpretation

When interpreting this Act, due consideration must be given to the principles and objectives of this Act, the Constitution and any international instruments. In so doing, any reasonable

interpretation that favours the presumption of a right to access **information** must be preferred to any adverse interpretation.

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

6 Duty to create, organise and maintain information

- (1) Each **public body** and **relevant private body** must create, organise and maintain its **information** in a manner which facilitates the right of access to **information**, as provided in this Act.
- (2) In furtherance of the obligation contemplated in subsection (1), every **public body** and **relevant private body** must:
 - (a) produce **information** in respect of all its activities, including but not limited to those expressly provided for under section 7 of this Act;
 - (b) arrange all **information** in its possession systematically and in a manner that facilitates prompt and easy identification; and
 - (c) keep all **information** in its possession in good condition and in a manner that preserves the safety and integrity of its contents.

7 Proactive disclosure

- (1) Each **public body** and **relevant private body** must **publish** the following information produced by or in relation to that body within 30 days of the information being generated or received by that body:
 - (a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
 - (b) the names, designations and other particulars of the information officer and deputy information officer of the **public body** or **relevant private body**, including their physical contact details and electronic addresses where persons may submit **requests** for **information** ;
 - (c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the **public body** or **relevant private body**;
 - (d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of its policies or similar documents;
 - (e) whether meetings of the **public body** or **relevant private body**, including its boards, councils, committees or similar other bodies, are open to members of the public and, if so, the process for direct or indirect engagement; but where a meeting is not open to the public, the body must proactively make public the contents of submissions received, the process for decision making and decisions reached;

- (f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;
 - (g) all contracts, licences, permits, authorisations and public-private partnerships granted by the **public body** or **relevant private body** ;
 - (h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the **public body** or **relevant private body**; and
 - (i) any other **information** directed by the oversight mechanism.
- (2) Each **public body** and **relevant private body** is required to annually **publish** the following information produced by or in relation to that body:
- (a) the particulars of its organisation, functions and duties;
 - (b) **information** containing interpretations or particulars of Acts or policies administered by the body;
 - (c) details of its processes and procedures for creating, organising and maintaining **information**;
 - (d) a list of all the categories of **information** held by it or under its control;
 - (e) a directory of its employees including their powers, duties and title, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;
 - (f) the yearly band of remuneration for each public employee and officer, including the system of compensation as provided in its laws, the procedures followed in its decision-making process, including channels of supervision and accountability;
 - (g) detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefit received by each employee and officer;
 - (h) a description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted as its part or for the purpose of advice to or managing the **public body** or **relevant private body**;
 - (i) the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports, and for any previous financial years from the date of the commencement of this Act;
 - (j) the annual report submitted to the oversight mechanism in terms of section 83 of this Act; and
 - (k) any other **information** directed by the oversight mechanism.

8 Submission of implementation plans, annual reports to and publication of information manuals

Every **public body** and **relevant private body** must annually within the timeframe stipulated by the oversight mechanism-

- (a) submit to the oversight mechanism -
 - (i) an **information** publication plan with respect to its proactive disclosure obligations in section 7 of this Act, in accordance with section 81(2);
 - (ii) annual reports on the implementation of this Act in accordance with section 85;
- (b) publish information manuals detailing the categories of information it proactively discloses in accordance with section 82(2)

9 Unpublished information not to prejudice public

Where a **public body** or **relevant private body** has failed to timeously **publish information** referred to in section 7, a member of the public who was not aware of that **information** may not be subjected to any prejudice if he or she could lawfully have avoided that prejudice had they been aware of the **information**.

10 Designation of information officer

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

11 Designation of deputy information officers

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

12 Right of access

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

13 Requests for access

- (1) A **person** who wishes to obtain access to **information** of a **public body** or **relevant private body** must make a **request** in writing or orally to the **information officer** of the body.
- (2) If a **person** makes a **request** orally the **information officer** must reduce that oral request to writing and provide a copy thereof to the **requester**.
- (3) On receipt of a request, an information officer must immediately provide a written acknowledgement of the request to the requester.
- (4) If an **information officer** is able to provide an immediate response to a person making a **request** and such response is to the satisfaction of the **requester**, the **information officer** must make and retain a record of the request and the response thereto.
- (5) A requester does not subject to subsection 6(b) have to provide a justification or reason for requesting any **information**.
- (6) A **request** must -
 - (a) provide such detail concerning the **information** requested as is reasonably necessary to enable the **information officer** to identify the **information**;
 - (b) notwithstanding subsection (5), if the **requester** believes that the **information** is necessary to safeguard the life or liberty of a **person**, include a statement to that effect, including the basis for that belief;
 - (c) identify the nature of the form and language in which the requester prefers access; and
 - (d) if the request is made on behalf of someone else, include an authorisation from the **person** on whose behalf the request is made.

14 Duty to assist requesters

- (1) Where a **person** -
 - (a) wishes to make a **request** to a **public body** or **relevant private body**; or
 - (b) has made a **request** to a **public body** or **relevant private body** that does not comply with the requirements of this Act -the **information officer** must take all necessary steps to assist the **person**, free of charge, to make the **request** in a manner that complies with this Act.
- (2) Where a **request** has been made by a person living with a disability, the **information officer** must take all necessary steps to assist the person to make the request in a manner that meets their needs.

15 Response to request

- (1) Subject to subsection (2), the **information officer** to whom a **request** is made must, as soon as reasonably possible, but in any event within 21 days after the **request** is submitted -
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and

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

Access granted

- (3) If the **request** is granted, the notice referred to in subsections (1) and (2) must state -
 - (a) the **reproduction fee** and/or **translation fee** (if any) payable;
 - (b) the form in which access to the **information** will be given; and
 - (c) that the **requester** may apply for a review of the **reproduction fee** and/or **translation fee** payable or the form in which access has been granted in accordance with section 55.
- (4) Where a **requester** has been given notice that his or her **request** has been granted, that **requester** must, subject to subsections (5) and (6) -
 - (a) if a **reproduction fee** and/or **translation fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** or **translation fee** is payable, immediately -
be given access to the **information**.
- (5) For the purposes of this Act, any **information** provided to a **requester** by a **public body** or **relevant private body** is presumed to be true and accurate in content and in form and the requester may rely on and use that information on that basis.
- (6) Despite subsection (4), where an **information officer** must respond to a **request** within 48 hours under subsection (2) and grants the **request**, the **requester** must be given access to the **information** immediately, irrespective of whether any **reproduction fee** and/or **translation fee** has been paid.
- (7) Despite subsections (1)(c) and (4), where **information requested** contains **third party information**, a **requester** may not be granted access to that **information** until such time as any right of the **third party** to appeal the release of the **information** has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (8) If the **request** is refused, the notice referred to in subsections (1) and (2) must -
 - (a) state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the **information officer**;
 - (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
 - (c) inform the **requester** that he or she may apply for a review of the decision in accordance with section 55.

48 hour request refused

- (9) If upon reviewing a **request** and the **information** that is the subject of the **request** the **information officer** does not consider that the **information requested** reasonably appears to be necessary to safeguard the life or liberty of a **person**, the **information officer** must within 48 hours after the request is submitted -
- (a) provide notice of the decision, including adequate reasons for the decision, to the **requester**;
 - (b) inform the **requester** that, subject to the **requester's** right to apply for a review of the decision, the **information officer** will make a decision regarding whether to grant access to the **requested information** within the time period specified in subsection (1); and
 - (c) inform the **requester** that he or she may appeal to the oversight mechanism in respect of the decision in accordance with section 87.

