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**Command Paper
on a draft bill to provide for the
disclosure of information held by
public authorities or by persons
providing services for them.**

**Presented to Parliament by
the Chief Minister.**

**by Command of Her Majesty
9th February 2015**

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to

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Command Papers Consultation c/o Kevin Warwick, Ministry of Education, Justice and International Exchange of Information, Suite 771, Europort, Gibraltar, no later than the 8th March 2015.

Any comments received later than the 8th March 2015 may not be taken into account for the purposes of the relevant consultation.

FREEDOM OF INFORMATION BILL 2015

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Public Authorities

B. XX/15

BILL

FOR

AN ACT to make provision for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes

ENACTED by the Legislature of Gibraltar.

Part 1 *Preliminary*

Title and commencement.

1. This Act may be cited as the Freedom of Information Act 2015 and comes into operation on the day appointed by the Minister by notice in the Gazette.

Interpretation.

2.(1) In this Act, unless the context otherwise requires,—

“applicant” in relation to a request for information, means the person who made the request;

“body” includes an unincorporated association;

“Commissioner” means the Commissioner under section 16;

“information” means information recorded in any form;

“Minister” means the Minister designated by the Chief Minister by Notice published in the Gazette;

“public authority” means—

(a) government departments;

- (b) any other body or other person, that carries out functions of public administration;
- (c) any other body or other person, that is under the control of a person falling within paragraphs (a) or (b) and—
 - (i) has public responsibilities;
 - (ii) exercises functions of a public nature; or
 - (iii) provides public services; or
- (e) a person or body declared by the Minister to be a public authority

“publication scheme” means a scheme maintained by a public authority which relates to the publication of information and which specifies—

- (a) classes of information which the public authority publishes or intends to publish,
- (b) the manner in which information of each class is, or is intended to be, published, and
- (c) such other matters as may be provided for by regulations made under section 18.

(2) The following expressions have the same meaning in this Act as they have in the Data Protection Act 2004, namely—

- (a) “data”;
- (b) “data subject”; and
- (c) “personal data”.

Application and principles of administration.

- 3.(1)(a) This Act applies to the public authorities specified in the Schedule;

- (b) during the first 12 months following a public authority being included in the Schedule, the Minister may by regulations extend every time period referred to in this Act by up to 6 months, and in such event the provisions of section 7 shall not apply.

(2) For the purposes of this Act, information is held by a public authority if the information—

- (a) is in the authority's possession and has been produced or received by the authority; or
- (b) is held by another person on behalf of the authority.

(3) Any person or body exercising an administrative discretion conferred by this Act should, as far as possible, exercise the discretion in a way that favours the disclosure of information of a kind that can be disclosed without infringing the right to privacy of individuals.

PART 2

Access to information held by public authorities

Right of access to information.

4.(1) A person has a legally enforceable right to apply for and to be given access to information held by public authorities in accordance with this Act.

(2) Subsection (1) shall not extend to—

- (a) a public authority which is not listed in the Schedule; or
- (b) making available or disseminating information which a public authority would be entitled to refuse to disclose under section 12.

Applications for access to information.

5.(1) Subject to the provisions of this Act, a public authority that holds information shall make it available on application.

(2) An application for access to information held by a public authority—

- (a) must be in writing;

- (b) must specify that it is made under this Act;
- (c) must be accompanied by such application fee or charge as may be prescribed under section 8; and
- (d) must contain such information as is reasonably necessary to enable the information to be identified.

(3) Information shall be made available under subsection (1) as soon as possible and no later than 1 month after the date of receipt of the application.

(4) For the purposes of subsection (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date and accurate, so far as the public authority reasonably believes.

Form and format of information.

6.(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

(2) If the information is not made available in the form or format requested, the public authority shall—

- (a) explain the reason for its decision as soon as possible and no later than 1 month after the date of receipt of the application for the information;
- (b) provide the explanation in writing if the applicant so requests; and
- (c) inform the applicant of the provisions of sections 11, 16 and 17.

Extension of time.

7.(1) Where an application is made under section 5, the public authority may extend the period of 1 month referred to in subsection 5(3) to 2 months

if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

(2) The provisions referred to in subsection (1) are—

- (a) section 5(3);
- (b) section 6(2)(a); and
- (c) section 14(2).

