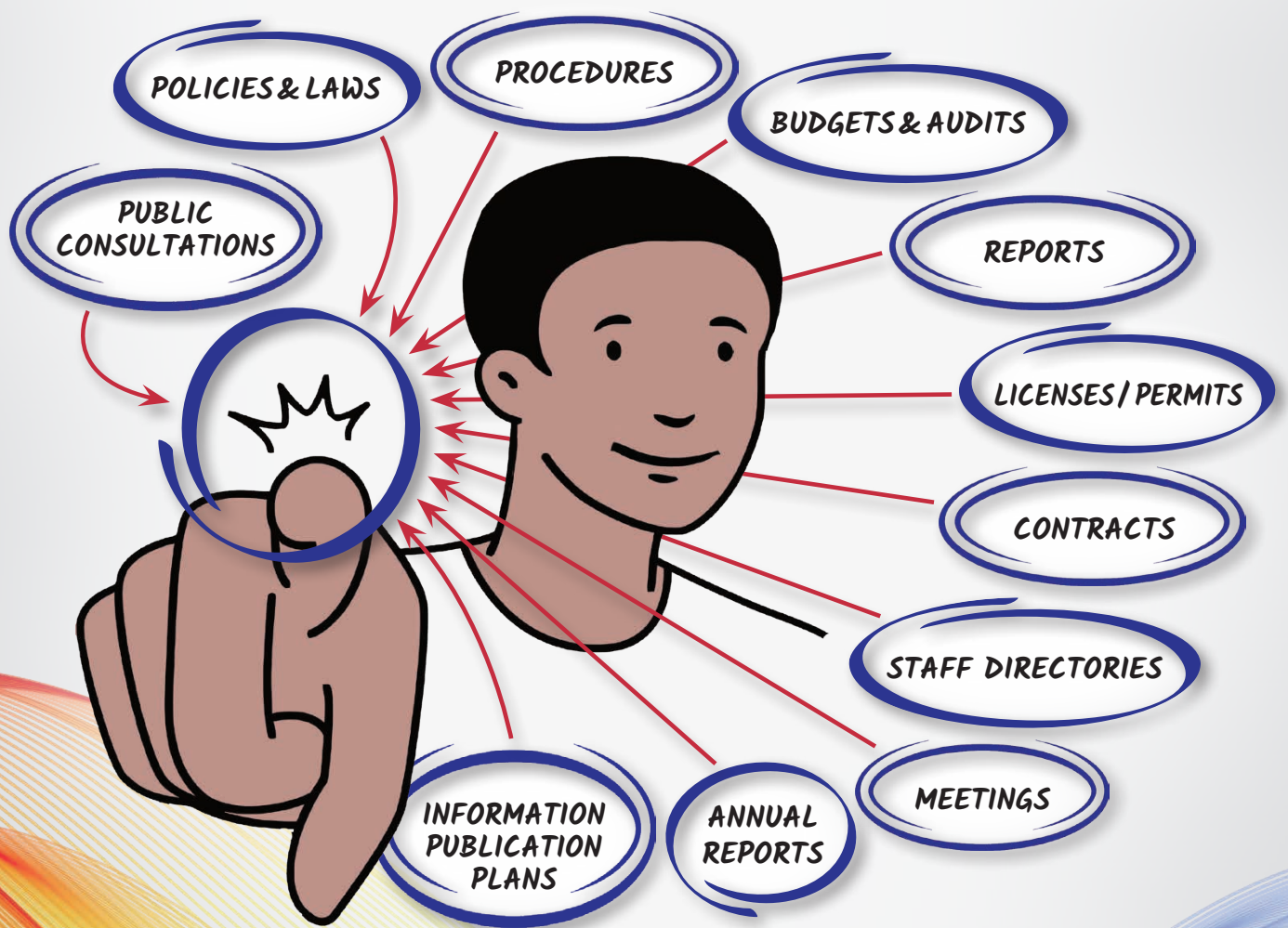


# YOUR RIGHT OF ACCESS TO INFORMATION

## A Simplified Guide to Namibia's Access to Information Act 8 of 2022



### BOOKLET 1

## OVERVIEW OF THE LAW

### Scope, Principles and Personnel

Booklet 1 in this series outlines the scope and principles of the Access to Information Act and introduces the officials who administer it.

Booklet 2 explains how to request access to information, step by step.

Booklet 3 explains your options if your request for information is denied.

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# THE IMPORTANCE OF ACCESS TO INFORMATION



## What is the “right of access to information”?

Internationally, the right of access to information is the right to information held by public bodies. It includes a right to request and receive information. It also places a duty on governments to publish information proactively, without being asked.

Access to information is vital in a democracy. Information helps citizens make informed decisions. It is also part of freedom of expression, which includes the right to seek and receive information as well as the freedom to give information to others. Most countries in the world have laws on access to information. This right is included in the constitutions of many countries.

The *African Charter on Human and Peoples’ Rights* says that “every individual shall have the right to receive information” (Article 9).

