

BERMUDA

PUBLIC ACCESS TO INFORMATION REGULATIONS 2014

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	Application for Amendment or Annotation of a Record

The Premier, in exercise of the power conferred by section 59 of the Public Access to Information Act 2010, makes the following Regulations:

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### Citation

1 These Regulations may be cited as the Public Access to Information Regulations 2014.

### Interpretation

2 In these Regulations—

“chief officer” means—

- (a) in the case of a Ministry, the Permanent Secretary of the Ministry or of the Cabinet Office; or
- (b) in the case of the portfolio of the—
  - (i) National Security;
  - (ii) Legal Affairs;
  - (iii) Finance; or
  - (iv) Civil Service,and such public officer in the portfolio as may be designated by the Governor; and
- (c) in the case of a statutory authority or a Government corporation, the person appointed as chief officer (by whatever name called) by the board of that authority or corporation, or by other relevant authority;

“information officer” includes any person authorised to act as an information officer for the purpose of the Act and these Regulations;

“public interest” means but is not limited to things that may or tend to—

- (a) promote greater public understanding of the process or decisions of public authorities;
- (b) provide reasons for decisions taken by the Government;
- (c) promote accountability of and within the Government;
- (d) promote accountability for the public expenditure or the more effective use of public funds;
- (e) facilitate public participation in decision-making by the Government;
- (f) improve the quality of services provided by the Government and the responsiveness of the Government to the needs of the public or of any section of the public;
- (g) deter or reveal wrong-doing or maladministration;
- (h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or

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- (i) reveal untrue, incomplete or misleading information or acts of a public authority.

### Right of access

3 An application for access to a record shall contain the particulars set out in Schedule 1.

### Provision of access

4 A record shall be provided to the applicant as soon as practicable—

- (a) not later than six weeks from the date the request is received by a public authority; or
- (b) where an additional six weeks extension has been granted in accordance with section 15(1) of the Act, not later than six weeks from the date the extension is granted by a public authority.

### Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

### Receipt and acknowledgement of requests and Schedule 2 forms

6 (1) An officer in a public authority to whom an application is given or transmitted shall accept it and pass it to the information officer as soon as practicable but not later than five working days after the date of receiving the application.

(2) In the circumstances referred to in paragraph (1) the date of receipt of the application by the public authority shall be the date on which the application was initially received by the officer.

(3) Not more than five working days after receipt of an application that meets the requirements of section 13 of the Act the information officer shall dispatch to the applicant a letter of acknowledgement in the form set out in Schedule 2.

### Access to records during working hours

7 The preparation of records by a public authority for the purpose of granting access and inspection, viewing or listening to or collection of copies of records shall be done during the working hours of the public authority unless otherwise authorized by the chief officer.

### Transfer of requests

8 (1) As soon as practicable after receipt by the public authority of an application the information officer shall make a determination under section 13(5) of the Act as to whether the application should be referred to another public authority.

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(2) Where an application is transferred to another public authority under section 13(6), the information officer shall within five working days dispatch correspondence to the applicant indicating that the public authority has transferred the application to the appropriate public authority, naming the authority.

### Unreasonable interference or disruption of other work

9 (1) Before a public authority makes a decision to refuse access under section 16(1)(c) of the Act (on the basis that the request would unreasonably interfere or disrupt other work) the information officer shall send written communication to the applicant—

- (a) explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and
- (b) inviting consultation with a view to narrowing the request.

(2) The information officer shall make a determination on the criteria for refusal in section 16(1)(c) of the Act on a case by case basis and for this purpose—

- (a) the resources to be considered are the existing resources of the public authority reasonably required to process the request consistent with attendance to other priorities including—
  - (i) identifying, locating or collating the records within the public authority's filing systems; and
  - (ii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters; and
- (b) the types of factors which shall be considered to determine whether the interference with or disruption of the other work would be unreasonable include—
  - (i) the nature and size of the public authority;
  - (ii) the number, type and volume of records falling within the request; and
  - (iii) the time involved in fully processing the request.

(3) In this regulation, a reference to the time spent by a public authority in searching for, locating or collating a record within a public authority's filing system or otherwise spent in processing the application does not include—

- (a) where the record is not found in the place in which, according to the filing system of the public authority (referred to in this regulation as the "relevant filing system") it ought to be located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the record had been found in that place; or
- (b) where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the record is located, any time other

than such time as would have been spent by the public authority in searching for or retrieving the record if the relevant filing system had indicated the place in which the record is located and the record had been found in that place.