16 Extension of time

- (1) The **information officer** to whom a **request** is made may extend the period to respond to a **request** in section 15(1) on a single occasion for a period of not more than 14 days if -
- (a) the **request** is for a large amount of **information** or requires a search through a large amount of **information** and meeting the original time limit would unreasonably interfere with the activities of the **public body** or **relevant private body** concerned; or
 - (b) consultations are necessary to comply with the **request** that cannot be reasonably completed within 21 days.
- (2) Notwithstanding subsection (1), if any part of the **information requested** can be considered by the **information officer** within the time period specified under section 15(1), it must be reviewed and a response provided to the **requester** in accordance with that section.
- (3) If a period to respond to a **request** is extended in terms of subsection (1), the **information officer** must forthwith after the decision to extend has been taken by him or her, but in any event within 21 days after the **request** is received, notify the **requester** in writing of that extension.
- (4) The notice in terms of subsection (3) must state -
- (a) the period of the extension;
 - (b) adequate reasons for the extension, based on the provisions of this Act; and
 - (c) that the **requester** may apply for a review of the decision in accordance with section 55.

17 Transfer of request

- (1) Where a **request** is made to a **public body** or **relevant private body** requesting **information** -
- (a) which the public body or relevant private body knows or reasonably presumes is held by another public body or relevant private body; or

- (b) which the public body or relevant private body does not hold, and the subject matter of which is more closely connected with the functions of another public body or relevant private body,

the body to which such request is made must transfer the request, or such part of it as may be appropriate, to that other public body or relevant private body.

- (2) A **public body** or **relevant private body** that transfers a **request** in accordance with subsection (1) must -
 - (a) make the transfer as soon as practicable but in any event within five days from the date of receipt of the **request**; and
 - (b) immediately notify the **requester** of the transfer in writing.
- (3) A **public body** or **relevant private body** that receives a transferred **request** must immediately notify the **requester** of the receipt in writing.
- (4) Where a **request** is transferred to another **public body** or **relevant private body** in accordance with subsection (1), the **request** is deemed to have been -
 - (a) made to the **public body** or **relevant private body** to which it was transferred; and
 - (b) received by that **public body** or **relevant private body** on the day the body to which it was originally made received it.

18 Deemed refusal

If the **information officer** fails to give a decision on a **request** within the time specified in section 15(1) or, where that time period has been extended in accordance with section 16, within any extended period of time, the **information officer** is deemed to have refused the **request**.

19 Information that cannot be found or does not exist

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

the **information officer** must, as soon as possible but in any event within 21 days of the receipt of the **request**, notify the **requester** in writing that the **information** cannot be found or does not exist.

- (2) The notice referred to in subsection (1) must include an affidavit or duly confirmed statement signed by the **information officer** stating the substantive details of all steps taken to find the **information** or to determine whether the **information** exists, including, but not limited to -
 - (a) details of all locations searched for the **information** and the person or persons that conducted those searches;

- (b) details of any communications with any person that the **information officer** contacted in searching for the **information** or attempting to establish the existence of the **information**; and
 - (c) any evidence relating to the existence of the **information** including -
 - (i) any evidence that the **information** was destroyed; and
 - (ii) the location in which the **information** was last known to be held.
- (3) If **information** is found after notice is given to a **requester** under subsection (1), the **information officer** must immediately notify the **requester** in writing and thereafter as soon as possible but in any event within 14 days -
- (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee**, give the requester access to the **information**.
- (4) If access to the **information** is granted, the notice referred to in subsection (3) must comply with section 15(3) and access must be given in accordance with sections 15(4) and 15(6).
- (5) If access to the **information** is refused, the notice referred to in subsection (3) must comply with section 15(7).

20 Deferral of access

- (1) An **information officer** who receives a **request** may defer the provision of access to the **information** if -
- (a) the **information** has been prepared for presentation to Parliament, but only until the expiration of five **sitting days of Parliament**; or
 - (b) the **information** constitutes a report or part thereof that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the state, but only until the report has been presented or made available to that body or person or upon the expiration of 35 days from the date of the request, whichever is the earlier.
- (2) If an **information officer** determines to defer access to **information** under subsection (1), the **information officer** must notify the **requester** in writing -
- (a) of the decision as soon as possible but not later than 21 days after receiving the **request**;
 - (b) of the reason for the decision, including the provisions of this Act relied on;
 - (c) of the likely period for which access is to be deferred; and
 - (d) that the **requester** may, within 14 days of receiving notice, make written or oral representations to the **information officer** regarding why the **information** is required before such presentation.
- (3) If a **person** makes oral representations in accordance with subsection (2)(d), the **information officer** must reduce those oral representations to writing and provide a copy thereof to the **requester**.
- (4) If a **requester** makes a representation in terms of subsection (2)(d), the **information officer**, after due consideration of those representations, must, as soon as reasonably

possible but in any event within five days, grant the **request** for access if there are reasonable grounds for believing that the **requester** will suffer substantial prejudice if access to the **information** is deferred for the likely period referred to in subsection (2)(c).

21 Form of access

- (1) Access to **information** must be given to a **requester** in one or more of the following forms -
 - (a) a reasonable opportunity to inspect the **information**;
 - (b) a copy of the **information**;
 - (c) in the case of **information** that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear, view, record or copy those sounds or visual images;
 - (d) in the case of **information** by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the **public body** or **relevant private body** of a written transcript;
 - (e) in the case of **information** which is held on a computer, or in electronic or machine-readable form, and from which the **public body** or **relevant private body** concerned is capable of producing a printed copy of the **information** or part of it, by supplying such a copy; or
 - (f) in the case of **information** available or capable of being made available in computer readable form, by supplying a copy in that form.
- (2) Subject to subsection (4), where the **requester** has requested access to **information** in a particular form, access must be given in that form.
- (3) A **requester** may amend their preferred form of access on receipt of notice of the **reproduction fees** payable if access is granted in the form initially requested.
- (4) If the giving of access to **information** in the form requested by the **requester** is likely to -
 - (a) unreasonably interfere with the operations of the **public body** or **relevant private body**;
 - (b) be detrimental to the preservation of the **information**; or
 - (c) having regard to the physical nature of the **information**, not be appropriate,access in that form may be refused if access is given in another form authorised by this Act.
- (5) Where a person requests access to **information** in a particular form and for a reason specified in subsection (4) access in that form is refused but access is given in another form, the **reproduction fee** charged may not exceed what would have been charged if that **requester** had been given access in the form requested.
- (6) If a **requester** with a disability is prevented by that disability from reading, viewing or listening to the **information** concerned in the form in which it is held by the **public body** or **relevant private body**, the **information officer** of the **public body** or **relevant private body** must, if that **requester** so requests, take reasonable steps

to make the **information** available in a form in which it is capable of being read, viewed or heard by the **requester**.

22 Language of access

- (1) Information must be provided to a requester in such language as the requester prefers.
- (2) Where the public body or relevant private body holds the information in the language the requester prefers, the requester must be given the information in his or her preferred language.
- (3) Where the requester requires the information to be provided in an official language of the country, but the public body or relevant private body does not hold the information in that language, the public body or relevant private body must cause the information to be translated into the relevant language and must bear the cost of such translation.
- (4) Where the requester requires the information to be provided in a language other than an official language of the country and the public body or relevant private body does not hold the information in that language, the public body or relevant private body must cause the information to be translated into the relevant language and recover the reasonable costs associated with the translation from the requester.