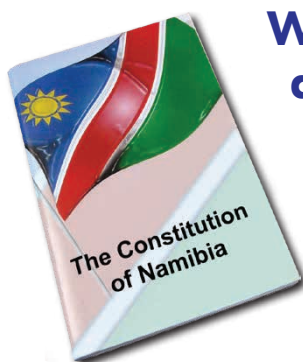
## Why is access to information important?

1) Access to information encourages *transparency* and *accountability*.

- **Transparency** means allowing members of the public to know how public and private bodies function – including how they make decisions and exercise their powers. Transparency is very important for preventing abuses of power.
- **Accountability** means holding public and private bodies responsible for their decisions and actions.

- 2) Access to information helps people assert and enforce their legal rights.
- 3) Access to information improves service delivery.
- 4) Access to information improves public participation.

The *African Union Convention on Preventing and Combating Corruption* says that governments must adopt laws and other measures “to give effect to the right to access to any information that is required to assist in the fight against corruption and related offences” (Article 9).



## What does the Namibian Constitution say about access to information?

The Namibian Constitution does not contain a specific right to information, but it provides for freedom of speech and expression. It also says that the public should be encouraged “to influence Government policy by debating its decisions”. A system of access to information is needed for the meaningful exercise of these rights.

**Namibian Constitution**, Articles 21(1)(a) and 95(k)

## Who administers the law on access to information?

The law is administered by an independent **Information Commissioner** and one or more **Deputy Information Commissioners** appointed by the President with the approval of the National Assembly.

**Access to Information Act**, section 5

# THE SCOPE OF THE LAW



## Whose information is covered by the law?

The law applies to (1) **information held by public entities** and (2) **some kinds of information held by private entities**.

“**Public entities**” include –

- ▶ government ministries, offices and agencies
- ▶ any body established by the Namibian Constitution or by a law passed by Parliament
- ▶ public enterprises (“parastatals”)
- ▶ government bodies at national, regional and local levels
- ▶ private entities that are totally or partially owned by government
- ▶ private entities that are directly or indirectly financed by government
- ▶ private entities that carry out public functions or services.

The **Information Commissioner**

can exempt categories of non-profit organisations from being treated like public entities, even if they are covered by the definition.

An example might be private children’s homes that receive government subsidies.

“**Private entities**” include –

- ▶ companies, close corporations or voluntary associations that are not public entities
- ▶ trusts or partnerships that carry on a trade, business, profession or activity
- ▶ individuals who carry on a trade, business, profession or activity, but *only* for information related to those activities.

This definition includes civil society groups.

The public has a general right to information held by **PUBLIC ENTITIES**.

The public has a right to information held by **PRIVATE ENTITIES** *IF the information may assist in the exercise or protection of a fundamental human right or freedom.*

**Access to Information Act**, sections 1 (definitions of “public entity” and “private entity”), 4(a)-(b), 29 and 30(1)

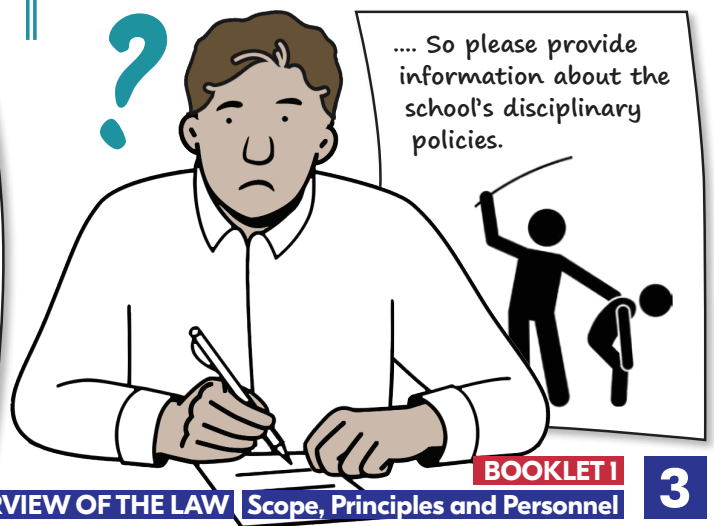
### PUBLIC ENTITY

Suppose that you are concerned about the allocation of resettlement farms. You could request a list of beneficiaries of this scheme from the Ministry of Ministry of Agriculture, Water, and Land Reform.



### PRIVATE ENTITY

Suppose that you believe that a private school is using corporal punishment against its learners, which is a violation of the Constitution. You could request information about the school’s disciplinary policies.



