

FREEDOM OF INFORMATION ACT

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SCHEDULE – FREEDOM OF ACCESS TO INFORMATION ON THE ENVIRONMENT (AMENDMENT) REGULATIONS, 2008

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

19th December, 2008

ACT No. XVI of 2008

AN ACT to establish a right to information held by public authorities in order to promote added transparency and accountability in government.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY AND DECLARATION OF PRINCIPLES

1. (1) This Act may be cited as the Freedom of Information Act, 2008. Short title and commencement.

(2) This Act shall come into force on such a date as the Minister may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

2. In this Act, unless the context otherwise requires: Interpretation.

“applicant” means, in relation to a request for the disclosure of a document in accordance with article 3, the person who made that request;

“Commissioner” means the Information and Data Protection Commissioner appointed in terms of article 36 of the Data Protection Act;

“decision notice” has the meaning given by article 23;

“document” means any article that is held by a public authority and on which information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved with or without the aid of any other article or device;

“eligible person” means a person who is resident in Malta and who has been so resident in Malta for a period of at least five years, and who is either a citizen of Malta or a citizen of any other member state of the European Union or a citizen of any other state the citizens of which have a right, in virtue of any treaty between such state and the European Union, to be treated in Malta in the same manner as citizens of member states of the European Union;

“enforcement notice” has the meaning given by article 25;

“European Union” has the meaning given by the European Union Act;

“exempt document” means a document which is not subject to disclosure under this Act in accordance with Parts V and VI;

“exempt matter” means matter the inclusion of which in a document causes the document to be an exempt document;

“information notice” has the meaning given by article 24;

“Minister” means the Minister responsible for freedom of information and data protection;

“Principal Permanent Secretary” means the officer appointed in terms of article 14 of the Public Administration Act;

“public authority” means:

(a) the Government, including any ministry or department thereof;

(b) a Government agency established in terms of the Public Administration Act or any other law; and

(c) any body established under any law, or any partnership or other body in which the Government of Malta, a Government agency or any such body as aforesaid has a controlling interest or over which it has effective control;

“relevant public authority” means a public authority other than those mentioned in article 5;

“Tribunal” means the Information and Data Protection Appeals Tribunal established under article 48 of the Data Protection Act.

3. Any eligible person has a right of access to documents held by public authorities in accordance with and subject to the provisions of this Act. Right of access to official documents.

4. Nothing in this Act shall be construed as preventing public authorities from publishing or granting access to documents (including exempt documents) otherwise than as required by this act. Access to documents other than through this Act.

5. (1) Subject to subarticle (2), this Act shall not apply to documents that – Application of this Act.

(a) are held by a Local Council and are accordingly subject to article 45 of the Local Councils Act;

(b) are subject to the Freedom of Access to Information on the Environment Regulations or to any other regulations made under the Environment Protection Act and providing for freedom of access to information;

(c) have been transferred to the National Archives in accordance with the National Archives Act;

(d) are accessible to the public under any other law;

(e) are available for purchase by the public in accordance with arrangements made by a public authority; or

(f) are held by a commercial partnership in which the Government or another public authority has a controlling interest, in so far as the documents in question relate to the commercial activities of the commercial partnership.

(2) This Act shall apply to documents to which subarticle (1) refers only in so far as may be provided for by any law governing access to such documents.

(3) This Act shall not apply to documents in so far as such documents contain –

(a) personal data subject to the Data Protection Act; or

(b) information the disclosure of which is prohibited by any other law:

Provided that where it is possible to release a document with such data or information deleted, this shall be done in accordance with subarticles (1) and (2) of article 13.

(4) This Act shall not apply to documents held by:

(a) the Electoral Commission;

(b) the Employment Commission;

(c) the Public Service Commission;

- (d) the Office of the Attorney General;
- (e) the National Audit Office;
- (f) the Security Service;
- (g) the Broadcasting Authority, in so far as such documents relate to its functions under subarticle (1) of article 119 of the Constitution; or
- (h) the Ombudsman.

PART II

SUBMISSION AND HANDLING OF REQUESTS FOR INFORMATION

Manner in which requests for access shall be made.

6. (1) An applicant's request to a public authority in terms of article 3 shall –

(a) be delivered in writing, including by post or electronically, subject to paragraph (e), to an office of the public authority; and

(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public authority to identify it; and

(c) include a copy of the applicant's identity card or residence permit, or make reference to the identity card or residence permit in such a way as may be specified by regulations issued under paragraph (a) of article 42;

(d) specify a postal address at which notices under this Act may, if necessary, be sent to the applicant; and

(e) be accompanied by any fee payable in accordance with subarticle (3) of article 9.

(2) No applicant shall be required to justify or give any reasons for a request under this Act, and any beliefs of public authorities as to what are the applicant's reasons for seeking access shall not affect that request.

Public authority's duty to assist applicants.