23 Fees

- (1) A **requester** is not required to pay any fee -
 - (a) on lodging a **request**;
 - (b) in relation to time spent by a **public body** or **relevant private body** in searching for the **information requested**;
 - (c) in relation to time spent by the **public body** or **relevant private body** in examining the **information** to determine whether it contains **exempt information** or deleting **exempt information** from a document; or
 - (d) in relation to time spent or costs incurred by the **public body** or **relevant private body** in transcribing the **information**.
- (2) Subject to subsection (3), the **public body** or **relevant private body** may charge the **requester** a **reproduction fee** consisting of the reasonable reproduction costs incurred by the **public body** or **relevant private body**.
- (3) No **reproduction fee** is payable -
 - (a) for reproduction of **personal information** of the **requester**, or where the **request** is made on behalf of another person, the **personal information** of the person on whose behalf the **request** is made;
 - (b) for reproduction of **information** which is in the public interest; or
 - (c) where the **public body** or **relevant private body** has failed to comply with the time for responding to a **request** under section 15(1) or where an extension of time has been made under section 16, within that extended period of time; or
 - (d) where the **requester** is indigent.

- (4) Where a **requester** requests that **information** released under this Act be made available in a language other than an official language of the country under section 22(4), the **requester** is liable for any reasonable costs associated with the translation of the **information**.

PART III – ACCESS TO INFORMATION OF PRIVATE BODIES

24 Publication of information manual

Every **private body** must publish an information manual detailing the categories of **information** it proactively discloses in accordance with section 82(2).

25 Designation of information officer

- (1) Every **private body** must designate an **information officer** for the purposes of this Act.
- (2) If a **private body** fails to designate an **information officer**, the **head of the body** will be the **information officer** for the purposes of this Act.
- (3) A person appointed as an **information officer** must be competent and suitable to exercise the powers and perform the duties and functions of an **information officer** under this Act.

26 Designation of deputy information officers

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

27 Right of access

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

28 Requests for access

- (1) A **person** who wishes to obtain access to **information** of a **private body** must make a **request** in writing or orally to the **information officer** of the body.
- (2) If a **person** makes a **request** orally, the **information officer** must reduce that oral request to writing and provide a copy thereof to the **requester**.

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

29 Duty to assist requesters

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

it is the duty of the **information officer** to take reasonable steps to assist the **person**, free of charge, to make the **request** in a manner that complies with this Act.
- (2) Where a **request** has been made by a person living with a disability, the **information officer** must take all necessary steps to assist the person, free of charge, to make the request on an equal basis with any other **requester** and through any form of communication of choice in a manner that meets their needs.

30 Response to request

- (1) Subject to subsection (2), the **information officer** to whom a **request** is made must, as soon as reasonably possible, but in any event within 21 days after the **request** is received -
 - (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee** and/or **translation fee**, give the **requester** access to the **information**.
- (2) Notwithstanding subsection (1), where a **request** relates to **information** which reasonably appears to be necessary to safeguard the life or liberty of a person, the **information officer** must within 48 hours -

- (a) determine whether to grant the **request**;
- (b) notify the **requester** of the decision in writing; and
- (c) if the **request** is granted, give the **requester** access to the **information**.

Access granted

- (3) If the **request** is granted, the notice referred to in subsections (1) and (2) must state -
 - (a) the **reproduction fee** and/or **translation fee** (if any) payable;
 - (b) the form in which access to the **information** will be given; and
 - (c) that the **requester** may apply for a review of the **reproduction fee** and/or **translation fee** payable or the form of access in accordance with section 55.
- (4) Where a **requester** has been given notice that his or her **request** has been granted, that **requester** must, subject to subsections (5) and (6) -
 - (a) if a **reproduction fee** and/or **translation fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** or **translation fee** is payable, immediately -
be given access to the **information**.
- (5) For the purposes of this Act, any **information** provided to a **requester** by a **private body** is presumed to be true and accurate in content and in form.
- (6) Notwithstanding subsection (4), where an **information officer** is required to respond to a **request** within 48 hours under subsection (2) and grants the **request**, the **requester** must be given access to the **information** immediately, irrespective of whether any **reproduction fee** or **translation fee** has been paid.
- (7) Notwithstanding subsections (1)(c) and (4), where **information requested** contains **third party information**, a **requester** may not be granted access to that **information** until such time as any right of the **third party** to appeal the release of the **information** has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (8) If the **request** is refused, the notice referred to in subsections (1) and (2) must -
 - (a) state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the **information officer**;
 - (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
 - (c) inform the **requester** that he or she may apply for a review of the decision in accordance with section 55.

48 hour request refused

- (9) If upon reviewing a request and the **information** that is the subject of the **request**, the **information officer** does not consider that the **information requested** reasonably appears to be necessary to safeguard the life or liberty of a person, the **information officer** must within 48 hours of receipt of the **request** -
 - (a) provide notice of the decision, including adequate reasons for the decision, to the **requester**;

- (b) inform the **requester** that, subject to the **requester's** right to apply for a review of the decision, the **information officer** will make a decision regarding whether to grant access to the **requested information** within the time period specified in subsection (1); and
- (c) inform the **requester** that he or she may appeal to the oversight mechanism in respect of the decision in accordance with section 87.

31 Extension of time

- (1) The **information officer** to whom a **request** is made may extend the period to respond to a **request** in section 30(1) on a single occasion for a period of not more than 14 days if -
 - (a) the **request** is for a large amount of **information** or requires a search through a large amount of **information** and meeting the original time limit would unreasonably interfere with the activities of the **private body** concerned; or
 - (b) consultations are necessary to comply with the **request** that cannot be reasonably completed within 21 days.
- (2) Notwithstanding subsection (1), if any part of the **information** requested can be considered by the **information officer** within the time period specified under section 30(1), it must be reviewed and a response provided to the **requester** in accordance with that section.
- (3) If a period for responding to a request is extended in terms of subsection (1), the **information officer** must, forthwith after the decision to extend has been taken by him or her, but in any event within 21 days after the **request** is received, notify the **requester** in writing of that extension.
- (4) The notice in terms of subsection (3) must state -
 - (a) the period of the extension;
 - (b) adequate reasons for the extension, including the provision of this Act relied on; and
 - (c) that the **requester** may apply for a review of the decision in accordance with section 55.

32 Deemed refusal

If the **information officer** fails to give a decision on a **request** within the time specified in section 30(1) or, where that time period has been extended in accordance with section 31, within any extended period of time, the **information officer** is deemed to have refused the **request**.

33 Information that cannot be found or does not exist

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

(ii) does not exist -

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

- (2) The notice referred to in subsection (1) must include an affidavit signed by the **information officer** stating the substantive details of all steps taken to find the **information** or to determine whether the **information** exists, including, but not limited to -
- (a) details of all locations searched for the **information** and the person or persons that conducted those searches;
 - (b) details of any communications with any person that the **information officer** contacted in searching for the **information** or attempting to establish the existence of the **information**;
 - (c) any evidence relating to the existence of the **information** including -
 - (i) any evidence that the **information** was destroyed; and
 - (ii) the location in which the **information** was last known to be held.
- (3) If **information** is found after notice is given to a **requester** under subsection (1), the **information officer** must immediately notify the **requester** in writing and thereafter as soon as possible, but in any event within 14 days -
- (a) determine whether to grant the **request**;
 - (b) notify the **requester** of the decision in writing; and
 - (c) if the **request** is granted, subject to the payment of any applicable **reproduction fee**, give the **requester** access to the **information**.
- (4) If access to the **information** is granted, the notice referred to in subsection (3) must comply with section 30(3) and access must be given in accordance with sections 30(4) and 30(6).
- (5) If access to the **information** is refused, the notice referred to in subsection (3) must comply with section 30(7).