(3) Where subsection (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 1 month after the date of receipt of the application.

Charging.

8.(1)(a) Subject to subsections (2) to (8), where a public authority makes information available in accordance with section 5(1) the public authority may charge the applicant for making the information available;

- (b) all application fees and charges shall be prescribed by the Minister by regulations, and the Minister may prescribe different fees and charges for different public authorities.

(2) A public authority shall not make any charge under this Act for allowing an applicant—

- (a) access to any public registers or lists of information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for that examination.

(3) A public authority may require advance payment of a charge for making information available and if it does it shall, no later than 1 month after the date of receipt of the application for the information, notify the applicant of this requirement and of the amount of the advance payment.

(4) Where a public authority has notified an applicant under subsection (3) that advance payment is required, the public authority is not required—

- (a) to make available the information requested; or
- (b) to comply with sections 6 or 14,

unless the charge is paid no later than 2 months after the date on which it gave the notification.

(5) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purposes of determining the period of 1 month referred to in the provisions in section 7, including any extension to those periods under section 7(1).

(6) The provisions referred to in subsection (5) are—

- (a) section 5(3);
- (b) section 6(2)(a); and
- (c) section 14(2).

(7) A public authority shall publish and make available to applicants—

- (a) a schedule of its application fees and charges; and
- (b) information on the circumstances in which an application fee or charge may be made or waived.

(8) The Minister may by Regulations make further or alternative provision with respect to the scale of fees or charges that may be levied under this section.

Advice and assistance.

9.(1) A public authority shall provide advice and assistance to applicants and prospective applicants, so far as it would be reasonable to expect the authority to do so.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

- (a) ask the applicant as soon as possible and in any event no later than 1 month after the date of receipt of the application, to

provide more particulars in relation to the request for information; and

(b) assist the applicant in providing those particulars.

(3) Where subsection (2) applies, in respect of an application under—

(a) section 5(3);

(b) section 6(2)(a); or

(c) section 14(2),

the period of 1 month referred to in those provisions shall be calculated from the date on which the further particulars are received by the public authority.

Transfer of a request and defunct public authorities.

10.(1) Where a public authority that receives an application for information does not hold the information requested but believes that another public authority holds the information, the public authority shall either—

(a) transfer the application to the other public authority; or

(b) supply the applicant with the name and address of the other public authority,

and inform the applicant accordingly with the refusal sent under section 14(1).

(2) For the purposes of the provisions referred to in subsection (3), where an application is transferred to another public authority, the application is deemed to be received by that public authority on the date on which it receives the transferred application.

(3) The provisions referred to in subsection (2) are—

(a) section 5(3);

(b) section 6(2)(a); and

(c) section 14(2).

(4) Where a public authority takes over the functions of another public authority and that other public authority ceases to exist, the responsibilities of the continuing public authority under this Act will include those of the former public authority as if the former public authority had merged with, and continued as part of, the continuing public authority.

(5) Where a public authority ceases to exist, and no other public authority takes over its functions, the responsibilities of the defunct agency under this Act will devolve—

- (a) if the Minister nominates a public authority, on the public authority so nominated as if the former public authority had merged with, and continued as part of, the nominated public authority; or
- (b) in the absence of such a nomination, on the Gibraltar Archives.

(6) Where subsection (5) applies, the time limit for responding to a request and the extension of time referred to in sections 5 and 7 shall be increased from 1 month to 2 months and from 2 months to 4 months respectively.

Representations and reconsideration.

11.(1) Subject to subsection (2), an applicant may make representations to a public authority in relation to his application for information if it appears to him that the public authority has failed to comply with the provisions of this Act in relation to his application for information.

(2) Representations under subsection (1) shall be made in writing to the public authority no later than 2 months after the date on which the applicant believes that the public authority has failed to comply with the requirement.

(3) The public authority shall on receipt of the representations and free of charge—

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under subsection (3) as soon as possible and no later than 2 months after the date of receipt of the representations.

(5) Where the public authority decides that it has failed to comply with the provisions of this Act in relation to the application, the notification under subsection (4) shall include a statement of—

- (a) the failure to comply;
- (b) the action the public authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

PART 3

Exceptions to the duty to disclose information

Exceptions to the duty to disclose information.