7. Where an eligible person –

(a) wishes to make a request to a public authority; or

(b) has made to a public authority a request that does not comply with article 6,

it is the duty of the public authority to take reasonable steps to assist the person to make the request in a manner that complies with article 6, and it shall do so at no charge.

Transfer of requests.

8. Where a request in accordance with article 6 is made to a public authority, and the document to which the request relates is not

held by the authority but is believed by the person dealing with the request to be held by another public authority, the public authority to which the request is made shall promptly, and in any case not later than 10 working days after the day on which the request is received, transfer the request to the other public authority and inform the applicant accordingly.

9. (1) Subject to subarticle (2) and to any regulations issued under this Act, a public authority may charge a fee to an applicant for access to a document in accordance with this Act. Fees.

(2) Any fee set by a public authority shall not exceed the cost of making a document available to the applicant, whereas if regulations issued as aforesaid prescribe a range of standard fees, such fees shall not exceed the average cost of making documents available to applicants.

(3) Regulations issued as aforesaid may provide for the payment of a fee specifically for the processing of a request for access to documents, and for the payment of such a fee on presentation of the request.

(4) Where a public authority decides to charge an applicant a fee, it shall advise him accordingly and inform him that he has the right to complain to the Commissioner under article 23 if he feels that the fee is excessive:

Provided that if the fee is a standard fee established by regulations under this Act, the Commissioner may in response to such a complaint inquire only into whether the regulations have been correctly applied.

(5) A public authority may waive any fees payable in respect of a particular application if, in the opinion of the authority –

(a) the fee payable is so small as to be not worth collecting; or

(b) payment of the fee would cause financial hardship to the applicant, bearing in mind the applicant's means and circumstances; or

(c) disclosure of the information requested is in the public interest.

(6) Where a public authority fails to meet the time limit set by article 10 or, if applicable, article 11, it shall not charge any fee for access to a document.

10. Subject to this Act, the public authority to which a request is made in accordance with article 6 or is transferred in accordance with article 8 shall, as soon as reasonably practicable, and in any case not Decisions on and replies to requests.

later than 20 working days after the day on which the request is received by the authority –

- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and
- (b) inform the applicant accordingly in writing.

Extension of time limits.

11. (1) Where a request in accordance with article 6 is made or transferred to a public authority, the authority may extend the time limit set out in article 10 by up to 40 working days in respect of the request if –

- (a) the request is for a large number of documents or necessitates a search through a large number of documents, and meeting the original time limit would unreasonably interfere with the operations of the public authority; or
- (b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

(2) Any extension under subarticle (1) shall be for a reasonable period of time having regard to the circumstances.

(3) The extension shall be effected by giving notice to the person who made the request within 20 working days after the day on which the request is received, and the notice shall –

- (a) specify the period of the extension;
- (b) give the reasons for the extension;
- (c) state that the applicant has the right under article 23 to make a complaint to the Commissioner about the extension; and
- (d) contain such other information as is necessary.

Manner in which access may be granted.

12. (1) A public authority may grant an applicant access to a document in one or more of the following ways:

- (a) by giving the applicant a reasonable opportunity to inspect the document; or
- (b) by providing the applicant with a copy of the document; or
- (c) in the case of a document that is a recording of sounds or visual images, by making arrangements for the applicant to hear or view those sounds or visual images; or
- (d) in the case of a document 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, by providing the applicant

with a written transcript of the words recorded or contained in the document; or

(e) by giving an excerpt or summary of the contents.

(2) Subject to article 13, the public authority shall make the document available to the applicant in the way preferred by the applicant unless to do so would –

(a) impair efficient administration; or

(b) be contrary to any legal duty of the public authority in respect of the document; or

(c) prejudice the interests protected by Part V and Part VI and (in the case of the interests protected by Part VI) those interests are not outweighed by a contrary public interest.

(3) Where access is not granted in the way preferred by the applicant, the public authority shall give to the applicant the reason for not providing the information in that way and state that the applicant has the right under article 23 to make a complaint thereon to the Commissioner.

13. (1) Where a request is made to a public authority for a document which is an exempt document, but –

Deletion of exempt matter or irrelevant material.

(a) it is possible for the public authority to make a copy of the document with the deletion of the exempt matter; and

(b) it is reasonably practical for the public authority, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy,

the public authority shall make such a copy available to the applicant.

(2) Where access is granted to a copy of a document in accordance with subarticle (1), the applicant shall be informed –

(a) that it is a copy;

(b) of the grounds for the deletions; and

(c) that the applicant has the right under article 23 to make a complaint to the Commissioner about the deletions.

(3) Where a document (not being an exempt document) contains material that is irrelevant to the applicant's request, the public authority may, if possible and reasonably practical and if the applicant agrees, make available to the applicant a copy of the document with the irrelevant material deleted; but a document may not be withheld on the grounds that it contains irrelevant material which cannot be deleted.

Reasons for refusal
of requests.