34 Deferral of access

- (1) An **information officer** who receives a **request** may defer the provision of access to the **information** if the **information** constitutes a report, or part thereof, that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the state, but only until the report has been presented or made available to that body or person or upon the expiration of 35 days from the date of the request, whichever is the earlier.
- (2) If an **information officer** determines to defer access to **information** under subsection (1), the **information officer** must notify the **requester** -
- (a) of the decision as soon as possible but not later than 21 days after receiving the **request**;
 - (b) of the reason for the decision, including the provisions of this Act relied on;
 - (c) of the likely period for which access is to be deferred; and

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

35 Form of access

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

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

36 Language of access

- (1) Information must be provided to a requester in such language as the requester prefers.
- (2) Where the private body holds the information in the language the requester prefers, the requester must be given the information in their preferred language.
- (3) Where the requester requires the information to be provided in an official language of the country, but the private body does not hold the information in that language, the private body must cause the information to be translated into the relevant language and must bear the cost of such translation.
- (4) Where the requester requires the information to be provided in a language other than an official language of the country and the private body does not hold the information in that language, the private body must cause the information to be translated into the relevant language and recover the reasonable costs associated with the translation from the requester.

37 Fees

- (1) A **requester** is not required to pay any fee -
 - (a) on lodging a **request**; or
 - (b) in relation to time spent by a **private body** in searching for the **information** requested;
 - (c) in relation to time spent by the **private body** in examining the **information** to determine whether it contains **exempt information** or deleting **exempt information** from a document; or
 - (d) in relation to time spent or costs incurred by the **private body** in transcribing the **information**.
- (2) Subject to subsection (3), the **private body** may charge the **requester** a **reproduction fee** consisting of the reasonable reproduction costs incurred by the **private body**.
- (3) No **reproduction fee** is payable -
 - (a) for reproduction of **personal information** of the **requester**, or where the **request** is made on behalf of another person, the **personal information** of the person on whose behalf the **request** is made;
 - (b) for reproduction of **information** which is in the public interest; or

- (c) where the **private body** has failed to comply with the time for responding to a **request** under section 30(1) or where an extension of time has been made under section 31, within that extended period of time; or
 - (d) where the **requester** is indigent.
- (4) Where a **requester** requests that **information** released under this Act be made available in a language other than an official language of the country under section 36(4), the **requester** is be liable for any reasonable costs associated with the translation of the **information**.

PART IV – EXEMPTIONS

38 Refusal

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

39 Public interest override

- (1) Notwithstanding any of the exemptions in this Part, an **information holder** may only refuse a **requester** access to **information** if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably outweighs the public interest in the release of the information.
- (2) An **information officer** must duly consider whether subsection (1) applies in relation to any **information** requested before refusing access on the basis of an exemption stated in this Part.

40 Classified information

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

41 Personal information of a third party

- (1) Subject to subsection (2), an **information officer** may refuse a **request** for **information** if its release would involve the unreasonable disclosure of **personal information** about a natural third party, including a deceased individual.
- (2) A **request** may not be refused in terms of subsection (1) where -
 - (a) the **third party** does not make a representation under section 52 stating why access to the **information** should not be granted;
 - (b) the **third party** consents to the disclosure;
 - (c) the **third party** has been deceased for more than 10 years;
 - (d) the **information** is in the public domain;
 - (e) the **information** relates to the physical or mental wellbeing of an individual who is under the care of the **requester** and who is -
 - (i) under the age of 18 years; or

- (ii) incapable of understanding the nature of the **request** - and giving access would be in the individual's interests;
- (f) the **information** is about a deceased individual and the **requester** is -
 - (i) the individual's next of kin or legal personal representative;
 - (ii) making the **request** with the written consent of the individual's next of kin or legal personal representative;
 - (iii) the executor of the deceased's estate; or
 - (iv) the trustee of a trust which can benefit from the deceased individual's estate;
- (g) the **information** relates to the position or functions of an individual who is or was an official of the **information holder** or any other **public body** or **relevant private body**;
- (h) the **information** was given to the **information holder** by the individual to whom it relates and the individual was informed by or on behalf of the **information holder**, before it was given, that the **information** belongs to a class of **information** that would or might be made available to the public.

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

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

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

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

44 **National security and defence**

- (1) An **information officer** may refuse to grant access to **information**, where to do so would cause substantial prejudice to the **security or defence of the state**.
- (2) For the purpose of this section, *security or defence of the state* means -

- (a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of **subversive or hostile activities**;
 - (b) intelligence relating to -
 - (i) the defence of the state;
 - (ii) the detection, prevention, suppression or curtailment of **subversive or hostile activities**;
 - (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);
 - (d) the identity of a confidential source; or
 - (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons.
- (3) For the purpose of this section, *subversive or hostile action* means -
- (a) an attack against the state by a foreign element;
 - (b) acts of sabotage or terrorism aimed at the people of the state or a strategic asset of the state, whether inside or outside the state; or
 - (c) a foreign or hostile intelligence operation.

45 **International relations**

An **information officer** may refuse to grant access to **information** -

- (a) supplied by or on behalf of the state to another state or an international organisation in terms of an international agreement with that state or organisation which requires the **information** to be held in confidence;
- (b) required to be held in confidence by international law;
- (c) on the positions adopted or to be adopted by the state, another state or an international organisation for the purpose of present or future international negotiations; or
- (d) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the country -

if the release of the information would cause substantial prejudice to the international relations of the state.

46 **Economic interests of the state**

An **information officer** may refuse to grant access to **information** which relates to the determination of -

- (a) currency or exchange rates;
- (b) interest rates; or
- (c) taxes, including duties of customs or excise -

if to do so would cause substantial harm to the economic interests of the state or the ability of the state to manage the economy.

47 Law enforcement

An **information officer** may refuse to grant access to **information**, where to do so would cause prejudice to -

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice; or
- (d) the assessment or collection of any tax or duty.

48 Legally-privileged documents

An **information officer** may refuse a **request** if the **information** -

- (a) consists of confidential communication between a medical practitioner and his or her patient;
- (b) consists of confidential communication between a lawyer and his or her client;
- (c) consists of confidential communication between a journalist and his or her source; or
- (d) would otherwise be privileged from production in legal proceedings,

unless the patient, client, source or person entitled to the privilege consents to the release or has waived the privilege.

49 Academic or professional examination and recruitment processes

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

50 Severance

- (1) Where a portion of a record or document containing requested **information** is exempt from release under this Part, the exempt portion of the **information** must be severed or redacted from the record or document and access to the remainder of the **information** must be granted to the **requester**.
- (2) Where an **information officer** severs or redacts any portion of a record or document, the **information officer** must indicate the length or amount of **information** severed or redacted in the response to the requester.

51 Manifestly-vexatious requests

- (1) An **information officer** may refuse a **request** if the **request** is manifestly vexatious.

- (2) Where an **information officer** refuses a **request** on the basis of subsection (1), the notice referred to in section 15(7) or section 30(7) must include an affidavit signed by the **information officer** stating the reasons that the **information officer** considers the request to be manifestly vexatious.

52 Burden of proof

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

- (a) such **information** is exempt from disclosure under this Act; and
- (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest in the release of the information.

53 Notice to third parties

- (1) If an **information officer** is considering a **request** for access to **personal information** of a natural **third party** or **commercial or confidential information of a third party**, the **information officer** must take reasonable steps to inform the **third party** to whom or which the **information** relates or, where the **third party** is deceased, the next of kin or legal representative of the **third party**, in writing of the **request** as soon as reasonably possible, but in any event within eight days after the **request** is received.
- (2) When informing the **third party** under subsection (1), the **information officer** must include in the notice -
 - (a) the nature of the **request** and the content of the **information**;
 - (b) that the **third party** may consent to the release of the **information** or make a representation as to why access to the **information** should not be granted in accordance with subsection (3);
 - (c) that if the third party does not make a representation as to why access to the information should not be granted, access will be given;
 - (d) that the **information officer** may give access even if the **third party** makes a representation under subsection (3);
 - (e) that if the **information officer** determines to release the **information**, the **third party** may lodge an appeal under section 55.
- (3) Within 10 days of being informed of a **request** under subsection (1), a **third party** may -
 - (a) inform the **information officer** orally or in writing that he or she consents to the release of the **information** to the **requester**; or
 - (b) make a representation to the **information officer** orally or in writing stating why the request for access to the **information** should not be granted.
- (4) If consent is given or a representation is made orally under subsection (3), the **information officer** must reduce that consent or representation to writing and send a copy thereof to the **third party**.
- (5) Where a **third party** does not provide a response under subsection (3) within 10 days or cannot be located after reasonable steps have been taken to do so, the **information officer** must assume that the **third party** does not object to the **information** being granted to the **requester**.

