

FREEDOM OF INFORMATION ACT

PREAMBLE

Recognizing that access to information is a fundamental right guaranteed by the Constitution of Liberia and the Universal Declaration of Human Rights as well as the African Charter on Human and People's Rights;

Realizing that the right of access to information encompasses the right to request and receive information, especially information involving public interest;

Acknowledging that access to information is indispensable to genuine democracy and good governance and, to this end, Article 15(c) of the Constitution of Liberia provides that no limitation shall be placed on the public right to be informed about the government and its functionaries;

Convinced that a dedicated statute on the right of access to information is essential to affirming and promoting the effective, equitable and inexpensive exercise of this right;

NOW THEREFORE IT IS HEREBY ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF LIBERIA, IN LEGISLATURE ASSEMBLED:

Chapter 1- General Provisions

Section 1.1 Title: This Act shall be known as the Freedom of Information Act of 2010.

Section 1.2 Short Title: This Act may be cited as the Freedom of Information Act.

Section 1.3 In this Act, the following terms and phrases shall have the meaning established for each in this Section:

1.3.1 Access to Information:

1.3.2 "Access to information" refers to the right of the public to request, receive, review, reproduce and retain records and documents held by public bodies and private entities performing public functions or receiving public funding.

1.3.3 "Act" means the Freedom of Information Act.

1.3.4 "Court" means any judicial body of the Republic of Liberia.

1.3.5 "Documents" means any retrievable or reviewable record, which may be written, printed, audio, visual or electronic.

1.3.6 “Independent Human Rights Commission” means the autonomous commission established by an Act of the legislature, which shall have oversight responsibility for the effective implementation of this Act

1.3.4 “Person” means any individual, partnership, corporation, joint venture, trust, estate, un-incorporated entity, government or any juridical entity.

1.3.5 “Private Bodies” include any entity, business or otherwise, owned by private persons.

1.3.6 “Public Authorities” means any agency, ministry, or institution of the Government of Liberia or person acting on behalf of such agency, ministry or institution;

1.3.7 “Public Bodies” refer to all agencies, entities, corporations, bodies and other institutions owned, wholly or substantially by the Government of Liberia.

1.3.8 “Public Function” refers to any act normally carried out by the Government or any of its agencies, ministries and institutions.

1.3.9 “Public Services” means services rendered for or to the general public at cost or on gratis, and includes sanitation, health, transportation, banking, education, broadcasting and telecommunications, etc.

1.3.11 “Publication Scheme” means publication by public authority providing detailed information to the public on the nature and activities of that authority and information it publishes.

1.3.12 “Public Record” means a record, manual rule book, regulation, or other documents produced or received by, being used or having been used by, possessed by or under the control of a public authority, whether in written form or recorded or stored in electronic form or in any other device.

1.3.13 “Requester” means an applicant or person who requests access to a document or information.

Section 1.4 Principles: This Act is based on the following principles, which shall govern the construction, exercise, and protection of the right of access to information:

- a. Public bodies hold information not for themselves but as agents of the public and custodians of the public good;

- b. Everyone has a right of access to information generated, received and or held by public bodies, subject only to such limitations as are necessary and narrowly established for reason of an equally or more compelling public interest;
- c. The right of access to information includes both (1) a right to request and receive information, and (2) an obligation on the part of public bodies and officials to disseminate essential information that the public would generally want to know, including their core functions and key activities;
- d. The right of access to information applies to private entities that receive public resources and benefits, engage in public functions, and or provide public services, particularly in respect of information relating to the public resources, benefits, functions or services;
- e. The right to information is independent of a personal interest in the information, and there is no need whatsoever for a person requesting information to provide a reason or justification for his or her request.

Section 1.5 The objects of this Act are:

- a. To promote effective, equitable and inexpensive exercise of the right of access to information;
- b. To establish clear and concise procedures for requesting and providing of information held by (i) public bodies and (ii) private bodies receiving public benefits or performing public functions or providing public service.
- c. To establish and provide for the exercise of a right to appeal any decision denying a request for information or infringing on the right of access to information; and
- d. To provide appropriate penalties and other sanctions for wrongful failure to keep and or provide information.