14. A request made in accordance with article 6 may be refused only for one or more of the following reasons:

(a) that the document requested is excluded from the scope of this Act by virtue of article 5;

(b) that, by virtue of Part V or Part VI, there is good reason for withholding the document requested;

(c) that, by virtue of article 34, the public authority does not confirm or deny the existence or non-existence of the document requested;

(d) that the document requested is publicly available or will be published within three months;

(e) that the document requested cannot be found, and this is certified in writing by the head of the public authority;

(f) that the resources required to –

(i) identify, locate or collate a document or documents;

(ii) examine a document or consult any person or body in relation to its possible disclosure; or

(iii) make a copy, or an edited copy, of a document, would substantially and unreasonably divert the resources of the public authority from its other operations, and it has not proved possible for the applicant, with advice from the public authority, to redefine his request in such a manner as to make it more easily addressed by the authority;

(g) that the document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the functions of, another public authority; or

(h) that the request is frivolous or vexatious or that the information requested is trivial.

Reason for refusal
to be given.

15. (1) Where a request made in accordance with this Act is refused, the public authority shall –

(a) subject to article 34, give the applicant the reasons for the refusal; and

(b) state that the applicant has the right, under article 23 of this Act, to seek an investigation and review by the Commissioner of the refusal.

(2) A notice under this article is not required to contain any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

16. (1) A decision by a public authority in respect of a request under this Act shall, subject to paragraph (c) of article 6 of the Interpretation Act, be taken by –

Decisions by public authorities under this Act.

(a) the head of the public authority or its governing board (as applicable), as identified in or established under the Public Administration Act or any other instrument to which the authority is subject; or

(b) an officer of the public authority, acting within the scope of the authority exercisable by him in accordance with arrangements approved by the head of the authority or by its governing board.

(2) A decision to disclose or grant access to a document in accordance with this Act shall constitute authorised disclosure in terms of the Official Secrets Act.

PART III

ACCESS TO CERTAIN DOCUMENTS

17. (1) Not later than one year after the coming into force of this article, every relevant public authority shall publish, in accordance with any instructions issued by the Commissioner:

Publication of information by public authorities.

(a) a description of its structure, functions and responsibilities;

(b) a general description of the categories of documents held by it;

(c) a description of all manuals and similar types of documents which contain policies, principles, rules or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity); and

(d) a statement of the information that needs to be available to members of the public who wish to obtain access to official documents from the public authority, which statement shall include particulars of the officer or officers to whom requests for such access should be sent.

(2) The Minister may, by regulations issued in consultation with the Commissioner, require relevant public authorities to publish information additional to that listed in subarticle (1).

(3) Each public authority shall update the material published in accordance with subarticles (1) and (2) at least annually, or at more frequent intervals as may be established by regulations issued under subarticle (2).

(4) Publication on an internet website or another electronic medium that is publicly accessible at all reasonable times shall be sufficient to satisfy the requirements of this article, provided that the information published hereunder shall be made available in printed form to members of the public who so require it.

(5) Nothing in this article shall require the publication of information where there is good reason under this Act to withhold it.

Right of access to certain official information.

18. (1) Regulations may be issued under this Act to establish a right of access to information which is held by bodies or persons other than public authorities or the employees thereof, and which pertains to:

(a) services provided to the public by such bodies or persons on behalf of the Government or another public authority; or

(b) projects or initiatives which are undertaken by such bodies or persons but financed by the Government or another public authority.

(2) The giving of access to any information to which subarticle (1) applies shall be subject to the provisions of any regulations made under this Act.

Right of access to internal rules affecting decisions.

19. (1) Subject to Part V and Part VI, any eligible person has a right to and shall, on request made under this article, be given access to any document (including a manual) which is held by a public authority and which contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity).

(2) The provisions of Part II other than articles 12 and 13 shall apply *mutatis mutandis* to a request made under subarticle (1).

(3) Where, by virtue of Part V and Part VI, there is good reason for withholding parts of a document to which subarticle (1) relates, the public authority shall, unless it is impracticable to do so, either –

(a) make a copy of that document available with such deletions or alterations as are necessary; or

(b) provide another document stating the substance and effect of the document except as it relates to the information withheld.

(4) Where a document is made available in accordance with subarticle (3), the public authority shall –

(a) give to the applicant the reasons for withholding the information; and

(b) state that the applicant has the right, under article 23, to seek an investigation and review by the Commissioner of the withholding of the information.

20. (1) Subject to the provisions of Part V and Part VI, where a public authority makes a decision or recommendation in respect of any eligible person, including an eligible person acting on behalf of a body corporate, that person has the right to and shall, on request within six months from when the person learns of the decision or recommendation, be given a written statement of –

Right of access by a person to reasons for decisions affecting that person.

(a) the findings on material issues of fact; and

(b) subject to subarticle (2), a reference to the information on which the findings were based; and

(c) the reasons for the decision or recommendation.