- (6) Where a **third party** cannot be located, an **information officer** must prepare and sign an affidavit stating all steps taken to locate the **third party**, and retain such affidavit.
- (7) On determining whether to grant the **requester** access to the **personal or commercial or confidential information of the third party**, the **information officer** must notify the **third party** in writing of the decision as soon as possible, but in any event within five days.
- (8) If the **information officer** has granted the **request** for access in circumstances where the **third party** objected to the granting of access, the notice referred to in subsection (7) must state -
 - (a) the reason(s) for granting the **request**;
 - (b) that the **third party** may apply for a review of the decision under section 55 within 10 days of receipt of the notice; and
 - (c) that the **requester** will be granted access to the **information** unless an appeal is lodged within the 10-day period.
- (9) Notwithstanding the above provisions, if the **information officer** is considering a **request** which the **information officer** must respond to within 48 hours under section 15(2) or 30(2) and that **information** contains **personal information** of a natural **third party** or **commercial or confidential information of a third party**, the **information officer** must take reasonable steps to inform the **third party** to whom or which the record relates, in writing, of -
 - (a) the nature of the **request** and the content of the **information**;
 - (b) the name of the **requester**;
 - (c) whether the **information officer** released the **information** to the **requester**.
- (10) Notwithstanding subsection (3), where an **information officer** must respond to a **request** within 48 hours under section 15(2) or 30(2), a **third party** does not have the right to make a representation to the **information officer** stating why the **request** should not be granted.

PART V – INTERNAL REVIEW OF DECISIONS

54 Right of internal review

- (1) A **requester** may apply for an internal review of any decision of an **information officer**.
- (2) A **third party** may apply for an internal review of a decision of an **information officer** to grant access to **information** containing **third party information**.

55 Application for internal review

- (1) A **requester** may make an **internal review request** in writing or orally to the **information officer** of the relevant body within 60 days of the receipt of the relevant decision of an **information officer**.

- (2) A **third party** may make an **internal review request** in writing or orally to the **information officer** of the relevant body within 10 days of the receipt of a decision of an **information officer** referred to in section 54(2).
- (3) If a **requester** or a **third party** makes an **internal review request** orally, the **information officer** must reduce that oral request to writing and provide a copy thereof to the relevant party.
- (4) An **internal review request** must identify the **request** and decision of the **information officer** which is the subject of the internal review.
- (5) If an **internal review request** referred to in subsection (1) is lodged after the expiry of 60 days, the **information officer** must, upon good cause shown, allow the late lodging of the request.
- (6) As soon as possible, but in any event within five days after receipt of an **internal review request**, the **information officer** must submit to the head of the **information holder** the -
 - (a) **internal review request**;
 - (b) **information officer's** reasons for the decision; and
 - (c) **information** that is the subject of the review,
 and notify the **requester** in writing that the documents have been so submitted.

56 Decision on internal review

- (1) The head of the **information holder** to whom an **internal review request** is submitted in accordance with section 55 must, as soon as reasonably possible, but in any event within 15 days after the **internal review request** is received by the **information officer** -
 - (a) make a fresh decision on behalf of the body; and
 - (b) notify the **requester** and, where relevant, the **third party** of that decision in writing.

Access granted

- (2) If the head of the **information holder** determines to grant access to the **information**, the notice to the **requester** referred to in subsection (1) must state -
 - (a) the **reproduction fee** (if any) payable;
 - (b) the form in which access will be given; and
 - (c) that the **requester** may apply to the oversight mechanism under section 87 for a review of the decision in respect of the **reproduction fee** payable or the form of access and the process for lodging that appeal.
- (3) Where a **requester** has been given notice that access to the **information** has been granted, that **requester** must, subject to subsection (4) -
 - (a) if a **reproduction fee** is payable, upon payment of that fee; or
 - (b) if no **reproduction fee** is payable, immediately
 be given access to the **information**.

- (4) Notwithstanding subsection (3), where the head of the **information holder** has determined to release **information** containing **third party information**, the **requester** may not be granted access to that **information** until such time as any right of the third party to appeal the release of the **information** under section 87 has expired or any appeal lodged by the **third party** has been finally determined.

Access refused

- (5) If the head of the **information holder** determines not to grant access to the information, the notice to the **requester** referred to in subsection (1) must-
- (a) state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the head of the information holder;
 - (b) contain a reference to specific provisions of this Act upon which the refusal is based; and
 - (c) inform the **requester** that he or she may apply to the oversight mechanism for a review of the decision in accordance with section 87, and the process of lodging that appeal.

Third party

- (6) Where a **third party** has lodged an **internal review request**, the notice referred to in subsection (1) must state -
- (a) adequate reasons for the decision; and
 - (b) that the **third party** may apply to the oversight mechanism under section 87 for a review of the decision, and the process for lodging that appeal.

57 Non-delegable duty

The decision referred to in section 56 must be made by the head of the **information holder** personally and may not be delegated to any other person.

58 Deemed refusal

If the head of the relevant **information holder** fails to give a decision on an **internal review request** within the time specified in section 56, the head of the body is deemed to have affirmed the original decision of the **information officer**.

PART VI – OVERSIGHT MECHANISM

Division 1 – Establishment of oversight mechanism

59 Purpose of Part

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

60 Appointment

- (1) The head of state must, within 14 days of assent to the legislation, appoint an independent panel to make a public call for nominations of candidates for selection as commissioners, subject to the following conditions:
 - (a) The panel must publish the list of candidates, together with the documentation related to the applications within 45 days of being appointed.
 - (b) The panel must, within five days of publishing the names of candidates in accordance with subsection (a), conduct a public vetting process of the candidates, which must include public participation.
 - (c) The panel must, within 21 days of the public vetting process in subsection (b), identify a short list of candidates and provide same to the head of state.
 - (d) The head of state must, upon receipt of the short list of candidates and all related documentation from the panel under subsection (c), make a selection from the short list and provide same, together with all relevant documentation to Parliament for approval.
 - (e) Parliament must make a decision regarding the approval or otherwise of candidates under subsection (d) within a reasonable time.

61 Criteria for appointment

- (1) Information commissioners must -
 - (a) be fit and proper persons;
 - (b) have requisite academic qualifications and working experience;
 - (c) be publicly-recognised human rights advocates;
 - (d) be independent, impartial and accountable; and
 - (e) have demonstrable knowledge in access to information, transparency or public and corporate governance.
- (2) Information commissioners must not -
 - (a) have been convicted of a crime involving dishonesty or violence;
 - (b) be insolvent; or
 - (c) at the time of nomination have been occupying, or have occupied in the last five years, any position within political office or as an official of a political party.

62 Term of office

- (1) Information commissioners hold office for a term of four years.
- (2) The head of state may reappoint an information commissioner to a fixed further term of four years, which term is not be renewable thereafter.
- (3) Any reappointment of an information commissioner referred to in subsection (2) must be approved by Parliament.