12.(1) Subject to subsections (2) and (3), a public authority may refuse to disclose information requested if—

- (a) an exception to disclosure applies under subsection (4) or (5); and
- (b) in the case of a refusal to disclose information under subsection (5), in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with section 13.

(4) For the purposes of subsection (1)(a), a public authority may refuse to disclose information to the extent that—

- (a) subject to section 10, it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the information is otherwise already reasonably accessible to the applicant;

- (d) the request for information is formulated in too general a manner and the public authority has complied with section 9;
- (e) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (f) the request involves the disclosure of–
 - (i) internal communications, including communications between public authorities;
 - (ii) cabinet documents (whether in draft form or otherwise);
 - (iii) briefing papers specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet; and
 - (iv) documents dealing with the formulation or development of government policy, including without limitation, documents containing interpretations, rules, guidelines, statements of policy, practices or precedents.
- (g) such information which could infringe the privileges of the Gibraltar Parliament; or
- (h) such information which is protected by legal professional privilege.

(5) For the purposes of subsection (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect–

- (a) the ability of the Government or a public authority to manage international relations, defence, the security of Gibraltar, the economy, public order or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;

- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect legitimate economic interests;
- (f) the interests of the person who provided the information where that person—
 - (i) was not under, and could not have been placed under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these provisions to disclose it; and
 - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates other than as permitted under the Freedom of Access to Information on the Environment Regulations 2005.

(6) For the purposes of subsection (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in subsection (5)(a) and would not be in the public interest under subsection (1)(b).

(7) For the purposes of a response under subsection (6), whether information exists and is held by the public authority is itself the disclosure of information.

(8) Nothing in this Act shall authorise a refusal to make available any information contained in or otherwise held with other information which is withheld by virtue of the provisions of this Act unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

(9) Information shall not be disclosed if its disclosure by the public authority holding it—

- (a) is prohibited by or under any enactment, including this Act;
- (b) is incompatible with any European Union obligation;
- (c) would constitute or be punishable as a contempt of court; or
- (d) would contravene the provisions of the Gibraltar Constitution Order 2006.

Personal data.

13.(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and where either condition in subsection (2) or (3) is satisfied, a public authority shall not disclose the personal data.

(2) The first condition applies to a case where the information falls within the definition of “data” in section 2 of the Data Protection Act 2004, and the disclosure of that information to a member of the public otherwise than under this Act would contravene—

- (a) any of the data protection principles contained in the Data Protection Act 2004; or
- (b) section 16 of that Act and in all the circumstances of the case, that the public interest in not disclosing the information outweighs the public interest in disclosing it.

(3) The second condition is that by virtue of any provision of Part II of the Data Protection Act 2004 the information is exempt from section 14 of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) For the purposes of this section a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 16 of the Data Protection Act 2004; or
- (b) by virtue of any provision of Part II of the Data Protection Act 2004, the information is exempt from section 14 of that Act.

Refusal to disclose information.

14.(1) If an application for information is refused by a public authority under sections 12(1) or 13(1), the refusal shall be made in writing and comply with this section.

(2) The refusal shall be made as soon as possible and no later than 1 month after the date of receipt of the application for information.

(3) The refusal shall specify the reasons for not disclosing the information requested, including—

- (a) any exception relied on under sections 12(3), 12(4) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under section 12(1)(b) or, where these apply, sections 13(2)(b) or 13(3).

(4) If the exception in section 12(4)(e) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

(5) The refusal shall inform the applicant—

- (a) that he may make representations to the public authority under section 11; and
- (b) of the provisions in section 16 (applications to the Commissioner for a determination).

Ministerial certificates.

15.(1) The Minister may certify that a refusal to disclose information under section 12(1) is because the disclosure—

- (a) would adversely affect the security of Gibraltar; and
- (b) would not be in the public interest under section 12(1)(b).

(2) For the purposes of subsection (1) the Minister may designate a person to certify the matters in that subsection on his behalf.

(3) A certificate issued in accordance with subsection (1)–

- (a) shall be conclusive evidence of the matters in that subsection; and
- (b) may identify the information to which it relates in general terms.