(2) A reference to the information on which any findings were based need not be given under paragraph (b) of subarticle (1) if –

(a) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise to the person who supplied the information to the effect that the information, or his identity, or both would be held in confidence; or

(b) after consultation undertaken (where practicable) by or on behalf of the public authority with a natural person's medical practitioner, the public authority is satisfied that the information relates to that person and the disclosure of the information (being information that relates to the physical or mental health of the person making the request under this article) would be likely to prejudice the physical or mental health of that person; or

(c) in the case of a natural person under the age of 18, the disclosure of the information would be contrary to that person's interests; or

(d) the disclosure of the information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person.

(3) For the purposes of paragraph (a) of subarticle (2), the term “evaluative material” means an assessment or opinion compiled solely –

(a) for the purpose of determining the suitability, eligibility or qualifications of the person to whom the material relates for purposes relating to the award, continuation or

cancellation of an appointment, a contract, an award, a scholarship, an honour or any other benefit; or

(b) for the purpose of determining whether to insure any person or property or to continue or renew such insurance.

(4) The provisions of Part II other than articles 12 and 13 shall apply *mutatis mutandis* to a request made under subarticle (1).

PART IV

THE INFORMATION AND DATA PROTECTION COMMISSIONER

General
functions of the
Commissioner.

21. (1) In addition to his duties under the Data Protection Act it shall be the duty of the Commissioner to promote the observance by relevant public authorities of –

(a) the requirements of this Act; and

(b) the provisions of the code of practice issued under article 41.

(2) The Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of such information as it may appear to him expedient to give to the public –

(a) about the operation of this Act,

(b) about compliance with the law, and

(c) about other matters within the scope of his functions under this Act,

and he may give advice to any person or authority as to any of those matters.

(3) Without prejudice to articles 22, 24 and 25, the Commissioner may, with the consent or at the request of any public authority, assess whether that authority is following good practice.

(4) The Commissioner may charge such sums as he may, with the consent of the Minister, determine for any of the services provided by the Commissioner under this article.

(5) Within three months following the end of each calendar year the Commissioner shall prepare and submit to the Minister an annual report on the workings of this Act during that year, and the Minister shall at the first available opportunity cause a copy of the report to be laid on the table of the House of Representatives; the report shall state:

(a) how many requests for information under this Act have been made to public authorities;

(b) how many of these requests have been accepted and rejected;

(c) the reasons for rejection;

(d) the average time taken to reply to requests;

(e) how many complaints have been made to the Commissioner, the grounds for such complaints, and the outcome thereof;

(f) the number of appeals lodged with the Tribunal and how they have been determined; and

(g) the number of information, decision and enforcement notices issued by the Commissioner.

(6) Without prejudice to subarticle (4) hereof and to articles 26, 39 and 40, in the exercise of his functions under this Act the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

(7) In this article “good practice”, in relation to a public authority, means such practice in the discharge of its functions under this Act as appears to the Commissioner to be desirable, and includes (but is not limited to) compliance with the requirements of this Act and the provisions of the code of practice issued under article 41.

22. (1) If it appears to the Commissioner that the practice of a relevant public authority in relation to the exercise of its functions under this Act does not conform with that proposed in the code of practice issued under article 41, he may give to the authority a recommendation (in this section referred to as a “practice recommendation”) specifying the steps which ought in his opinion to be taken for promoting such conformity.

Recommendations
as to good practice.

(2) A practice recommendation must be given in writing and must refer to the particular provisions of the code of practice with which, in the Commissioner’s opinion, the public authority’s practice does not conform.

23. (1) Any applicant may apply to the Commissioner for a decision whether, in any specified respect –

Application for
decision by
Commissioner.

(a) a request for information made by the applicant to a public authority has been dealt with in accordance with the requirements of this Act; or

(b) a public authority is in compliance with the requirements set out in Part III.

(2) On receiving an application under this article, the Commissioner shall make a decision unless it appears to him –

(a) that the applicant has not exhausted any complaints procedure which may be provided by the public authority in conformity with the code of practice issued under article 41;

Provided that the Commissioner may decide on the application if in his opinion the complaints procedure provided by the public authority has not been, or is unlikely to be, concluded within a reasonable period;

(b) that there has been undue delay in making the application;

(c) that the application is frivolous or vexatious; or

(d) that the application has been withdrawn or abandoned.

(3) Where the Commissioner has received an application under this article, he shall either –

(a) notify the applicant that he has not made any decision under this article as a result of the application and of his grounds for not doing so; or

(b) serve notice of his decision (in this Act referred to as a “decision notice”) on the applicant and the public authority.

(4) Where the Commissioner decides that a public authority –

(a) has failed to provide access to a document, or to confirm or deny the existence of a document, in a case where it is required to do so under this Act; or

(b) has failed to comply with any of the other requirements of Part II in its handling of the applicant’s request for a document; or

(c) has failed to comply with any of the requirements of Part III,

the decision notice shall specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.

(5) A decision notice shall contain particulars of the right of appeal conferred by article 39.

