

# **FREEDOM OF INFORMATION BILL 2004**

## **ARRANGEMENT OF CLAUSES**

### **SECTION**

#### **PART I: PRELIMINARY**

1. Short Title
2. Commencement
3. Purpose
4. Interpretation
5. Act binds the State
6. Act extends outside Fiji Islands

#### **PART II: THE RIGHT TO ACCESS INFORMATION HELD BY PUBLIC BODIES**

7. Freedom of Information
8. General Right of Access
9. Legislation Prohibiting or Restricting Disclosure
10. Public and Private Bodies
11. Records
12. Request for Information
13. Time Limits for Responding to Requests
14. Notice of Response
15. Fees
16. Means of Communicating Information
17. If a Record is Not Held
18. Vexatious, Repetitive or Unreasonable Requests

#### **PART III: MEASURES TO PROMOTE OPENNESS**

19. Guide to Using the Act
20. Information Officer
21. Duty to Publish
22. Guidance on Duty to Publish
23. Maintenance of Records
24. Training of Officials
25. Reports to the Information Commissioner

#### **PART IV: EXCEPTIONS**

26. Public Interest Override
27. Information Already Publicly Available
28. Severability
29. Personal Information
30. Legal Privilege
31. Commercial and Confidential Information
32. Health and Safety
33. Law Enforcement
34. Defence and Security
35. Public Economic Interests
36. Policy Making and Operations of Public Bodies
37. Time Limits

**PART V: THE INFORMATION COMMISSIONER**

- 38. Office of Information Commissioner
- 39. Independence and Powers
- 40. Staff
- 41. General Activities
- 42. Reports
- 43. Protection of the Commissioner

**PART VI: ENFORCEMENT BY THE COMMISSIONER**

- 44. Complaint to the Commissioner
- 45. Complaint Decision
- 46. Decision on Public Body's Compliance with Part III
- 47. Commissioner's Powers to Investigate
- 48. Appeal from Commissioner's Decisions and Orders
- 49. Binding Nature of Commissioner's Decisions and Orders

**PART VII: WHISTLEBLOWERS**

- 50. Whistleblowers

**PART VIII: CRIMINAL AND CIVIL RESPONSIBILITY**

- 51. Good Faith Disclosures
- 52. Criminal Offences

**PART IX: MISCELLANEOUS PROVISIONS**

- 53. Regulations
- 54. Amendments

**SCHEDULE**

**BILL NO. OF 2004**

**A BILL**

For an Act to give members of the public rights of access to official documents of the Government and its agencies, in accordance with section 174 of the Constitution, to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access information, and to provide for effective mechanisms to secure that right.

Enacted by the Parliament of the Fiji Islands –

**PART I: PRELIMINARY**

**Short Title**

1. This Act may be cited as the Freedom of Information Act 2004.

**Commencement**

2. This Act shall come into effect on a date proclaimed by the Minister, provided that it shall automatically come into effect six months after its passage into law if no proclamation is forthcoming.

**Purpose**

3. The purposes of this Act are: –

(1) to provide a right of access to information held by public bodies in accordance with the principles that such information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of such information should be reviewed independently of government; and

(2) to provide a right of access to information held by private bodies where this is necessary for the exercise or protection of any right, subject only to limited and specific exceptions.

**Interpretation**

4. (1) In this Act, unless the context otherwise requires: –

"Commissioner" is the office of the Information Commissioner, established by Part V, or the holder of that office, as the context may require;

"Information Officer" is an individual with specific responsibilities under this Act, required to be appointed by every public body pursuant to section 20(1);

"official" means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full-time;

"Minister" means the Cabinet minister responsible for the administration of justice;

"private body" has the meaning given by sub-section 10(3);

"public body" has the meaning given by sub-sections 10(1) and (2);

"publish" means make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;

"personal information" means information which relates to a living individual who can be identified from that information; and

"record" has the meaning given by section 11.

(2) When interpreting a provision of this Act, every court must adopt any reasonable interpretation of the provision that best gives effect to the right to information.

## **Act binds the State**

5. This Act binds the State.

## **Act extends outside Fiji Islands**

6. This Act extends to acts and omissions outside the Fiji Islands.

# **PART II: THE RIGHT TO ACCESS INFORMATION HELD BY PUBLIC AND PRIVATE BODIES**

## **Freedom of Information**

7. Further to the right to freedom of speech and expression guaranteed by section 30 of the Constitution, everyone shall have the right to information, including the right to access information held by public and private bodies, subject only to the provisions of this Act.