Section 1.6 Scope of Act: This Act shall apply to and cover:

- a. All public authorities and bodies at all branches and levels of the Government, including but not limited to ministries, bureau, departments, autonomous agencies, public corporations, commissions, committees, sub-committees, boards, military and paramilitary institutions, and any other related bodies supported in whole or in part by public resources;

- b. All private bodies performing public functions and or providing public services, including academic institutions, hospitals and other health service providers; telecommunications operators, banking institutions, and similar entities;

- c. All private bodies that receive public funds or benefits of whatever nature; and

Section 1.7 Primacy of Act: Save for the Constitution, this Act is and shall be the primary law governing the right of access to information, including all matters related to request for and provision of information in Liberia. No administrative action, order or regulation contrary to, inconsistent with, or in derogation of this Act shall issue or be effective in Liberia, and this Act shall prevail over any and all subsequent inconsistent statutes, except a subsequent statute that specifically amends or repeals it.

Chapter 2.0 Publication of Certain Information

Section 2.1 Requirement of a Publication Scheme: Every public authority or body shall establish, maintain, and regularly update a widely accessible and user-friendly publication scheme whereby the public authority or public body automatically provides detailed information regarding its core functions, nature of its activities and operations, and the information it possesses.

Section 2.2 Contents of Publication Scheme: The publication scheme shall, at a minimum, contain:

- a. The full name, designation, functions and contact details of the Information officer appointed and maintained by the Authority in keeping with Section 5. Of this Act;

- b. Clear statement that (1) describes the nature, organization, functions and powers of the public authority concerned, (2) explains its decision-making processes, and (3) discloses agreement(s) and or arrangement(s), if any, that it has with third parties relative to the discharge of its functions;

- c. A fair description of the types and categories of documents and information held by the public authority, the location of the documents, and a clear statement of the public right to review, request, receive and retain copies of any of such documents or information; and

- d. Such procedures, as are not inconsistent with this Act, which may be followed to access, review, copy, receive and retain the whole or any portion of the documents or information.

Section 2.3 Access to Publication Scheme: The publication scheme of every public authority or body shall be widely accessible, and the hard and or soft copies of the scheme shall be available at the offices of the authority and at other reasonable public places.

Section 2.5 Automatic Publication: Without prejudice to the general publication scheme established in this Act, every public authority is obliged to publish, and maintained published, certain key classes of documents/information as soon as they are generated or received by the authority, irrespective of whether a request has been made or not made for them.

Section 2.6 Documents subject to Automatic Publication: The classes of documents to be automatically published by every public authority shall include: (1) the enabling legislation of the agency or authority; (2) its existing policies, procedures and rules; (3) its budgets; (4) the financial accounts of the agency/authority; (5) Material contracts; (6) Organizational chart, including lines of reporting; (7) Procedures for appealing decisions of the authority or its officers; and (8) such other information that would enable the public to deal with the authority and or monitors its performance.

Chapter 3 Procedures for Making and Responding to Request for Information

Section 3.1 Accessibility of Information: All public information held by public bodies and those held by private entities in respect of public funding received or public services provided shall be accessible, and may be inspected, requested, provided, reproduced and retained as provided in this Act.

Section 3.2 Request for Information: Every person, irrespective of their nationality or residence, may request, receive, reproduce and retain any information held by (1) a public authority or (2) private entity that receives public funds or engage in public functions or provision of public service; provided that in respect of private entities, the information shall relate to the public funds, benefit, functions or service.

Section 3.3 Description of information Requested: Every request shall describe the information requested with reasonable details that would enable the public authority or private entity easily identify the information. Additional specification of the information may be provided by the requester by any means and at any time, including in responses to questions from personnel of the authority or entity.

Section 3.4 Form of Request: Request for information may be filed in writing, by electronic mail, or orally in person, or by any alternative means.

Section 3.5 Reason for Request: The right to request information is independent of personal interest in the information, and no one shall be asked or required to provide a justification or reason for requesting any information.