(6) Where a decision notice requires steps to be taken by the public authority within a specified period, the time specified in the notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, no step which is affected by the appeal need be taken pending the determination or withdrawal of the appeal.

(7) This article shall have effect subject to article 26.

24. (1) If the Commissioner has received an application under article 23, or reasonably requires any information – Information notices.

(a) for the purpose of determining whether a public authority has complied or is complying with any of the requirements of this Act; or

(b) for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that set out in the code of practice established under article 41,

he may serve the authority with a notice (in this Act referred to as an “information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such a manner as may be so specified, with such information as is so specified relating to the application or to the purposes to which paragraphs (a) and (b) refer.

(2) An information notice shall specify the purpose for which the Commissioner requires the information and, where it refers to information recorded in a document, shall include such details as is reasonably necessary to enable a responsible officer of the public authority to identify that document.

(3) An information notice shall also contain particulars of the right of appeal conferred by article 39.

(4) The time period specified in an information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information required by the notice need not be furnished pending the determination or withdrawal of the appeal.

(5) A public authority shall not be required by virtue of this article to make available to the Commissioner any information in respect of:

(a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act; or

(b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(6) In subarticle (5) references to the client of a professional legal adviser include references to any person representing such a client.

(7) The Commissioner may cancel an information notice by written notice to the public authority on which it was served.

(8) In this article “information” includes unrecorded information.

Enforcement notices.

25. (1) If the Commissioner is satisfied that a public authority has failed to comply with any of its obligations under this Act, the Commissioner may serve the authority with a notice (in this Act referred to as “an enforcement notice”) requiring the authority to take, within such a time as may be specified in the notice, such steps as may be so specified for complying with those obligations.

(2) An enforcement notice shall contain –

(a) a statement of the requirement or requirements of this Act with which the public authority has, in the Commissioner’s satisfied opinion, failed to comply, and his reasons for reaching that conclusion; and

(b) particulars of the right of appeal conferred by article 39.

(3) An enforcement notice shall not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(4) The Commissioner may cancel an enforcement notice by written notice to the public authority on which it was served.

(5) This article shall have effect subject to article 26.

Exception from duty to comply with decision notice or enforcement notice.

26. (1) A decision or enforcement notice issued by the Commissioner in respect of the disclosure of a document shall not have effect if the Prime Minister certifies to the Commissioner that, in his opinion, the document is an exempt document in terms of any of the provisions of Part V.

(2) A certificate under this article shall contain a statement by the Prime Minister of the reasons for his opinion, except in so far as this would involve the disclosure of matter that is exempt matter in terms of the provisions of Part V.

(3) Where the Prime Minister issues a certificate under this article, he shall as soon as practicable thereafter lay a copy of it before the House of Representatives.

(4) Where the Commissioner receives a certificate under this article in respect of a decision notice, he shall inform the applicant accordingly.

27. (1) Where a public authority or an officer of such an authority refuses or, without a good reason, fails to comply with:

Failure to comply with notice.

- (a) so much of a decision notice as requires steps to be taken;
- (b) an information notice; or
- (c) an enforcement notice,

this shall be regarded as an offence in terms of subarticle (2) of article 41 of the Data Protection Act, and the Commissioner may also levy an administrative fine against the defaulting authority or officer thereof as provided for by subarticle (3) of article 42 of the Data Protection Act.

(2) Where a public authority fails to comply with an information notice, or where the Commissioner believes that an offence in terms of article 43 is being or is about to be committed, the Commissioner may act to secure compliance with the notice or to prevent the offence from being committed using the powers of entry and search vested in the Commissioner under subarticle (5) of article 41 of the Data Protection Act, which shall be applicable for this purpose.

(3) For the purposes of this article, a public authority which, in purported compliance with an information notice –

- (a) makes a statement which it knows to be false in a material respect; or
- (b) recklessly makes a statement which is false in a material respect,

shall be taken to have failed to comply with the notice.

28. (1) This Act does not confer any right of action in civil proceedings in respect of any failure to comply with any duty imposed by or under this Act.

No civil action against a public authority.

(2) Subarticle (1) shall not affect the powers of the Commissioner under article 27.

PART V
CONCLUSIVE REASONS FOR NOT DISCLOSING
OFFICIAL DOCUMENTS UNDER THIS ACT

Documents affecting national security, defence or international relations, and Cabinet documents.

29. (1) A document is an exempt document if its disclosure under this Act:

(a) would, or could reasonably be expected to, cause damage to the security, the defence, or the international relations of Malta; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government, or an international organisation to the Government of Malta or to another public authority, or by the Government of Malta or another public authority to a foreign government, an authority thereof, or an international organisation.

(2) Subject to subarticle (3), a document is an exempt document if it is:

(a) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission to the Cabinet;

(b) an official record of the Cabinet;

(c) a document that is a copy of all or part of, or contains an extract from, a document referred to in paragraph (a) or (b); or

(d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was published:

Provided that each year, the Prime Minister may direct that certain Cabinet documents, being documents selected from among those that are 30 years old or more, shall be subject to disclosure, whereupon this subarticle shall not apply to such documents.