## **General Right of Access**

8. (1) Any person making a request for information to a public body shall be entitled, subject only to the provisions of Parts II and IV of this Act: –

(a) to be informed whether or not the public body holds a record containing that information or from which that information may be derived; and

(b) if the public body does hold such a record, to have that information communicated to him or her.

(2) Any person making a request for information to a private body which holds information necessary for the exercise or protection of any right shall, subject only to the relevant provisions of Parts II and IV of this Act, be entitled to have that information communicated to him or her.

## Legislation Prohibiting or Restricting Disclosure

9. (1) This Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record by a public or private body.

(2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice.

## Public and Private Bodies

10. (1) For purposes of this Act, a public body includes any body: –

- (a) established by or under the Constitution;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by Government or the State; or
- (e) carrying out a statutory or public function,

provided that the bodies indicated in sub-section (1)(e) are public bodies only to the extent of their statutory or public functions.

(2) The Minister may by order designate as a public body any body that carries out a public function.

(3) For purposes of this Act, a private body includes: –

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

but excludes a public body.

## Records

11. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified.

(2) For purposes of this Act, a public or private body holds a record if: –

- (a) the public or private body holds the record, other than on behalf of another person; or
- (b) another person holds the record, on behalf of the public or private body.

## Request for Information

12. (1) For purposes of section 8, a request for information is a request in writing to any official of a public or private body that is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds a record with that information.

(2) Where a request for information pursuant to section 8(1) does not comply with the provisions of sub-section (1), the official who receives the request shall, subject to sub-section (5), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with sub-section (1).

(3) An individual who is unable, because of illiteracy or disability or for any other reason, to make a written request for information pursuant to section 8(1) may make an oral request, and the official who receives an oral request shall, subject to sub-section (5), reduce it to writing, including the official's name and position within the body, and give a copy thereof to the person who made the request.

(4) A request for information under section 8(2) must identify the right the person making the request is seeking to exercise or protect and the reasons why the information is required to exercise or protect that right.

(5) An official who receives a request for information may transfer that request to the Information Officer for purposes of complying with sub-sections (2) and/or (3).

(6) A public or private body may prescribe a form for requests for information, provided that such forms do not unreasonably delay requests or place an undue burden upon those making requests.

(7) A public or private body which receives a request for information shall provide the requester with a receipt documenting the request.

## **Time Limits for Responding to Requests**

13. (1) Subject to sub-section (3), a public or private body must respond to a request for information pursuant to section 8 as soon as is reasonably possible and in any event within twenty working days of receipt of the request.

(2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.

(3) A public or private body may, by notice in writing within the initial twenty day period, extend the period in sub-section (1) to the extent strictly necessary, and in any case to not more than forty working days running from the date of receipt of the request, where the request is for a large number of records or requires a search through a large number of records, and where compliance within twenty working days would unreasonably interfere with the activities of the body.

(4) Failure to comply with sub-section (1) is deemed to be a refusal of the request.

## **Notice of Response**

14. (1) The response under section 13 to a request for information pursuant to section 8(1) must be by notice in writing and state: –

(a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 15, and the form in which the information will be communicated;

(b) in relation to any part of the request which relates to information that is not contained in any record held by the public body, the fact that the body does not hold the information and, if the request has been transferred to another public body under section 17, the fact of such transfer;

(c) in relation to any refusal to communicate information, adequate reasons for the refusal;

(d) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and

(d) whether the public body provides any internal appeal mechanism, and the fact that the person who made the request may complain to the Commissioner if he or she believes that the body has failed to comply with its obligations under this Act.

(2) The response under section 13 to a request for information pursuant to section 8(2) must be by notice in writing and state: –

- (a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 15, and the form in which the information will be communicated; and
- (b) in relation to any part of the request which is not granted, adequate reasons for the refusal.

(3) In relation to any part of a request which is granted, communication of the information must take place forthwith, subject only to Section 15.

## **Fees**

15. (1) The communication of information pursuant to a request under section 8 by a public or private body may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of communicating the information.

(2) Payment of a fee shall not be required for the communication of information pursuant to a request that is in the public interest, or a request for personal information relating to the person making the request, a natural third party of whom the requester is the guardian, or a deceased third party of whom the requester is the next of kin or of whose will the requester is the executor.

(3) The Minister may, after consultation with the Commissioner, make regulations providing: –

- (a) for the manner in which fees are to be calculated;
- (b) that no fee is to be charged in prescribed cases; and
- (c) that any fee cannot exceed a certain maximum.