Notice to third parties

10 (1) Where the information officer intends to give a requester access to a record which he believes contains personal information relating to a third party, he shall, within five working days of receipt of the application, send the third party written notice of the application for access.

(2) If the third party does not respond within the time specified in paragraph (5) or the information officer is not satisfied that the communication has reached the third party, he shall make such further attempts as are practicable to contact the third party by other feasible means of communication such as telephone, fax or email until he is so satisfied.

(3) The information officer may, in exercise of the powers contained in section 15 of the Act, extend the period for decision making.

(4) The notice shall—

- (a) state that a request has been made by an applicant (without naming him) for access to a record containing personal information about a third party;
- (b) describe the contents of the request and record concerned;
- (c) state that, within fourteen working days from the date of notice (and the notice shall be dispatched on the date of the notice), the third party may, in writing, consent to the disclosure or may make written representations to the public authority explaining why the information should not be disclosed; and
- (d) state that a decision will be made within fourteen working days from the expiry of the fourteen working days whether or not to give the requester access to the record or from the date a response is received from the third party if earlier.

Notifications of decisions to grant access and right of appeal

11 (1) On reaching a decision to grant access or partial access to personal information the information officer shall as soon as reasonably practicable give written notification of that decision to the applicant with a copy to—

- (a) the third party; and
- (b) the Information Commissioner;
- (c) the notice shall also state that—
  - (i) the requester has a right to internal review by the public authority under section 41 of the Act;

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- (ii) the requester has a right of review by the Commissioner under section 45 of the Act;
- (iii) the third party has a right to apply for review under paragraph (2);
- (iv) access to the record will be given unless the third party applies for review of the decision to the information officer or, as the case may be, the Commissioner under paragraph (2); and
- (v) that the record will be withheld until the third party's time for appeal to the Commissioner has expired.

(2) Where the third party is dissatisfied with the decision or any part of it, he may apply for review to the information officer or the Commissioner within six weeks after the date of decision.

(3) If there is no application for review within the period referred to in paragraph (2) the record may be released but only after the expiry of an additional six weeks during which time the Commissioner may exercise his power under section 45(2) of the Act to extend the period of application.

(4) Where following receipt of representations from the third party an information officer decides to claim an exemption for the record, notice of the decision shall be dispatched to the requester within five working days of the date of the decision but the requester has the right of review specified in sections 41 and 45 of the Act.

### Application for access to personal information

12 (1) Any person applying for access to his personal information shall provide photo identification confirming that he is the person to whom the information relates.

(2) Where the requester is not the person to whom the personal information relates, the person applying for the information shall provide sufficient proof of his authority to apply for the information and have access to it and such proof includes but is not limited to—

- (a) a power of attorney;
- (b) a court order;
- (c) probate or letters of administration; or
- (d) written authority by a next of kin of the person to whom the information relates to apply for and gain access to the information.

### Fees

13 (1) The fees prescribed in the the Government Fees Regulations 1976 shall apply.

(2) Where access is granted to a record and the record is to be inspected on the premises of the public authority no fee is payable.

(3) Before access is given to a record the information officer shall give the requester an estimate of the amount of fee payable, and the fee shall be paid before access is granted.

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(4) Payment may be made by such method as the public authority may specify and for this purpose the public authority may specify payment by cash, money order or electronic bank card.

(5) The application shall be deemed to have been withdrawn where the requester fails within thirty working days of receipt of the notification of fees—

- (a) to respond;
- (b) to set an appointment for inspection; or
- (c) to present himself at the public authority to receive copies of the record.

(6) Where before the expiry of the period referred to in paragraph (5) the requester asks for an extension the information officer may, where he thinks appropriate, extend that period for a further thirty working days.

(7) During the periods referred to in paragraph (6) the information officer shall do his best to remind the requester that payment needs to be made within the time allowed.

### Form of application- Schedule 3

14 An application for amendment or annotation of a record shall contain the particulars set out in Schedule 3.

### Manner of amending personal records

15 (1) Information on a paper record shall be corrected by ruling through the information found to be incorrect and writing the correct information next to it.

(2) The amendment shall not obliterate the text of the record as it existed before the amendment and shall be sealed.

(3) The information officer shall insert the following—

“Amended on [insert date] under section 19(1) of the PATI Act 2010”.

(4) Where the incorrect information is found in a particular place, a clear reference to the file where the correct information is held shall be added to the file or record holding the incorrect information.

### Manner of annotating personal records

16 (1) Annotation of records shall be completed by adding a file note to the record summarizing the requester's statement cross-indexed to the material claimed to be incomplete, incorrect, out of date or misleading.