(3) Subarticle (2) shall not apply to a document if, and in so far as, it contains factual information relating to a decision of the Cabinet that has been published.

(4) In subarticles (2) and (3) “Cabinet” includes Cabinet Committees.

Documents affecting the enforcement of the law and the protection of public safety.

30. (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to;

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-

existence of a confidential source of information, in relation to the enforcement or administration of the law; or

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case by any court, tribunal, disciplinary board, arbitration panel or similar body, or prejudice an inquiry conducted under the Inquiries Act;

(b) prejudice the effectiveness of lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law through the disclosure thereof; or

(c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(3) For the purposes of paragraph (b) of subarticle (1), a person shall be taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection by the Police or other public authorities as:

(a) a witness; or

(b) a person who, because of his relationship to or association with a witness, needs or may need such protection; or

(c) any other person who, for any reason, needs or may need such protection.

31. (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Documents subject to legal professional privilege or containing material obtained in confidence.

(2) A document is an exempt document if its disclosure under this Act would found an action by a person (other than a public authority) for breach of confidence.

(3) Subarticle (2) shall not apply to internal working documents prepared by a member, officer or employee of the Government or any other public authority in the course of his duties unless the disclosure would constitute a breach of confidence owed to a person or body other than a member, officer or employee of the Government or any other public authority as aforesaid.

32. (1) A document is an exempt document if its disclosure under this Act would disclose:

Documents relating to business affairs, the economy and research.

(a) trade secrets;

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information:

(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Government or to another public authority for the purpose of the administration of a law or the administration of matters administered by the authority.

(2) Subarticle (1) shall not apply to a request for access to a document by reason only that the document contains information about:

(a) the applicant's own business or professional affairs;

(b) the business, commercial or financial affairs of an undertaking where the applicant is the proprietor of the undertaking or is acting on behalf of the proprietor; or

(c) the business, commercial or financial affairs of an organisation where the applicant is acting on its behalf.

(3) Paragraph (c) of subarticle (1) shall not apply to information solely concerning a person's status as a member of a profession.

(4) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it:

(a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government to manage the Maltese economy; or

(b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or community, or an undue benefit or detriment to any person or class of persons, by reason of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament.

(5) The kinds of documents to which subarticle (4) may apply include, but are not limited to, documents containing matter relating to:

- (a) currency or exchange rates;
- (b) interest rates;
- (c) taxes, including duties of customs or of excise;
- (d) the regulation or supervision of banking, insurance and other financial institutions;
- (e) the stability of the financial system;
- (f) proposals for expenditure;
- (g) foreign investment in Malta; or
- (h) borrowings by the Government or other public authorities.

(6) A document is an exempt document if it is in the possession of a member of the academic staff of the University of Malta and contains information relating to research that has been or is being undertaken by such a member, unless the research has been commissioned by a public authority.

(7) A document is an exempt document if:

- (a) it contains information relating to scientific or academic research that is being, or is to be, undertaken by a member of staff of a public authority, other than research to which subarticle (6) applies; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the public authority or the member of staff to disadvantage.

(8) Subarticle (7) shall not apply to a document that, in so far as it contains information relating to research, only contains information relating to research that has been completed.

(9) A document is an exempt document if it contains information relating to research on security and defence matters which has been undertaken or commissioned by, or with the involvement of, a public authority.

33. A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Government:

- (a) be in contempt of court;

Documents the disclosure of which would be contempt of Parliament or of Court.

(b) be contrary to an order made or direction given by any Board to which the Inquiries Act applies, or by any tribunal or other person having power to take evidence on oath; or

(c) infringe the privileges of Parliament.

Information concerning existence of certain documents.

34. Where –

(a) a request under this Act relates to a document to which the provisions of this Part apply, or would apply if such a document existed; and

(b) the existence or non-existence of the document would in its own right, if it were stated in a document, be subject to non-disclosure in terms of any of the said provisions,

the public authority dealing with the request may give notice in writing to the applicant that it neither confirms nor denies the existence or non-existence of that document.

PART VI

OTHER REASONS FOR WITHHOLDING OFFICIAL INFORMATION

Application of this Part.

35. (1) This Part shall apply subject to the provisions of Part V.

(2) A document may be withheld in accordance with the provisions of this Part only if it contains matter in relation to which the public interest that is served by non-disclosure outweighs the public interest in disclosure.

Internal working documents.

36. (1) Subject to article 35 and to subarticles (2) and (3) hereof, a document is an exempt document if its disclosure under this Act would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Government or another public authority.

(2) Subarticle (1) shall not apply to a document by reason only of purely factual information contained in the document.

(3) Subarticle (1) shall not apply to:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed by a public authority or not, including reports expressing the opinions of such experts on scientific or technical matters; or

(b) the record of, or a final statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

(4) In subarticle (3) the term “scientific or technical expert” shall be construed as excluding senior managers in public authorities.