(4) A public body shall not require payment of a fee under sub-section (1) where the cost of collecting that fee would exceed the amount of the fee.

(5) Except as provided by subsection (1), no fees may be charged in relation to requests for information under this Act.

## **Means of Communicating Information**

16. (1) Where a request indicates a preference as to the form of communication of information contained in sub-section (2), a public or private body communicating information pursuant to a request for information under section 8 shall, subject to sub-section (3), do so in accordance with that preference.

(2) A request may indicate the following preferences as to the form of communication of information: –

- (a) a true copy of the record in permanent or other form;
- (b) an opportunity to inspect the record, where necessary using equipment normally available to the body;
- (c) an opportunity to copy the record, using his or her own equipment;
- (d) a written transcript of the words contained in a sound or visual form;
- (e) a transcript of the content of a record, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the body; or
- (f) a transcript of the record from shorthand or other codified form.

(3) A public or private body shall not be required to communicate information in the form indicated by the person making the request where to do so would: –

- (a) unreasonably interfere with the effective operation of the body; or
- (b) be detrimental to the preservation of the record.

(4) Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.

## **If a Record is Not Held**

17. (1) Where an official who receives a request pursuant to section 8(1) believes that the request relates to information that is not contained in any record held by the public body, the official may transfer the request to the Information Officer for purposes of compliance with this section.

(2) Where an Information Officer receives a request pursuant to sub-section (1), he or she shall confirm whether or not the public body does hold a record containing the information and, if it does not, shall, if he or she knows of another public body which does hold the relevant record, as soon as practicable: –

- (a) indicate to the person making the request which public body holds the relevant record; and
- (b) if the person making the request consents, transfer the request to that other public body.

(3) The transfer of a request pursuant to sub-section (2)(b) does not relieve the public body to which the request was made of its obligation to respond to the request under section 13.

(4) A public body to which a request is transferred pursuant to sub-section (2)(b) shall provide the requester with a receipt documenting the request, and respond to the request under section 13, as if the request had been received from the requester on the date of transfer.

## **Vexatious, Repetitive or Unreasonable Requests**

18. (1) A public or private body is not required to comply with a request for information which is vexatious or where it has recently complied with a substantially similar request from the same person.

(2) A public or private body is not required to comply with a request for information where to do so would unreasonably divert its resources.

# **PART III: MEASURES TO PROMOTE OPENNESS**

## **Guide to Using the Act**

19. (1) The Commissioner shall, as soon as practicable, compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Act, and shall disseminate the guide widely in an accessible form.

(2) The guide in sub-section (1) shall be updated as necessary.

## Information Officer

20. (1) Every public body shall appoint an Information Officer and ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details.

(2) The Information Officer shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities: –

(a) to promote within the public body the best possible practices in relation to open government, record maintenance, archiving and disposal; and

(b) to serve as a central contact within the public body for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public body relating to information disclosure.

## Duty to Publish

21. (1) Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to: –

(a) a description of its structure, functions, duties and finances;

(b) relevant details concerning any services it provides to members of the public;

(c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;

(d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;

(e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;

(f) any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;

(g) the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and

(h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

(2) In addition to its obligations under sub-section (1), every public body shall, before implementing any project (including any development activity), publish or communicate to the public generally, or to the persons who are likely to be affected by the project in particular, such information relating to the project as the public body considers necessary in the public interest, including the reasons for the project and any important background material.

## Guidance on Duty to Publish

22. The Commissioner shall: –

(a) publish, as soon as practicable, and update, as necessary, a guide on minimum standards and best practices regarding the duty of public bodies to publish pursuant to section 21; and

- (b) upon request, provide advice to a public body regarding the duty to publish.

## **Maintenance of Records**

23. (1) Every public body is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice stipulated in sub-section (3).

(2) Every public body shall ensure that adequate procedures are in place for the correction of personal information.

(3) The Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the National Archives of Fiji.

## **Training of Officials**

24. Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

## **Reports to the Information Commissioner**

25. The Information Officer of every public body shall annually submit to the Commissioner a report on the activities of the public body pursuant to, or to promote compliance with, this Act, which shall include information about: –

- (a) the number of requests for information received, granted in full or in part, and refused;
- (b) how often and which sections of the Act were relied upon to refuse, in part or in full, requests for information;
- (c) appeals from refusals to communicate information;
- (d) fees charged for requests for information;
- (e) its activities pursuant to section 21 (duty to publish);
- (f) its activities pursuant to section 23 (maintenance of records); and
- (g) its activities pursuant to section 24 (training of officials).