Section 3.6 Designation of at least one personnel / staff: Every public authority and private entity to which this Act applies shall appoint, maintain and duly support at least one designated personnel/staff whose overall responsibility shall be to receive requests for information held by the authority or entity and coordinate the response(s) of the authority or entity to all such requests. The designated personnel / staff shall serve as the primary contact of the authority or agency with the public relative to request for and provision of information, and his responsibilities shall include promoting best practices in record maintenance, storage, and management, and assisting members of the public, especially illiterate and other physically challenged persons, to file requests for information.

Section 3.7 Prompt Response to Information Request: Every public authority and private entity shall promptly respond to all requests for information it receives, be it by post, e-mail, or hand delivery.

Section 3.8 Documentary acknowledgement of Request: Upon the receipt of every request, a public authority or private entity shall acknowledge the request in writing and advise the requester of the maximum number of days it shall take to respond to the request.

Section 3.9 Maximum period for responding to Requests: Every public authority and private entity shall respond to every request for information within thirty (30) calendar days; provided that this period shall be extended once upon showing of a reasonable cause.

Section 3.10 Response to request defined: A response to a request for information may consist of one of the followings: (1) timely provision of the requested information; (2) denial of the request; (3) transfer of the request.

Section 3.11 Provision of Requested information: The search for and provision of requested information shall be done free of charge to the requester, but a public entity may charge such amount as is necessary to cover actual cost of photocopying, transcribing, scanning or other forms of reproduction.

Section 3.12 Denial of Requests: A request for information, including to inspect, review or reproduce the information, may be lawfully denied only if it is within one of the exemptions provided in Chapter 4 of this Act. A denial of a request and the reason thereof shall be in writing and served the requester no later than 30 calendar days as of the receipt of the request.

Section 3.13 Transfer of Requests: In the event a public authority or private entity receives a request relating to information not held by the authority or entity, such authority or entity shall, with notice to the requester, automatically transfer the request to the public authority or private entity known or believed to hold the requested information.

A transfer of request shall be made no later than fifteen (15) days after receipt of the request and with prompt notice served the requester.

Section 3.14 Further Transfer of Requests: Where a request for information is transferred to a wrong public authority or private entity, the public authority or entity to which the request was erroneously transferred may, with notice to the requester, further transfer the request to another public authority or entity known or reasonably believed to be the holder of the information. A further transfer shall be made no later than ten (10) working days after receipt. There shall be only one further transfer, and in making the one further transfer, the original recipient of the request and the authority or entity making the further transfer have the obligations to consult and make all efforts to identify the proper holder of the information so as not to cause further delay in responding to the request.

Chapter 4.0 Exemptions

Section 4.1 Exhaustive List of Exempted Documents: Subject to the provisions of Section 4.8, a document, information or record is exempted from disclosure ONLY if it falls in or under one or more of categories of exempted documents listed in this Chapter.

Section 4.2 Information Relating to National Defence, Security and International Relations: A document or record is exempted from disclosure or public access if its disclosure would cause injury or substantial harm to the security, defence or international relations of the Republic of Liberia or would divulge any information or matter communicated in confidence by or on behalf of another country to the Government.

Section 4.3 Criminal Investigation: A document or record is exempted from disclosure or public access if its disclosure would cause injury or substantial harm to (1) an ongoing criminal investigation, (2) disclose the identity of a confidential source assisting with criminal investigation, or (3) endanger the lives or physical safety of persons involved in criminal investigation.

Section 4.4 Trade Secrets: A document or record is exempted from disclosure or public access if its disclosure under this Act would reveal trade secrets belonging to a public authority or a private entity, or destroy the commercial value or affect the competitiveness of a public authority or private entity in relation to the business or work of the authority or entity; provided that this provisions shall not be construed to apply to:

- (a) Information on the general business or professional affairs of the authority or private entity; or
- (b) Information on the business, commercial or financial affairs of an undertaking of which that person, or a person on whose behalf that person made the request, is a proprietor.

Section 4.5 Personal Information: A document or record is exempted from the general right of access if its disclosure would constitute an unreasonable disclosure of the personal information.