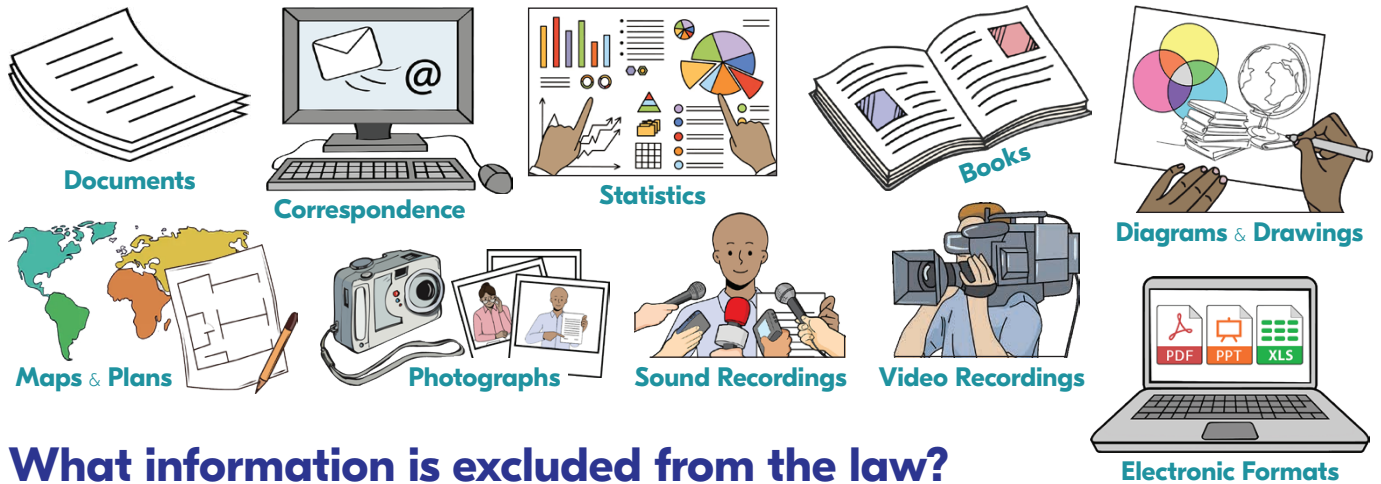
# What information is covered by the law?

The term “information” is very broad. It covers documents, correspondence, statistics, books, drawings, diagrams, plans, maps, photographs, sound recordings, video recordings, electronic formats or any other forms.

The law covers information that was produced both *before* and *after* the law came into force.

**Access to Information Act,**  
section 2(1)

**Access to Information Act,** section 1, (definition of “information”)



# What information is excluded from the law?

The law does *not* apply to this information:

- 1) **meetings and decisions of Cabinet and Cabinet committees**
- 2) **the judicial functions of courts, tribunals or investigative units** (such as the Immigration Tribunal, the Namibian Competition Commission or the Namibia Refugees Committee).
- 3) **the nomination, selection and appointment of judges, magistrates or other persons with judicial functions** (such as the presiding officer of an election tribunal that decides on electoral challenges or the persons appointed to serve on a tax tribunal).
- 4) **materials that have already been published** (which are already publicly available).
- 5) **materials available for public use, reference or exhibition purposes at a library or museum** (which are already publicly available).

There are some other categories of “**exempt information**” that can be accessed only under certain conditions.

This is explained in **Booklet 2** of this series.

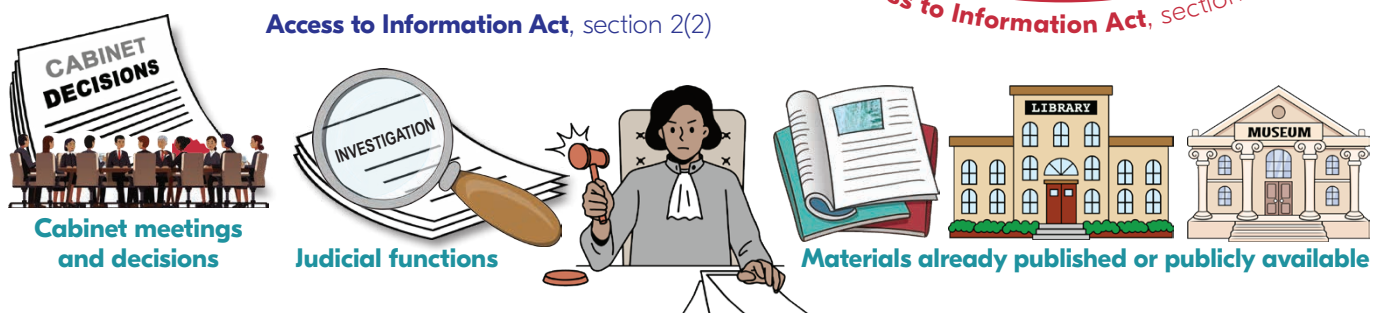
**Access to Information Act,** Part 9

**Note also that private entities are only required to provide access to information IF the information may assist in the exercise or protection of a fundamental human right or freedom. The law does not cover any other kinds of information held by private entities.**

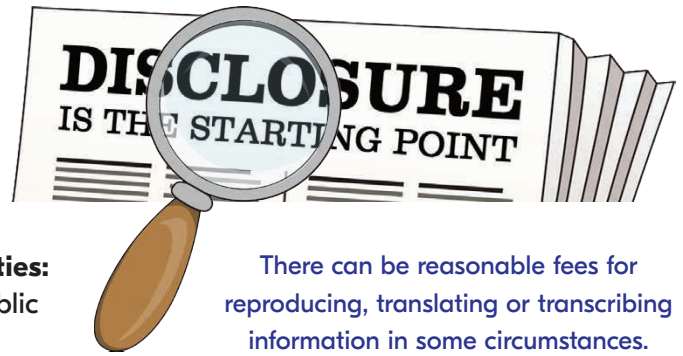
*Access to Information Act, section 4(b)*

This means that the law *cannot* be used to get access to these five types of information.