# **PART IV: EXCEPTIONS**

## **Public Interest Override**

26. Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the public interest in disclosure is outweighed by the harm that disclosure would cause.

## **Information Already Publicly Available**

27. Notwithstanding any provision in this Part, a body may not refuse to communicate information where the information is already publicly available.

## Severability

28. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the requester.

## Personal Information

29 (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a natural third party.

(2) Sub-section (1) does not apply if: –

- (a) the third party has effectively consented to the disclosure of the information;
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;
- (c) the third party has been deceased for more than 20 years; or
- (d) the third party is or was an official of a public body and the information relates to his or her function as a public official.

## Legal Privilege

30. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

## Commercial and Confidential Information

31. A body may refuse to communicate information if: –

- (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
- (b) the information was obtained in confidence from a third party and: –
  - (i) it contains a trade secret; or
  - (ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or
- (c) the information was obtained in confidence from another State or international organisation, and to communicate it would, or would be likely to, seriously prejudice relations with that State or international organisation.

## Health and Safety

32. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any individual.

## Law Enforcement

33. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to: –

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice;
- (d) the assessment or collection of any tax or duty;
- (e) the operation of immigration controls; or
- (f) the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

## Defence and Security

34. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of the Republic of the Fiji Islands.

## Public Economic Interests

35. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the government to manage the economy of the Fiji Islands.

(2) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of a public body.

(3) Sub-sections (1) or (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

## Policy Making and Operations of Public Bodies

36. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to: –

- (a) cause serious prejudice to the effective formulation or development of government policy;
- (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
- (c) significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views; or
- (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public body.

(2) Sub-section (1) does not apply to facts, analyses of facts, technical data or statistical information.

## Time Limits

37. (1) The provisions of sections 31–36 apply only inasmuch as the harm they envisage would, or would be likely to, occur at or after the time at which the request is considered.

(2) Sections 31(c), 33, 34, 35 and 36 do not apply to a record which is more than 10 years old.

# PART V: THE INFORMATION COMMISSIONER

## Office of Information Commissioner

38. (1) This section establishes the office of Information Commissioner.

(2) The Information Commissioner shall be appointed by the President on the advice of the Prime Minister, following consultation by the Prime Minister with the Leader of the Opposition and the sector standing committee of the House of Representatives responsible for matters concerning human rights.

(3) The person appointed to the office of Information Commissioner must possess relevant expertise.

(4) No-one may be appointed Information Commissioner if he or she: –

(a) holds an official office in or is an employee of a political party, or holds an elected or appointed position in central or local government;

(b) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned; or

(c) is an undischarged bankrupt.

(5) The provisions of Part 4 of Chapter 11 of the Constitution apply to the office of Information Commissioner in relation to terms and conditions of office, remuneration and allowances, and removal from office for cause, as if references in that Part to the “Ombudsman” were references to the “Information Commissioner”.

## Independence and Powers

39. (1) The Commissioner shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except as specifically provided for by law.

(2) The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.

## Staff

40. The Commissioner may appoint such officers and employees as are necessary to enable him or her to perform his or her duties and functions.

## General Activities

41. In addition to any other powers and responsibilities provided for in this Act, the Commissioner may: –

(a) monitor and report on the compliance by public bodies with their obligations under this Act;

- (b) make recommendations for reform both of a general nature and directed at specific public bodies;
- (c) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act;
- (d) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
- (e) publicise the requirements of this Act and the rights of individuals under it.

## Reports

42. (1) The Commissioner shall, within three months after the termination of each financial year, lay before the House of Representatives and the Senate an annual report on compliance by public bodies with this Act, the activities of his or her office and audited accounts of the office during that financial year.

(2) The Commissioner may from time to time lay before the House of Representatives and the Senate such other reports as he or she deems appropriate.

## Protection of the Commissioner

43. (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Act.

(2) For the purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act is privileged, unless that information is shown to have been said or supplied with malice.

# PART VI: ENFORCEMENT BY THE COMMISSIONER

## Complaint to the Commissioner

44. A person who has made a request for information may apply to the Commissioner for a decision that a public or private body has failed to comply with an obligation under Part II, including by: –

- (a) refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 8;
- (b) failing to respond to a request for information within the time limits established in section 13;
- (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 14;
- (d) failing to communicate information forthwith, contrary to section 14(3);
- (e) charging an excessive fee, contrary to section 15; or
- (f) failing to communicate information in the form requested, contrary to section 16.

## Complaint Decision

45. (1) The Commissioner shall, subject to sub-section (2), decide an application under section 44 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing.