37. Subject to article 35, a document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Government or of another public authority.

Documents affecting financial or property interests of public authorities.

38. Subject to article 35, a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

Documents concerning certain operations of public authorities.

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by a public authority;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by a public authority;

(c) have a substantial adverse effect on the proper and efficient conduct of the operations of a public authority; or

(d) have a substantial adverse effect on the conduct of negotiations (including commercial and industrial negotiations) by or on behalf of the Government or another public authority.

PART VII

FURTHER PROVISIONS

39. (1) Where a decision notice has been served, the applicant or the public authority may appeal to the Tribunal against the notice within twenty working days.

Appeals against notices served by the Commissioner.

(2) A public authority on which an information notice or an enforcement notice has been served by the Commissioner may appeal to the Tribunal against the notice.

(3) If, on an appeal under this article, the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law; or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(4) Where the Tribunal substitutes a notice as aforesaid, the Commissioner shall take action under article 27 to secure compliance as if that notice had been issued by the Commissioner.

(5) In hearing appeals under this article the Tribunal shall remain subject to the following provisions of the Data Protection Act:

- (a) subarticle (3) of article 49; and
- (b) subarticles (2), (3) and (4) of article 50.

Appeals from
decisions of the
Tribunal.

40. Decisions of the Tribunal under this Act shall be subject to appeal to the Court of Appeal as provided for by article 51 of the Data Protection Act.

Code of practice.

41. (1) The Minister shall issue a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of public authorities' functions under Part II and Part III.

(2) The code of practice shall, in particular, include provisions relating to:

(a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them;

(b) the transfer of requests by one public authority to another public authority which holds, or may hold, the documents requested;

(c) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information;

(d) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information;

(e) the provision by public authorities of rapid procedures for dealing with complaints about the handling by them of requests for information; and

(f) the keeping of documents and records by public authorities in such a manner as to facilitate the identification and retrieval of documents for the purposes of this Act.

(3) The code may make different provision for different public authorities.

(4) Before issuing or revising any code under this article, the Minister shall consult the Commissioner and the Principal Permanent Secretary.

42. The Minister may, following consultation with the Commissioner, make regulations for any or all of the following purposes: Regulations.

(a) to prescribe application forms (manual or electronic) and other documents required for the purposes of this Act, or authorising any person to prescribe or approve such forms or documents:

Provided that forms cannot place requirements on applicants additional to those set out by this Act, and that an application meeting all such requirements shall still be considered if it is made otherwise than using the prescribed form;

(b) to establish the procedure for the service of notices and documents by public authorities under this Act;

(c) to prescribe reasonable charges or scales of reasonable charges for the purposes of this Act; and

(d) to provide for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

43. Article 144 of the Criminal Code shall apply to any person who embezzles, destroys, mutilates or purloins a document with the intention of preventing the disclosure of information to an applicant under this Act. Damage etc. of documents to constitute an offence.

44. (1) Subarticle (2) of article 590 of the Code of Organisation and Civil Procedure (in this article referred to as the Code) shall be substituted by the following: Amendments to the Code of Organisation and Civil Procedure.

“(2) No witness may be compelled to disclose any information derived from or relating to any document to which subarticle (3) of article 637 applies.”

(2) Subarticle (3) of article 637 of the Code shall be substituted by the following:

“(3) It shall not be lawful to demand the production of any document which is held by a public authority and –

(a) which is an exempt document under articles 29, 30 or 36(1) or subarticles (4) or (5) of article 32 of the Freedom of Information Act; or

(b) the disclosure of which is prohibited by

any other law.”

(3) Subarticle (4) of article 637 of the Code shall be substituted by the following:

“(4) Where a demand is made for the production in court of a document held by a public authority, and the public authority is of the view that paragraph (a) of subarticle (3) applies to that document, the public authority shall reply to the demand as if that demand were a request for disclosure of the document under the Freedom of Information Act; and the provisions of Parts II and IV and of articles 39, 40 and 43 of the Freedom of Information Act shall apply accordingly.”

(4) Subarticle (6) of article 637 of the Code shall be substituted by the following:

“(6) In this article “public authority” shall have the meaning assigned to it by the Freedom of Information Act.”

Amendments to the Press Act.

45. (1) Subarticles (1) and (2) of article 47 of the Press Act shall be deleted.

(2) Subarticle (3) of article 47 of the Press Act shall be renumbered as article 47 thereof.

Amendments to the Data Protection Act.

46. (1) In article 2 of the Data Protection Act and wherever else they may appear, for the words “Data Protection Commissioner” there shall be substituted the words “Information and Data Protection Commissioner”.

(2) In article 2 of the Data Protection Act, for the words “Minister responsible for data protection” there shall be substituted the words “Minister responsible for freedom of information and data protection”.