63 Removal from office

- (1) Subject to subsection (2), the head of state may terminate the appointment of an information commissioner before the expiration of their term -
 - (a) where the person is mentally or physically incapable of performing the functions and duties of the office;
 - (b) where the person is insolvent;
 - (c) where the person has performed actions which constitute gross misconduct or brought the oversight mechanism into disrepute;
 - (d) where the person has been convicted of a crime involving dishonesty or violence; or
 - (e) on performance grounds.
- (2) Before terminating the appointment of an information commissioner -
 - (a) the head of state must appoint an independent commission of enquiry to investigate any allegation against the information commissioner. Any investigation conducted by the commission of enquiry must be closed to the public, unless the information commissioner who is the subject of the enquiry requests otherwise.
 - (b) Upon the completion of the investigation, the commission of enquiry must send its findings and recommendation to the head of state.
 - (c) A decision of the head of state to terminate the appointment of an information commissioner must be approved by a two-thirds majority of Parliament.

64 Interim information commissioner

- (1) The head of state may appoint an interim information commissioner for a period not exceeding six months if an information commissioner is incapacitated, removed from office or resigns.
- (2) The head of state must not make successive appointments of interim information commissioners.

65 Limitation on outside work

During his or her term of office, an information commissioner or interim information commissioner may not occupy or engage in any other activity, profession or trade for financial gain, or any political activity.

66 Remuneration

- (1) An information commissioner receives a salary equivalent to that of a justice of the highest court in the state.
- (2) An information commissioner must receive reasonable travelling and living expenses incurred in the course of the conduct of his or her duties.
- (3) An information commissioner is be entitled to pension benefits equivalent to a justice of the highest court in the state.

- (4) Any other issues relating to the payment of salaries, expenses, pensions or compensation of information commissioners must be guided by legislation relevant to those issues applicable within the public service or to the judiciary of the state.

Division 2 – Independence, structure and operations of the oversight mechanism

67 Independence

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

68 Code of conduct

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

69 Structure of the oversight mechanism

- (1) The oversight mechanism is presided over by a Chairperson who is legally responsible for the entity.
- (2) The appointed information commissioners must determine who among them will serve as the Chairperson of the oversight mechanism and such other matters related to the role of the Chairperson, including whether the position of Chairperson is to be fixed or rotated amongst them.
- (3) The oversight mechanism has all of the rights of a juristic person, including the right to acquire, hold or dispose of property.

70 Staff

- (1) The information commissioners must appoint such personnel as are necessary to fulfil the functions of the oversight mechanism.
- (2) Personnel of the oversight mechanism may be subject either to the terms and conditions of service of the public service or subject to specifically-designed terms and conditions of service adopted by the oversight mechanism.
- (3) Where the oversight mechanism is subsumed into existing mechanisms, personnel appointed within the secretariat of the oversight mechanism must -
 - (a) have clear terms and conditions of service;
 - (b) have specific performance areas and lines of accountability; and
 - (c) be independent of other personnel within the existing domestic machinery or structure within which the oversight mechanism is to operate.

71 Engagement of experts

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

72 Indemnity of the oversight mechanism and personnel

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

73 Regulation of procedure

- (1) Subject to this Act, the oversight mechanism must determine the procedure to be followed in the exercise of any power, the performance of any duty or function of the oversight mechanism under this Act.
- (2) The oversight mechanism may, from time to time, after public consultation, review the procedure referred to in subsection (1).
- (3) Any procedures established by the oversight mechanism, as amended from time to time, must be made public, including publication in the official gazette, and widely disseminated within 30 days of adoption.

Division 3 – Powers and Duties of the Oversight Mechanism

74 General Powers of the Oversight Mechanism

- (1) The oversight mechanism has the power to determine the nature, process and undertakings necessary to discharge its mandate in terms of this Act, including all work necessary for the promotion, monitoring and protection of the right to access information in all sectors of society within the state.
- (2) The oversight mechanism has the discretion and power to:
 - (a) resolve a matter through negotiation, conciliation or mediation where it deems such recourse appropriate;
 - (b) determine the need for, form of and type of investigation required for the determination of any matter;
 - (c) exempt any category of organisations operating on a non-profit basis that are relevant private bodies by virtue of subsection (b) of the definition of relevant private body carrying out a public service, from any of the obligations in this Act;
 - (d) make any such determination as it considers just and equitable including issuing such fines, recommendations and/or penalties in matters before it as it considers appropriate;
 - (e) dismiss a matter it considers manifestly vexatious;
 - (f) dismiss a matter where the applicant has failed to comply with the requirements of this Act;
 - (g) grant condonation where appropriate on the facts of the matter; and
 - (h) authorise and/or undertake any such action it deems necessary or appropriate for the execution of its mandate in terms of this Act.
- (3) The oversight mechanism must:
 - (a) determine and issue general directions for the hearing of a matter including notification of parties;
 - (b) issue specific directions where issues of sensitivity to the state are concerned;
 - (c) issue specific directions in matters concerning confidential information or minors or circumstances which it deems appropriate for such action;
 - (d) decide on all matters relating to the need for, form of, issuing and service of notices and communications; and
 - (e) decide on issues of representation where this is necessary.
- (4) The oversight mechanism has the power of:
 - (a) issuing written orders obliging the production of **information**;
 - (b) examining, reproducing, taking extracts from or holding **information** for as long as is necessary, including information found in any premises entered pursuant to subsection (e);
 - (c) requiring the production of **information** where access is refused on the basis of an exemption for the purpose of deciding whether it is an **exempt document**;

- (d) limiting access to **information** by the parties in terms of this Act;
- (e) developing regulations necessary for the entry, search and seizure necessary for the execution of its mandate; and
- (f) taking any such other action or issue and serve notices as may be appropriate for the resolution of any matter before it.

75 Referral Powers of the Oversight Mechanism

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

76 General Duties of the Oversight Mechanism

- (1) The oversight mechanism has a duty to:
 - (a) conduct matters with as little technicality or formality and as expeditiously as possible;
 - (b) consider the needs of persons who wish to make protected disclosures and minors and other vulnerable groups;
 - (c) hold hearings in public unless it is inappropriate to do so;
 - (d) publish quarterly its findings, recommendations, orders, decisions and directives.
- (2) The oversight mechanism must in all official languages, prepare a plain language guide to this Act to assist users in requesting information.

77 Reports by the oversight mechanism

- (1) The oversight mechanism must annually report on its activities to parliament, which report must include:
 - (a) complaints about offences noted during investigations under this Act; and
 - (b) the findings of any audit undertaken.
- (2) The oversight mechanism must produce such reports on the state of implementation of access to information and any such further access to information matter as may be required by the African Commission on Human and Peoples' Rights or the African Union and any of its bodies.
- (3) In addition to the reporting obligation in subsection (2), the oversight mechanism must report to such other regional or sub regional bodies in terms of any request or obligation requiring such response.

Division 4: Promotion

78 Promotion

- (1) The mandate of promoting awareness, education and popularisation of the right of access to information, rests with the oversight mechanism and must include **information holders** in terms of the directives of the oversight mechanism.
- (2) In promoting the right of access to information the oversight mechanism must-
 - (a) assess all implementation plans required in terms of section 81 to ensure entities have clear obligations and processes which support awareness raising and education interventions at community level including disadvantaged groups;
 - (b) consult and collaborate with civil society organisations and interest groups;
 - (c) provide recommendations and guidelines to **information holders** for internal training of personnel;
 - (d) monitor internal training of personnel within **public bodies** and **relevant private bodies** and issue notices for mandatory training where necessary;
 - (e) assist both **requesters** and **information holders** on matters of interpretation of the Act;
 - (f) develop such material as it deems necessary to advance promotion of access to information;
 - (g) provide training on request, if resources are available;
 - (h) hold at least one public meeting and at least one press conference on the occasion of the release of the annual report of the oversight mechanism to discuss the report; and
 - (i) use any means necessary both locally and internationally to promote the objectives of access to information.