**Access to Information Act,** section 2(2)



# KEY PRINCIPLES



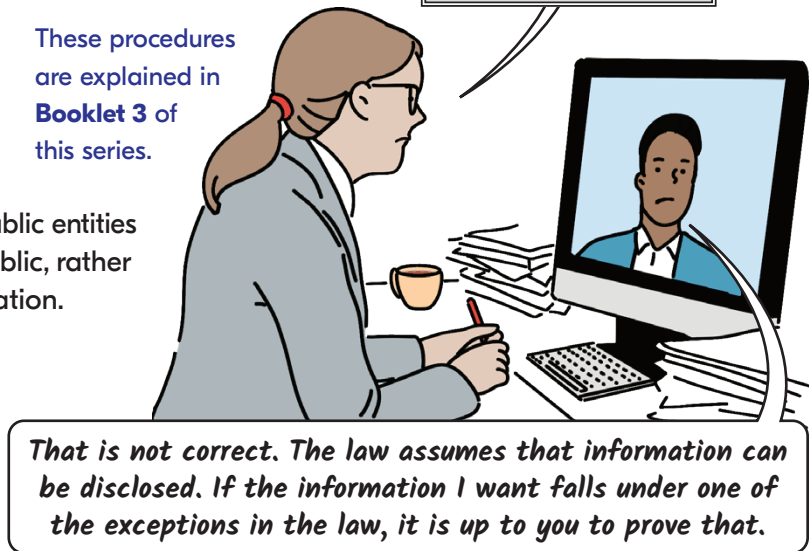
## General principles

- 1) Right to access information held by public entities:** You have the right to access information held by public entities *without delay* and *free of charge*.
- 2) Right to access information held by private entities:** You have the right to access information held by private entities that may assist in the exercise or protection of any fundamental human right or freedom *quickly* and *without high fees*.
- 3) Disclosure is the starting point:** Public and private entities must assume that information can be disclosed, unless they can show that one of the exceptions stated in the law applies.
- 4) Authority of Information Commissioner:** All public entities and private entities that hold information fall under the authority of the Information Commissioner who administers the law.
- 5) Right to challenge non-disclosure:** Any refusal to disclose information can be challenged through the procedures set out in the law.   
 These procedures are explained in **Booklet 3** of this series.
- 6) Proactive disclosure by public entities:** Public entities have a duty to make their information public, rather than just waiting for requests for information.
- 7) Protection for good faith disclosure:** A person who discloses information in good faith cannot be punished for the disclosure, except where a law provides for this.

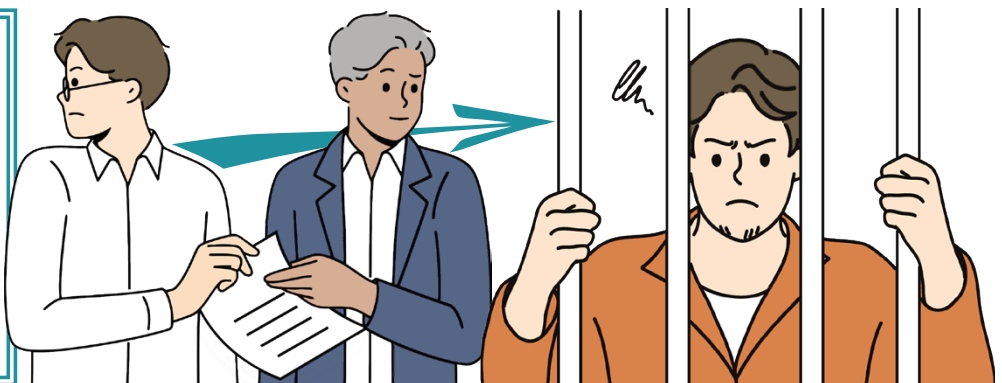
There can be reasonable fees for reproducing, translating or transcribing information in some circumstances.

*You must prove to me that you have a right to this information!*

INFORMATION OFFICER



For example, it is a crime for employees of the Namibian Central Intelligence Service to disclose information they access through their jobs other than in certain circumstances set out in the Namibia Central Intelligence Service Act 10 of 1997.



**Access to Information Act**, section 4

See also section 3(2)-(3) on how the Act relates to other laws and section 46 on fees.

# INFORMATION COMMISSIONER

## Role of Information Commissioner

The Information Commissioner has the main responsibility for implementing the law on access to information. The Information Commissioner must also promote, monitor and protect the right of access to information in Namibia.