(2) The Commissioner may summarily reject applications: –

- (a) which are frivolous, vexatious or clearly unwarranted; or
- (b) where the applicant has failed to use any effective and timely internal appeal mechanism provided by the relevant public or private body.

(3) In any application under section 44, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part II.

(4) In his or her decision pursuant to sub-section (1), the Commissioner may: –

- (a) reject the application;
- (b) require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations under Part II;
- (c) require the public or private body to compensate the complainant for any loss or other detriment suffered; and/or
- (d) in the case of an egregious or wilful failure to comply with an obligation under Part II, impose a fine on the public or private body.

(5) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or private body.

## Decision on Public Body's Compliance with Part III

46. (1) The Commissioner may, of his or her own motion, after giving a public body an opportunity to provide its views in writing, decide that a public body has failed to comply with an obligation under Part III.

(2) In his or her decision pursuant to sub-section (1), the Commissioner may require the public body to take such steps as may be necessary to bring it into compliance with its obligations under Part III, including by: –

- (a) appointing an Information Officer;
- (b) publishing certain information and/or categories of information;
- (c) making certain changes to its practices in relation to the keeping, management and destruction of records, and/or the transfer of records to the National Archives of Fiji;
- (d) enhancing the provision of training on the right to information for its officials;
- (e) providing him or her with an annual report, in compliance with section 25; and/or
- (f) in the case of an egregious or wilful failure to comply with an obligation under Part III, paying a fine.

(3) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public body.

## **Commissioner's Powers to Investigate**

47. (1) In coming to a decision pursuant to section 45 or 46, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

(2) The Commissioner may, during an investigation pursuant to sub-section (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

## **Appeal from Commissioner's Decisions and Orders**

48. (1) The complainant, or the relevant public or private body, may, within 45 days, appeal to the High Court for a full review, including both matters of fact and questions of law, of a decision of the Commissioner pursuant to section 45 or 46, or an order pursuant to section 47(1).

(2) The High Court shall have jurisdiction to determine any appeal pursuant to sub-section (1).

(3) In any appeal pursuant to sub-section (1), the High Court may, in addition to its other powers, exercise any power of the Commissioner under this Part, and grant any remedy or relief which could have been granted by the Commissioner.

(4) In any appeal from a decision pursuant to section 45, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part II.

## **Binding Nature of Commissioner's Decisions and Orders**

49. Upon expiry of the 45-day period for appeals pursuant to section 48, the Commissioner may certify in writing to the High Court any failure to comply with a decision pursuant to section 45 or 46, or an order pursuant to section 47(1), and the court shall consider such failure under the rules relating to contempt of court.

# **PART VII: WHISTLEBLOWERS**

## **Whistleblowers**

50. (1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration of a public body.

# **PART VIII: CRIMINAL AND CIVIL RESPONSIBILITY**

## **Good Faith Disclosures**

51. No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Act, as long as they acted reasonably and in good faith.

## **Criminal Offences**

52. (1) It is a criminal offence to wilfully: –

- (a) obstruct access to any record contrary to Part II of this Act;
- (b) obstruct the performance by a public body of a duty under Part III of this Act;
- (c) interfere with the work of the Commissioner; or
- (d) destroy records without lawful authority.

(2) Anyone who commits an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding \$10,000 and to imprisonment for up to 12 months.

## **PART IX: MISCELLANEOUS PROVISIONS**

### **Regulations**

53. (1) The Minister may, by notice in the *Gazette* and after consultation with the Commissioner, make regulations regarding: –

- (a) additional forms of communication of information under section 16(2);
- (b) training of officials under section 24;
- (c) reports to the Commissioner under section 25;
- (d) any notice required by this Act; or
- (e) any administrative or procedural matter necessary to give effect to this Act.

(2) Any regulation under sub-section (1) must, before publication in the *Gazette*, be laid before the House of Representatives and the Senate.

### **Amendments**

54. (1) On the commencement of this Act, section 2 of the Act of the United Kingdom Parliament known as the Official Secrets Act 1911 ceases to apply to information which must be made available under Part II of this Act.

(2) The Act mentioned in the Schedule is amended in the manner specified.

# **SCHEDULE**

*(Section 54)*

## **AMENDMENTS**

### **PRESCRIPTION OF SALARIES ACT (Cap. 2)**

*Schedule* – Insert the following entry in the list after the entry for the office of Ombudsman –

<i>(Office)</i>	<i>(Salary)</i>	<i>(Allowance)</i>
"Information Commissioner	60,370 per annum	–"