Section 4.6 Privileged Communications: A document or record is an exempt document or record if it is shown to be of such nature that it would be privileged from production in any legal proceedings based on any of the privileges recognized under the rules of evidence extant in Liberia.

Section 4.7 Partial Exemption: Where a portion of a document or record falls under the exemptions established in Sections 4.2 thru 4.6 above, only the exempted part(s) of the requested document shall be redacted from the original document and remaining portion released.

Section 4.8 Exemption must be justified; not merely Claimed: A public authority or private entity may not refuse access to or disclosure of information simply by claiming it as “confidential or secret”. In order to qualify to be exempted from disclosure, it must be clearly demonstrated that:

- a) The information or record falls within or under one or more of the exemptions established in this Act;
- b) That the disclosure of the information will cause or likely to cause injury or substantial harm to the interest protected by one or more of the exemptions established in this Act; and
- c) The harm to be caused by the disclosure is greater than the public interest in having the information disclosed.

Section 4.9 Maximum period for non disclosure: Information or records exempted from disclosure or public may remain exempted for as long as the reason for their exemption exists, but in any event no longer than a continuous period of fifteen (15) years).

Chapter 5 Oversight

Section 5.1 Oversight Body: The implementation of this Act, including compliance therewith, shall be overseen an independent Information Commissioner to be appointed by the President with the advice and consent of the Liberian Senate. The Independent Information Commissioner shall be a Liberian of high moral character and generally acceptable to many stakeholders. The Independent Information Commissioner shall serve full-time, and receive compensation at least equal to that receive by a Circuit Judge.

The work of the Information Commissioner and the Technical Secretariat to support his or her work shall be funded by the Government through the National budget. The Information Commissioner shall enjoy operational, investigatory and regulatory autonomy, and general independence in the exercise of his or her work.

Section 5.2 Functions and Powers of Information Commissioner: Without limiting the generality of the provisions of Clause 5.1 above, the functions and powers of the Independent Information Commissioner shall include:

- a) To receive, hear and decide all complaints as well as mediate disputes arising under this Act.
- b) To compel witnesses and evidence for the purpose of deciding appeal or otherwise determining compliance with this Act.
- c) To review information held by public bodies and covered private entities and, in connection therewith, including procedures for the internal reviews provided in Section Chapter (6) of this Act as well as the fees charged by public bodies and entities for reproduction of requested information.
- d) To issue cease and desist orders and other recommendations to any or all of such public bodies and relevant private entities relative to implementation and compliance with this law.
- e) To investigate, monitor, and promote compliance with this Act, including collecting statistics associated therewith.
- f) To order any public body or private body concerned to release requested information should it find that the information or record is not one that is exempted by this Act.
- g) To train and build the capacity of personnel of public bodies and private entities concerned to ensure (1) proper interpretation and application of this Act and (2) that the handling of information requests is consistent across all government bodies.
- h) To consult with and provide support to Information Officers and other relevant officials of public bodies and private entities covered under this Act.
- i) To develop access guidelines and procedures.
- j) To develop public awareness strategies and information dissemination campaigns to educate the public about their rights under the Act, and promoting necessary compliance with this Act.
- k) To evaluate existing laws and regulations relating to access to information, and to make recommendations for reform and harmonization of the laws.

Section 5.3: Annual Reports: All public bodies and private entities to which this Act applies shall submit to the Independent Information Commissioner report concerning activities carried out during the preceding year in relation to this Act. The annual report shall be submitted at a time to be determined by the Independent Information Commissioner, and shall include:

- (a) the number of requests for access to documents or records or other type of information received by the public authority or private body as the case may be between January 1 and December 31 of the preceding year, and the number of applications which the public authority or private body processed during the period.
- (b) the number of requests for access to information pending before the public authority or private body as the case may be as of December 31 of the preceding year and the number of days that each of those requests had been pending before the public authority or private body as of the date of the submission of the report.
- (c) the number of requests where the public authority or the private body as the case may be declined access to records or documents requested by members of the public under this Act and the reasons for each such refusal of access.
- (d) the average number of days it takes the public authority or private body to process different types of requests for access to information, records or documents;
- (e) the total amount of fees collected by the public authority or private body as the case may be to process such requests; and
- (f) A description of the steps or efforts taken by the responsible Minister or Chief Executive of the public authority or private body as the case may be to encourage all officers under his or her charge to comply with the provisions of this Act.