[Access to Information Act](#), section 5(1)

## Independence of Information Commissioner

The Information Commissioner must be independent and impartial. To ensure independence, the Information Commissioner must not hold any other office for financial gain or engage in any political activity (such as publicly presiding over a political meeting or making a public statement that promotes or prejudices any political party).

[Access to Information Act](#), sections 5(1), 10-11

## Qualifications

These qualifications and disqualifications apply to the Information Commissioner and his or her Deputies.

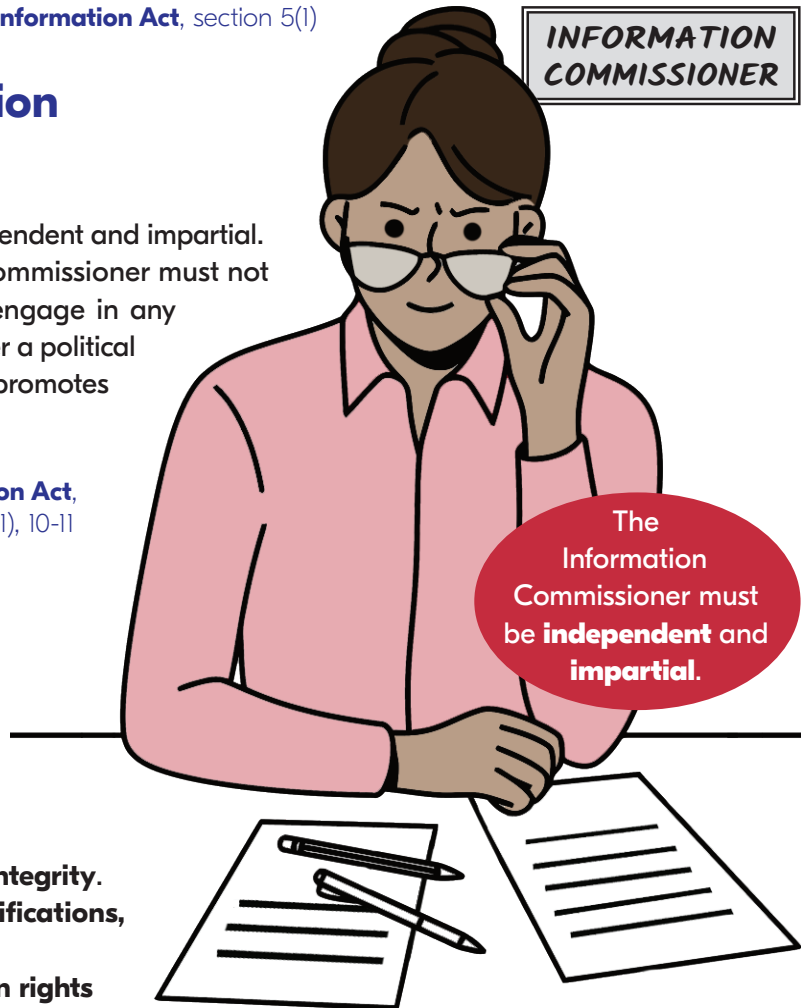
### Qualifications:

- ▶ They must be **fit and proper persons of integrity**.
- ▶ They must have **relevant academic qualifications, knowledge and experience**.
- ▶ They must have **knowledge about human rights** (especially the right of access to information) OR **knowledge about good governance**
- ▶ They must have **a clear understanding of transparency and accountability**.
- ▶ They must be **Namibian citizens or permanent residents**.

### Disqualifications:

- ▶ They must *not* be a **member of Parliament, a regional council or a local authority council**.
- ▶ They must *not* hold any national regional or local **political office** OR a **position in a political party**.
- ▶ They must *not* be currently **bankrupt** (because this could be a sign of financial irresponsibility, and because a person in financial difficulties might be vulnerable to corruption)
- ▶ They must *not* have been **convicted of a crime** and sentenced to imprisonment without the option of a fine (the kind of sentence that usually applies to serious crimes).

[Access to Information Act](#), sections 7-8



# Appointment process



## 1 Establishment of Selection Committee by Minister

The Minister for information forms a Selection Committee of five members:

- chairperson of the Public Service Commission
- chairperson of the Law Society of Namibia
- Executive Director of the ministry responsible for information (MICT)
- CEO of the Communications Regulatory Authority of Namibia (CRAN)
- one person nominated by non-governmental media organisations and chosen by the Minister.

The Selection Committee must be gender-balanced, with no more than 3 men or 3 women if possible. The designated members can be substituted by deputies if necessary for gender balance.

## 2 Identification of top candidates by Selection Committee

The Selection Committee nominates, shortlists, interviews and selects the top 2 to 3 candidates.



## 3 Approval by National Assembly

The Selection Committee presents the list of 2 to 3 candidates to the National Assembly for approval by resolution.