79 Research and law reform

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

- (6) Reports of recommendations for reform and any research undertaken by the oversight mechanism must be presented to Parliament in the annual report of the oversight mechanism.

Division 5 - Monitoring

80 Monitoring

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

81 Implementation plan

- (1) Every **public body** and **relevant private body** must submit an implementation plan to the oversight mechanism within 18 months of the commencement of this Act, or within 6 months of the establishment of the body, whichever is the earlier, detailing its:
 - (a) operational plan to implement its obligations under this Act; and
 - (b) an information publication plan in respect of its proactive disclosure responsibilities contemplated in section 7.
- (2) The report referred to in subsection (1) must include -
 - (a) budgetary projections for implementation against available resources for implementation;
 - (b) personnel estimates per capita of its service base and identification of said personnel;
 - (c) processes, mechanisms and policies to facilitate and enhance implementation of the legislation, including measures to secure optimal responsiveness to requests for information and records management;
 - (d) mechanisms it will use to monitor and track applications, notifications and responses;
 - (e) steps to secure continued capacity building and compulsory training plans for personnel;
 - (f) clear plans for community outreach, information sharing and awareness raising;
 - (g) plans for public consultation in its processes;
 - (h) plans for, and frequency of, self initiated implementation audits and review; and
 - (i) for the purpose of section 81(1)(b) –

- (i) policies and plans for the purposes of realising its proactive disclosure obligations, including information classification processes; and
 - (ii) measures to ensure frequent and accurate proactive disclosure of information.
- (3) The oversight mechanism may, of its own accord from time to time, call for further plans or amended plans at its discretion.
- (4) The oversight mechanism may issue recommendations on specific plans for enhanced implementation.
- (5) Recommendations of the oversight mechanism referred to in subsection (4) must be complied with and no appeal lies against such recommendations.
- (6) The oversight mechanism may require the report produced in terms of clause 81(1) to be reviewed within such timeframes and at such frequencies as it deems necessary.

82 **Publication of information manual**

- (1) As soon as possible but in any event within two years of the commencement of this Act, all **information holders** must prepare information manuals to be made publicly available, including in the official gazette, and submitted to the oversight mechanism.
- (2) The manual referred to in subsection (1) must include the categories of information that the information holder will proactively disclose and those which will be made available only through the formal request process.
- (3) With regard to proactively disclosed information the oversight mechanism must from time to time determine:
 - (a) measures to be undertaken to ensure accessibility of information;
 - (b) accessibility guarantees in terms of medium, format and language;
 - (c) measures to ensure accuracy of information; and
 - (d) additional categories of information not listed in section 7 that must be proactively disclosed.
- (4) With regard to all other **information**, the oversight mechanism must determine -
 - (a) measures and means to be adopted to ensure periodic and frequent updating of all categories of **information** held by the information holder, including those listed in subsection (2) above;
 - (b) measures to be undertaken to ensure accessibility of information;
 - (c) accessibility guarantees in terms of medium, format and language; and
 - (d) measures to ensure accuracy of information.
- (5) The information manual must, together with the information required in terms of subsections (2) and (3), include the following information about the body -
 - (a) description of the structure and its functions, powers and duties;
 - (b) physical and electronic contact details of persons to whom requests must be directed;
 - (c) physical and electronic contact details of the Information Officer and any Deputy Information Officers;

- (d) the plain language guide developed by the oversight mechanism under section 76(3);
 - (e) the description of any arrangement or provision for a person through consultation, making recommendations or otherwise to participate or influence the formulation of policy or the exercise of powers or performance of duties by the body;
 - (f) a description of remedies available in respect of an act or failure to act by the body; and
 - (g) the manner of payment of **reproduction fees**.
- (6) **Information holder** must -
- (a) update and publish its information manual whenever material changes to the information therein occur, but at least every 2 years; and
 - (b) submit updated information manuals to the oversight mechanism.

83 Annual reports to the oversight mechanism

- (1) The **information officer** of each **public body** and **relevant private body** must annually, but no later than the end of the first quarter, submit to the oversight mechanism a report stating in relation to the body in respect of the preceding year -
- (a) the number of **requests** for access received;
 - (b) the number of **requests** for **personal information** received;
 - (c) the number of **requests** for access granted in full;
 - (d) the number of **requests** for access granted in terms of the public interest override in section 39;
 - (e) the number of **requests** for access refused -
 - (i) in full; and
 - (ii) in part;
 - (f) the number of times each provision of Part IV was relied on to refuse access in full or part;
 - (g) the number of cases in which the periods stipulated in section 15 were extended in terms of section 16;
 - (h) the number of internal appeals lodged with the relevant authority;
 - (i) the number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 18;
 - (j) the number of cases in which, as a result of an internal appeal, access was given to **information**;
 - (k) the number of appeals referred to the oversight mechanism and the outcome of those appeals;
 - (l) the number of appeals referred to an appropriate court and the outcome of those appeals;
 - (m) a description of the steps or efforts taken by the head of the body to encourage all officers of that body to comply with the provisions of this Act;

- (n) any facts which indicate an effort by the body to administer and implement the spirit and intention of the Act according to its submitted plan;
 - (o) particulars of any penalties issued against any person under this Act;
 - (p) particulars of any disciplinary action taken against any person under this Act;
 - (q) particulars of any difficulties encountered in the administration of this Act in relation to the operations of the body including issues of staffing and costs; and
 - (r) recommendations for reform, or amendment of this Act, other legislation, common law, sector regulation or practise relevant to the optimal realisation of the objectives of this Act.
- (2) The oversight mechanism may impose penalties on **public bodies** and **relevant private bodies** which do not comply with the annual reporting obligation.
 - (3) **Public bodies** will further be required to produce the annual report in terms of this provision to the national Parliament in their annual reports to Parliament.

84 Proactive disclosure reports to the oversight mechanism

The information officer of each public body and relevant private body must annually, but no later than the end of the first quarter, submit to the oversight mechanism a report stating the categories of information that have been proactively disclosed by the public body, including those documents referred to in section 7, and where the public can access that information.

85 Auditing powers of oversight mechanism

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

86 Effect of non-compliance

- (1) In the event of non-compliance by an information holder with any of the obligations under this Division 5, the oversight mechanism may issue a notice specifying a timeframe for compliance with the obligation and any further recommendations or directives as the oversight mechanism considers necessary or appropriate.
- (2) If the information holder fails to comply with a notice issued by the oversight mechanism under subsection (1), the oversight mechanism may impose such a fine it considers necessary or appropriate.

Division 6 – Applications to the oversight mechanism

87 Applications to the oversight mechanism

- (1) **Requesters** may apply to the oversight mechanism for a review of any decision of an **information holder**.
- (2) A **third party** may apply to the oversight mechanism for a review of a decision of an **information holder** to grant a **requester** access to the third party's **information**.

88 Form of application

- (1) An application to the oversight mechanism under section 87 may be made orally or in writing.
- (2) If an application is made orally, the oversight mechanism must reduce the oral application to writing and provide a copy thereof to the applicant.

89 Must exhaust internal review process

A **requester** or **third party** may only apply to the oversight mechanism for the review of a decision of an information holder under section 87 if the **requester** or **third party** has exhausted the internal review procedure in Part V of this Act.