(4) A document purporting to be a certificate under subsection (1) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(5) A document which purports to be certified by or on behalf of the Minister as a true copy of a certificate issued by him under subsection (1) shall in any legal proceedings be evidence of that certificate.

PART 4

Determination by the Commissioner, Appeals and other matters

Determination by the Commissioner.

16.(1) There shall be a Commissioner who shall be independent in the exercise of his functions under this Act.

(2) The Commissioner shall be the Gibraltar Regulatory Authority who shall perform the functions conferred by this Act and any regulations enacted under it.

(3) Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of this Act.

(4) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—

- (a) that the complainant has not exhausted any complaints procedure which is provided under this Act;
- (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.

(5) Where the Commissioner has received an application under this section, he shall either—

- (a) notify the complainant that he has not made any decision under this section 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 complainant and the public authority.

(6) Where the Commissioner decides that a public authority—

- (a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so; or
- (b) has failed to comply with any of the requirements of sections 6 and 14,

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

(7) A decision notice must contain particulars of the right of appeal conferred by section 17.

(8) Where a decision notice requires steps to be taken by the public authority within a specified period, the time specified in the notice must 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.

Appeal to the Magistrates’ Court.

17.(1) Where a party, to whom a determination made under section 16 applies, is not satisfied with that determination that party may, within 30 days after notice is given to that party of the determination to which the proceedings relate, appeal the determination to the Magistrates’ Court.

(2) Upon hearing an appeal pursuant to subsection (1) the Magistrates’ Court may—

- (a) uphold the action of the public authority;
- (b) direct the disclosure of information requested by the applicant,

and in any case before it, make such orders and issue such directions including orders as to costs, as it deems appropriate.

(3) Where any appeal to the Magistrates' Court is or is likely to involve the consideration of issues related to international relations, defence, the security of Gibraltar, or public order, the Court—

- (a) shall conduct its proceedings in private;
- (b) must not determine the appeal unless the Court has given the Minister, or such person as the Minister may designate to appear on the Minister's behalf, a reasonable opportunity to appear and be heard in relation to the matter; and
- (c) other than to the extent to which the Court directs, shall not permit reporting of the proceedings.

(4) A decision from the Magistrates' Court on an appeal made under subsection (1) shall be final save that an appeal may be brought to the Supreme Court on a point of law against such decision.

Regulations.

18.(1) The Minister may by regulation—

- (a) prescribe such matters as appear to him to be reasonably necessary for, or supplementary or incidental to, this Act;
- (b) add, amend or remove public authorities from the Schedule; and
- (c) add, amend or remove the classes of information which may be refused to be disclosed by a public authority pursuant to section 12;
- (d) make provision to require public authorities to issue publication schemes, and may further make provision as to the content of such a scheme and any matter incidental thereto;

(e) provide for the implementation of any European Union or other international obligation.

(2) Regulations made under this Act may contain such commencement and transitional provisions as appear to the Minister to be expedient for the purposes of this Act.

(3) Any power conferred by this Act to make regulations includes the power, by subsequent regulations, to vary or revoke any regulations so made.

Reports to Parliament.

19.(1) The Commissioner shall as soon as practicable after 30 June and in any case before 31 October in each year prepare a report on the administration of this Act for the 12 months ending on 30 June and submit the report to the Minister.

(2) The Minister shall cause a copy of the report to be laid before the Gibraltar Parliament and the next meeting thereof after the date on which the report is submitted to the Minister, or where it is not practicable to do so as soon as possible thereafter.

SCHEDULE

Public Authorities

EXPLANATORY MEMORANDUM

This Act provides for the disclosure of information held by public authorities or by persons providing services for them.

A person seeking information may apply to a public authority and that authority must respond within specified time limits.

Where the public authority holds the requested information it shall provide it. There are exceptions to the duty to provide information and these are set out in the Bill. Refusals will be notified and will state the grounds upon which the request has not been granted.

Where an applicant is not satisfied that the procedures set out have been adhered to the applicant must ask the public authority to reconsider. Following this the applicant may apply to the Commissioner for a determination. The Commissioner may require disclosure, where appropriate.

An appeal lies to the Magistrates' Court.