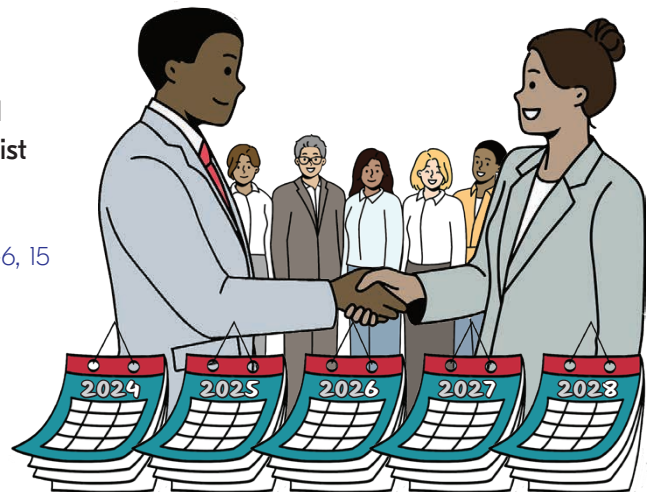
The Minister for information will set the procedures for this process.

A Deputy Information Commissioner serves as Acting Information Commissioner when necessary.

## 4 Appointment by President

The President appoints the Information Commissioner and at least one Deputy Information Commissioner from the list approved by the National Assembly.

[Access to Information Act](#), sections 5-6, 15



## Term of office

An Information Commissioner and a Deputy Information Commissioner hold office for **five years**. No person may serve more than **two terms of office**.

[Access to Information Act](#), section 12

## Removal from office



The President can remove an Information Commissioner or a Deputy only for these three reasons: (1) **non-compliance with the contract of appointment** (2) **incapacity** or (3) **misconduct**.

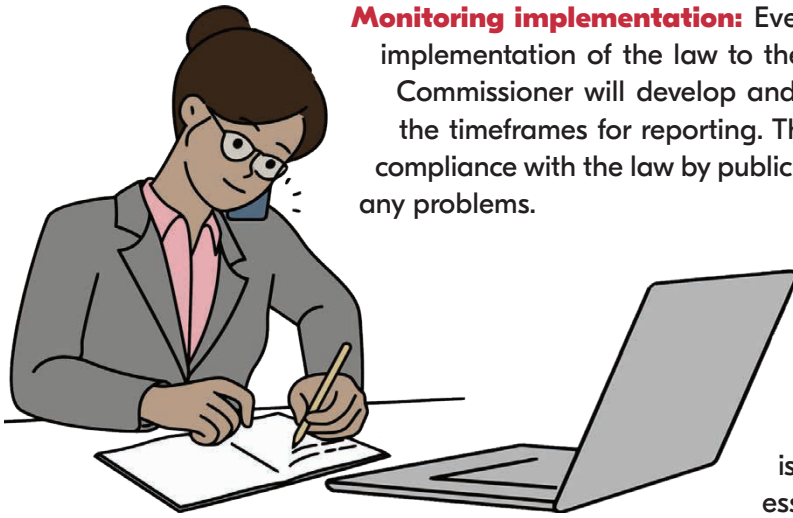
Removal can take place only after **investigation by a committee of inquiry nominated by the Selection Committee and appointed by the President**. This committee must be chaired by a magistrate, judge or legal practitioner. It must make recommendations to the President. Removal can take place only with the **approval of the National Assembly**.

The removal process helps protect the independence of the Information Commissioner and the Deputies.

[Access to Information Act](#), section 14

# Key duties of the Information Commissioner

**Ensuring compliance with the law:** The Information Commissioner can take various steps to make sure that public and private entities comply with the law. The Information Commissioner can also assist members of the public and information holders.



**Monitoring implementation:** Every public entity must provide reports on its implementation of the law to the Information Commissioner. The Information Commissioner will develop and publish guidelines on these reports and set the timeframes for reporting. The Information Commissioner must also audit compliance with the law by public entities and issue recommendations to correct any problems.

**Encouraging training of personnel:** The Information Commissioner must provide guidelines to public entities for internal training of their personnel and monitor this training. The Information Commissioner may issue directives for mandatory training, if necessary, or provide training directly on request.

**Resolving disputes:** The Information Commissioner must attempt to resolve disputes through negotiation, conciliation or mediation. The Information Commissioner will decide on appeals when requests for disclosure are refused.

**Issuing directions:** The Information Commissioner can issue directions on information that involves sensitive State matters, confidential information or information about children. The Information Commissioner can issue directions in other circumstances where this would be helpful.

**Promoting public understanding of the law:** The Information Commissioner has a duty to prepare a simple guide to the law that is translated into other languages where possible. The Information Commissioner must consult with civil society organisations and interest groups on how to promote access to information.

**Research and recommendations:** The Information Commissioner may commission research relating to access to information and make recommendations for law reform as needed.

**Transparency:** The decisions, recommendation and directives of the Information Commissioner must be published quarterly, to promote transparency.

**Accountability:** The Information Commissioner is accountable to the National Assembly and must submit an annual report to the National Assembly three months after the end of every financial year.