90 Direct access

- (1) Notwithstanding section 89, any person may make an application to the oversight mechanism without exhausting the internal review procedure in Part V of the Act in the following instances:
 - (a) where the **information** requested is the **personal information** of the applicant and the initial request to the **information holder** has been refused;
 - (b) where the **information** requested was previously in the public domain; or
 - (c) where the head of the **information holder** is the **information officer** of that body.
- (2) A **requester** who requests access to **information** reasonably believed to be necessary to safeguard life or liberty of a person and is -
 - (a) refused access to the record within 48 hours of its request; or

- (b) receives no notice of the decision of the **information officer** within 48 hours of the request being lodged -

may apply directly to the oversight mechanism for review of the decision refusing access.

- (3) Where the oversight mechanism receives an application under subsection (2), the oversight mechanism may, upon an assessment of the facts, elect to determine the matter summarily or undertake further investigation, if necessary, before such determination.
- (4) A person within the employ of an information holder who wishes to report wrongdoing relating to access to information may contact the oversight mechanism without exhausting any applicable internal procedures.

Division 7 - Procedure

91 Timeframes

The regulations developed by the oversight mechanism pursuant to section 76 must include timeframes governing the referral of matters to, and the conduct of matters by, the oversight mechanism.

92 Onus of proof

- (1) The **information holder** bears the onus of proof in all applications and investigations.
- (2) An **information holder** that refuses to grant access to **information** requested has the onus of proving that -
 - (a) such **information** is exempt from disclosure under this Act; and
 - (b) the harm to the protected interest under the relevant exemption that would result from the release of the information outweighs the public interest in the release of the information.
- (3) Notwithstanding subsection (1) above, the requester shall bear the onus of proof where -
 - (a) a request to a private body is refused on the basis that the information requested does not assist in the exercise or protection of any right; or
 - (b) he or she asserts that no reproduction fee is payable, on the basis that the information requested is in the public interest or that he or she is indigent, as set out sections 23(3) (d) and(e) of this Act.

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

The oversight mechanism must notify the head of the **information holder** concerned of the intention to carry out an investigation or hearing and must inform the head of such entity of the substance of the application, as is appropriate, before commencing an investigation or hearing under this Act.

94 Notice to third parties

- (1) The head of an **information holder** must, immediately on receipt of a notice of a hearing or investigation from the oversight mechanism, inform the oversight mechanism of all third parties to whom the information relates.
- (2) The oversight mechanism must issue such directions as are necessary to ensure, to the extent reasonably possible, that third parties in matters before it are notified of the proceedings or investigations.
- (3) Notwithstanding subsection (2), the oversight mechanism has the discretion to dispense with notification to third parties where it considers it necessary on the facts of the matter.

95 Right to make representations

- (1) In the course of an investigation or hearing by the oversight mechanism, a reasonable opportunity to make representations must be given to -
 - (a) the person who made the application, and the **requester**, if he or she did not make the application;
 - (b) the head of the **information holder** concerned; and
 - (c) a third party if the **information** requested contains **third party information** and the **third party** can reasonably be located.
- (2) The right to be present during a hearing must be upheld except when, in the view of the oversight mechanism, the circumstances dictate the holding of in camera processes.
- (4) The oversight mechanism has the following powers and duties with regard to evidence, parties and witnesses for the purposes of investigation or hearing:
 - (a) to summon witnesses, heads of organs of state or any person where necessary;
 - (b) to summon expert witnesses where appropriate;
 - (c) to allow interested parties on application to join proceedings;
 - (d) to provide assistance to applicants where appropriate;
 - (e) to allow relevant persons to participate in the hearings through any medium they chose;
 - (f) to compel any witness or evidence it considers necessary for the resolution of a matter; and
 - (g) to administer oaths and receive any such evidence it deems necessary under oath or on affidavit.

96 Notices and communications

- (1) The oversight mechanism must serve notice of the finding of an investigation, audit, summary finding, application or decision on a hearing or of a referral to an appropriate court, including any rights of appeal, on all relevant parties .

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

97 Duty to assist oversight mechanism

Information holders and interested parties must assist the oversight mechanism in the course of any application or investigation.

Division 8 – Orders, decisions and directives of the oversight mechanism

98 Orders, decisions and directives

- (1) The oversight mechanism may issue any of the following binding orders or recommendations appropriate to an application, hearing, audit, process or investigation it undertakes, including -
 - (a) affirming the decision of the **information holder**;
 - (b) varying the type of access originally granted or requested;
 - (c) setting aside the decision of the information holder and making a ruling;
 - (d) requiring the information holder to take such steps as may be necessary to secure compliance with its obligations under the Act;
 - (e) in cases of a failure by an information holder to comply with an obligation under the Act, ordering compliance, imposing a fine and recommending employment sanctions against relevant personnel;
 - (f) summary orders if, in its discretion, the matter can be decided without the presence of the parties or summary orders are appropriate in terms of its rules and procedures;
 - (g) contempt orders;
 - (h) cost orders;
 - (i) rulings on any matter relating to the execution of warrants and search and seizure;
 - (j) an order pursuant to section 74(2)(a) [negotiation, conciliation, arbitration]; or
 - (k) any other order it considers just and equitable.

- (2) The oversight mechanism may issue such directives it deems necessary to enforce its decisions.
- (3) Decisions, orders and directives of the oversight mechanism have the same force and effect as decisions of the highest court of first instance.

99 Content of recommendations, findings, orders, decisions and directives

- (1) The oversight mechanism must produce a statement of facts, findings and reasoning for decisions on matters before it.
- (2) All parties to a matter before the oversight mechanism must be given a copy of any recommendations, findings, orders, decisions or directives of the oversight mechanism free of charge.

100 Witness costs

The oversight mechanism may require that reasonable costs of attendance are paid to any person summoned to appear before it.

PART VII – JUDICIAL REVIEW

101 Application for judicial review

An application may be made to the appropriate court for judicial review of a decision of the oversight mechanism.

PART VIII – TRANSITIONAL PROVISIONS

102 Extended period for dealing with requests during the first two years

For -

- (a) 12 months from the date that Parts II and III take effect, the reference to -
 - (i) 21 days in section 15 and any other reference to that period in other provisions of this Act; and
 - (ii) 21 days in section 30 and any other reference to that period in other provisions of this Act -
must be construed as a reference to 45 days;
- (b) 12 months following the 12 months referred to in paragraph (a), the reference to -
 - (i) 21 days in section 15 and any other reference to that period in other provisions of this Act; and
 - (ii) 21 days in section 30 and any other reference to that period in other provisions of this Act;
must be construed as a reference to 35 days.

PART IX – MISCELLANEOUS PROVISIONS

103 Operation of the law

This Act applies to **information** of **information holders** regardless of whether the **information** came into existence before the operation of this Act.

104 Information released is in public domain

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

105 Protection against criminal and civil liability

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

106 Offences

- (1) A **person** who with intent to deny a right of access to **information** under this Act -
 - (a) destroys, damages or alters **information**; or
 - (b) conceals **information**; or
 - (c) falsifies **information** or makes a false **record**; or
 - (d) obstructs the performance by an **information holder** of a duty under this Act; or
 - (e) interferes or obstructs the work of the oversight mechanism; or
 - (f) directs, proposes, counsels or causes any **person** in any manner to do any of the above -commits a criminal offence and is liable to a fine or imprisonment or both.
- (2) Where a person, without reasonable cause -
 - (a) refuses to receive a **request**;
 - (b) has not responded to a **request** within the time specified in sections 15, 30 or 56 or where that time period has been extended in accordance with sections 16 or 31, as applicable, within any extended period of time;
 - (c) has vexatiously denied the **request**;
 - (d) has given incorrect, incomplete or misleading information; or

(e) obstructs in any manner the release of **information** -
the oversight mechanism or an appropriate court may impose a financial penalty
each day until the request is received or determined.

107 Short title and commencement