Section 5.4 Annual Report to the Legislature: The Independent Information Commissioner shall include in its annual report to the National Legislature a full account of the status of implementation of the Act.

Chapter 6 Appeal Procedures

Section 6.1 Right of Appeal: In all events where a request for information is denied and or not responded to, or an action of a public body or private entity in respect of the transfer or any handling of such request if is alleged not to be in keeping with this law, the applicant shall have a right to appeal the decision or action of the public authority or private entity concerned.

Section 6.2 Internal Review: An applicant who receives a negative decision or action regarding a request for information or who believes that the transfer of his or her request or the fees charged by the public body or private entity are inconsistent with this law shall in all cases be entitled to an internal review of the action or decision. Such internal review shall be conducted by a senior official or an internal information request review body to be established by each authority or agency. An internal review shall be concluded within thirty (30) working days as of its filing by the applicant. The outcome of each internal review shall be in writing and copies shared with the applicant.

Section 6.3 Complaints to the Independent Information Commissioner: Where (i) an applicant receives a negative decision or action and (ii) is not satisfied with the outcome of an internal review conducted pursuant to Section 6.2, such applicant shall have a right to appeal the decision of the authority or entity directly to the Independent Information Commissioner. The Independent Information Commissioner shall be the final administrative arbiter of all complaints concerning denial of information requests and any other alleged infringement of the right of access established under this Act. A final decision of the Independent information officer may include any of the civil sanctions provided for in Chapter 7 of this Act.

Section 6.4 Burden of Proof: In both (i) an internal review conducted by an authority or agency pursuant to Section 6.2 and (ii) a hearing conducted by the Independent information Commissioner pursuant to Section 6.3 hereof, the burden of proof shall be on the public authority or private entity to show that it acted consistent with its obligations and in accordance with this Act.

Section 6.5 Right of Judicial Review: Any person who is not successful in an internal review and in respect of a appeal taken from the internal review to the Independent Information Commissioner shall have a right to a judicial review. An appeal from the decision of the Information Commissioner shall lie before the Civil Law Court in Montserrat County and in the Circuit Court of the county where the public body or private entity is located.

Chapter 7.0 Offences, Sanctions, Protections

Section 7.1 Fines for violations: The person deemed responsible for a public authority or private entity to violate this act will be subject to a fine not less than L\$5,000 and not

greater than L\$10,000.00 in addition to reimbursement of any reasonable attorney costs incurred by the successful applicant.

Section 7.2 Dismissal: A public servant who without authorization and any legal basis wrongfully denies an applicant access to information or otherwise violate a person's right of access shall be subject to a fine of not less than L\$5,000 and not greater than L\$10,000 plus a formal reprimand for the first wrongful conduct. The person shall be suspended for two months without pay for the second offense, and immediate dismissal for the third time of violation.

Section 7.3 When Civil Sanctions may be imposed: The fines established in Section 7.1 and the personnel actions provided for in Section 7.2 hereof may be imposed by an authority or entity or the Independent Information Commissioner at the end of an internal review or a hearing consistent with due process.

Section 7.4 Criminal Sanction for Willful Destruction of Records: It shall be a criminal offence punishable on conviction with a maximum of two (2) years imprisonment for willfully destroying or altering records after that have are the subject of a request for information.

Section 7.5: Protection from civil and criminal liability: Any person who discloses information or grant access to information in good-faith reliance on the provision of this Act shall be protected from any and all civil and criminal liabilities, even if it is later determined that the information was in fact exempted. Similar protection shall be accorded all persons that receive information pursuant to this Act

Chapter 8.0 Effective Date

Section 8.1: This Act shall take effect immediately upon publication in Hand-Bills.

Any law to the contrary notwithstanding.