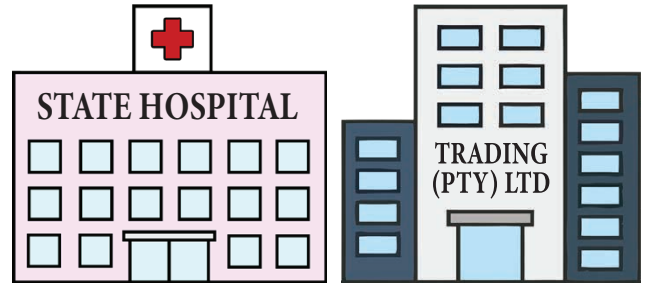


The Information Commissioner is assisted by members of the public service who work under his or her supervision. The Information Commissioner can also contract services from other persons or convene panels of experts to assist with the implementation of the law.

Access to Information Act,  
sections 9, 10(1), 18-21, 31(2)



# DUTIES OF PUBLIC AND PRIVATE ENTITIES



## Information officers



The head of every public or private entity must designate a staff member to be its information officer. If an entity fails to designate an information officer, then the head of the entity must serve as the information officer.

**Access to Information Act**, section 22

An entity can also designate staff members as deputies to assist its information officer, if it wishes.

## Duties of information officers

Information officers handle requests for access to information. They must also assist persons to make requests for information if necessary, free of charge. When a member of the public makes a request for information, the information officer makes the initial decision on whether the law requires disclosure of that information.

**Access to Information Act**, section 23, 35(1), 36(1), 37(2)

Details about the process for requesting information are contained in **Booklet 2** of this series.

All public and private entities have a legal duty to assist the Information Commissioner with any application, investigation or appeal under the law.

**Access to Information Act**, section 28



# DUTIES OF PUBLIC ENTITIES



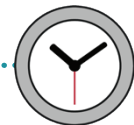
## Implementation plans

All public entities must prepare an implementation plan within **12 months** of the date when the law comes into force. Each public entity's implementation plan must include:

- ▶ information on how it will implement the law
- ▶ an information publication plan on proactive information-sharing
- ▶ estimates of the budget and staff it needs to implement the law
- ▶ how it will monitor and track requests for information and its responses
- ▶ plans for compulsory staff training
- ▶ plans for public consultation and community outreach
- ▶ plans for internal audits of its compliance with the law.

**Access to Information Act**, sections 24 and 27

Every public entity must submit its implementation plan to the Information Commissioner. The Information Commissioner may request amendments to the plan or issue directives that could enhance implementation.



The implementation plan must be reviewed and updated  
**AS REQUIRED BY THE  
INFORMATION COMMISSIONER.**

## Information manuals

All public entities must publish an information manual within **24 months** of the date when the law comes into force. Each public entity's information manual must include:

- ▶ a description of its structure, objectives, powers and functions
- ▶ contact details of its information officer and deputies
- ▶ the plain language guide to the law developed by the Information Commissioner
- ▶ information on how members of the public can make recommendations on its policies or activities
- ▶ remedies for complaints
- ▶ reproduction fees, translation fees and transcription fees
- ▶ what information it proactively discloses, and what information is available only on request.

**Access to Information Act**, sections 25, 27

The information manual must be submitted to the Information Commissioner for approval before publication. It must then be circulated to the public in as many local languages as possible.



The information manual must be reviewed and updated **EVERY 5 YEARS.**

## Annual reports

The head of a public entity must submit an **annual report** to the Information Commissioner. Each public entity's annual report must include information about access to information during the previous year:

- ▶ the number of requests for information it refused, and the reasons for the refusals
- ▶ the number of times when its responses to requests for information were delayed
- ▶ the number of challenges to its refusals to disclose information and their outcomes
- ▶ the steps taken by its head to encourage its staff to comply with the law
- ▶ its efforts to implement the law in terms of its implementation plan
- ▶ any penalties and disciplinary actions related to access to information
- ▶ any difficulties encountered in implementation of the law, such as insufficient staff or budget
- ▶ categories of information proactively disclosed, and where the public can access that information
- ▶ any recommendations for changes to the laws or practices on access to information.

**Access to Information Act**, sections 26-27



The annual report must be submitted to the Information Commissioner **BEFORE THE END OF APRIL EVERY YEAR.**

## Proactive disclosure of information

Every public entity must publish this information, but **the law does not specify a timeframe:**

- ▶ its organisation, mandate, powers and duties
- ▶ the laws and policies it administers
- ▶ its procedures for producing and managing information
- ▶ a list of the categories of information it holds or controls
- ▶ a staff directory
- ▶ its recruitment procedures and vacancies
- ▶ details about boards, councils, committees and other bodies that fall under the entity, or advise or manage it
- ▶ its budget
- ▶ the annual report it submitted to the Information Commissioner
- ▶ any other information specified by the Information Commissioner.



Every public entity must publish this information **within 30 days of producing or receiving it:**

- ▶ staff manuals, policies, procedures or rules
- ▶ names and contact details of the information officer and deputy information officers
- ▶ forms, procedures, processes and rules for engagement with the public
- ▶ arrangements for public consultation on policies, draft laws or similar documents
- ▶ whether meetings of the public entity are open to members of the public
  - if so, the options for public engagement at the meeting
  - if not, how to access submissions received and decisions reached
- ▶ details of any subsidy programs that use public funds (including amounts, criteria and beneficiaries)
- ▶ contracts, licences, permits, authorisations and public-private partnerships
- ▶ reports on surveys, studies or tests, including environmental impact assessments
- ▶ any other information specified by the Information Commissioner.