(3) In paragraph (m) of article 40 of the Data Protection Act, the words “international obligation of Malta.” shall be replaced by the words “international obligation of Malta; and”, and a new paragraph shall be added as follows:

“(n) to carry out the functions assigned to him by the Freedom of Information Act.”

(4) In article 48 of the Data Protection Act and in the marginal note thereto, for the words “Data Protection Appeals Tribunal” there shall be substituted the words “Information and Data Protection Appeals Tribunal”.

(5) In subarticle (1) of article 52 of the Data Protection Act, the words “and under the Freedom of Information Act and other laws” shall be added immediately following the words “The expenses required by the Commissioner to exercise his functions under this Act”.

(6) In subarticle (1) of article 53 of the Data Protection Act, the words “under this Act and under the Freedom of Information Act and other laws” shall be added immediately following the words “The Commissioner shall cause to be kept proper accounts and other records in respect of his operations”.

47. (1) In article 2 of the Local Councils Act, there shall be added the following new definition after the definition of “identity card”:

Amendments to the
Local Councils
Act.

“ “Information and Data Protection Commissioner” means the official appointed in terms of article 36 of the Data Protection Act;”.

(2) The provision of article 45 of the Local Councils Act shall be numbered as subarticle (1) of the same article.

(3) The following new subarticles (2) and (3) shall be added to article 45 of the Local Councils Act subsequent to the current provision thereof:

“(2) Any person who requests information from a Local Council in accordance with subarticle (1) and who is dissatisfied with the Council’s response to his request may apply to the Information and Data Protection Commissioner for a decision whether, in any specified respect, his request has been dealt with in accordance with the requirements of this Act and any regulations made hereunder.

(3) Part IV of the Freedom of Information Act, other than article 26, as well as articles 39, 40 and 43 of the same Act, shall apply *mutatis mutandis* to requests for information under this article, save that references to a code of practice in Part IV of the Freedom of Information Act shall be construed as referring to any code of practice on the disclosure of information that may be issued by the Minister through regulations under this Act; but the application of the Freedom of Information Act in terms of this subarticle shall not be dependent on the issue of such a code.”

48. The Freedom of Access to Information on the Environment Regulations shall be amended in accordance with the Schedule to this Act.

Amendments to the
Freedom of Access
to Information on
the Environment
Regulations.

SCHEDULE

(Article 48)

FREEDOM OF ACCESS TO INFORMATION ON THE ENVIRONMENT (AMENDMENT) REGULATIONS, 2008

BY VIRTUE of the powers conferred by articles 3, 9, 19, 23 and 28 of the Environment Protection Act the Prime Minister has made the following regulations:—

Citation and commencement.

1. (1) The title of these regulations is the Freedom of Access to Information on the Environment (Amendment) Regulations, 2008.

(2) These regulations shall be read and construed as one with the Freedom of Access to Information on the Environment Regulations, 2005, hereinafter referred to as “the principal regulations”.

(3) These regulations shall come into force on such a date as the Minister responsible for the environment may by notice in the Gazette appoint.

Amendment to regulation 2.

2. In regulation 2 of the principal regulations, after the definition of “environmental information” there shall be added the following new definition:

“ “Information and Data Protection Commissioner” means the official appointed in terms of article 36 of the Data Protection Act;”.

Addition of new regulations.

3. (1) There shall be added to the principal regulations new regulations 12 and 13 as follows:

“Enforcement.

12. (1) Any person who requests the competent authority to provide him with environmental information in accordance with regulation 3, and who is dissatisfied with the response, may apply to the Information and Data Protection Commissioner for a decision whether, in any specified respect, his request has been dealt with in accordance with the requirements of these regulations and any additional regulations made in accordance with regulation 11.

(2) Part IV of the Freedom of Information Act other than article 26, as well as articles 39, 40 and 43 of the same Act, shall apply *mutatis mutandis* to requests for information under this article, save that references to a code of practice in Part IV of the Freedom of Information

Act shall be construed as referring to any code of practice on the disclosure of information that may be issued by the competent authority through regulations in accordance with regulation 11; but the application of the Freedom of Information Act in terms of this sub-regulation shall not be dependent on the issue of such a code.

(3) Where the question emerges as to whether or not information requested under regulation 3 is environmental information to which these regulations apply, that question shall be subject to review and decision by the Information and Data Protection Commissioner and additionally subject to appeal under articles 39 and 40 of the Freedom of Information Act.

Interpretation.

13. In deciding whether or not particular environmental information is exempted from disclosure under paragraph (a) of sub-regulation (2) of regulation 7, regard shall be had to subarticles (2), (3) and (4) of article 29 and article 36 of the Freedom of Information Act; and information to which the aforementioned paragraph applies shall not be released under these regulations if it would be considered exempt matter under the Freedom of Information Act.”

Passed by the House of Representatives at Sitting No. 67 of 15th December, 2008.

LOUIS GALEA
Speaker

PAULINE ABELA
Acting Clerk to the House of Representatives