**Access to Information Act**, sections 24(2)(b), 27 and 33

**A public entity has a duty to proactively publish certain categories of information.**

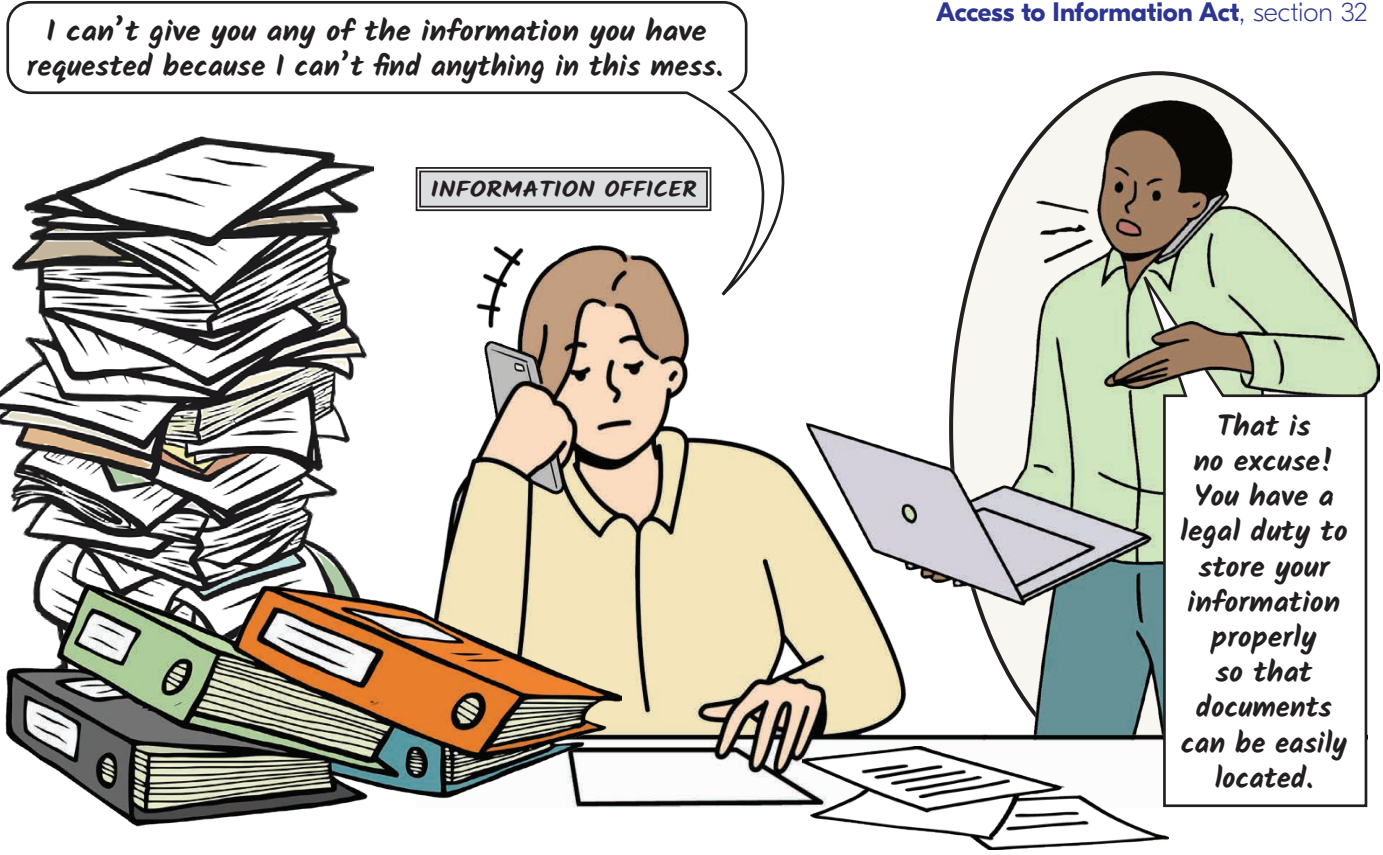


Some information must be proactively published **WITHIN 30 DAYS.**

# Duty to manage information effectively

Public entities must organise and manage their information in a way that promotes access to information. This includes storing information systematically so that it can be easily located and identified. Public entities must also store information in way that preserves it safely and accurately.

Access to Information Act, section 32



**How does the Access to Information Act fit together with other laws about access to specific kinds of information?**

Nothing in the Access to Information Act limits access to information under any other law. Where there is conflict between the laws, the one that is more favourable to granting access will apply.

**Access to Information Act, section 3**

IPPR / ACTION Coalition Project

Access to Information for Civil Society Organisations (ATI for CSOs)

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