(2) The annotation of the record shall be clearly displayed on the cover of all of the requester's files.

### Functions of information officers

17 An information officer shall—

- (a) ensure persons who are applying for access to personal information prove their identity;
- (b) conduct interviews with applicants to ensure that the appropriate records are located;
- (c) ensure that applicants are fully informed of the status of their applications;
- (d) inform applicants when it is known that a record is already published and if requested provide information as to where the information can be accessed or provide access to that information;
- (e) monitor the inspection of records;
- (f) make a record of all applications for access as required by these Regulations and maintain a disclosure log for the public authority of all applications granted;
- (g) coordinate throughout the public authority the information required to be published under section 5 of the Act.
- (h) transfer applications to other public authorities after consultation with the appropriate information officer on the functions and duties of the public authority and the existence or otherwise of the records required by the requester in that public authority;
- (i) assist persons who have limited ability to read or write English or with any mental or physical disability;
- (j) examine records to which access has been applied for to determine whether—
  - (i) the record is exempt in its entirety;
  - (ii) the record contains exempt matter;
  - (iii) access should be granted; or
  - (iv) the grant of access should be deferred under section 11 of the Act;
- (k) publish on an annual basis the relevant publication scheme, and this function may be performed in conjunction with other public authorities; and
- (l) keep up to date his knowledge of the Act, the laws relevant to the administration of his public authority, the Code of Practice on Records Management, and the laws and practices affecting the management of records and information.

Delegation of functions

18 (1) An information officer may delegate to an officer such of his functions as he thinks necessary or expedient but shall remain accountable for the discharge of those functions.



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(2) Any complaint against the information officer concerning the service provided by the information officer that is not a matter which is subject to internal review shall be referred to the chief officer of the public authority.

### Sharing of information officers

19 A public authority may agree with one or more other public authorities to appoint one information officer.

### Duty to keep register of applications

20 The information officer shall, in the monitoring and tracking computer system used by the Government, keep a register of applications in electronic form which shall include but be not limited to—

- (a) an application number;
- (b) the name of the requester;
- (c) the date of the application (which shall be the date of original receipt, where it was at that time a complete and valid request under the Act or these Regulations) or a subsequent date (where the application had to be resubmitted so as to be complete and valid);
- (d) a summary of the requester's request;
- (e) the date the response was sent to the requester;
- (f) a summary of information provided, where information was provided;
- (g) where the request was refused, the specific clause relied upon with an explanation of reasons; and
- (h) whether an appeal was filed and the outcome of that appeal.

### Request on behalf of minors

21 (1) In this section "child" means a person under the age of eighteen years.

(2) A parent or guardian of a child may, without obtaining the consent of the child, apply for and be granted access to information (including personal information) relating to that child but access shall not be granted if, in the opinion of the information officer—

- (a) such information is of such a nature as not to be ordinarily made available to a parent in the normal course of dealing with a public authority; or
- (b) after consultation with the Director of Child and Family Services, the granting of access to such information would not be in the best interest of the child.

### Commencement

22 These Regulations shall come into operation on the same date on which the Public Access to Information Act 2010 comes into operation.

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### SCHEDULE 1

(Regulation 3)

#### PARTICULARS TO BE SET OUT IN THE FORM OF AN APPLICATION FOR ACCESS

Name of Public Authority to which the application is being made

Details of requester

Title (Mr., Mrs., Ms., Miss., Other)

Surname (Family name)

First name

Middle names

Postal address (include Postal code)

Email address

Telephone number

Details request

(Include subject matter of the request and the time frame to which the request refers.  
Include dates and any known documents)

If you are making a request for personal information, please include the following:

The full name of the person to whom the information relates

The authority which entitles you to apply on behalf of the above named person (if a third party).

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SCHEDULE 2

(Regulation 6)

FORM OF LETTER OF ACKNOWLEDGEMENT

Reference Number [Insert Number]

Dear [Name]

Thank you for your application dated [insert date of application], received by us on [insert date of receipt].

Your request is being dealt with under the terms of Public Access to Information Act and Regulations.

You will receive a response to your request within twenty-eight days as set out in the Act.

If you have any queries about this letter, please contact me. Please quote your reference number in any future correspondence.

Sincerely,

Information Officer

[Name, address, email address, telephone number]

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SCHEDULE 3

(Regulation 14)

APPLICATION FOR AMENDMENT OR ANNOTATION OF A RECORD

Applicant's Name: \_\_\_\_\_

Applicant's Account Number or File Number: \_\_\_\_\_

Applicant's

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date or dates of entry to be amended:

\_\_\_\_\_

\_\_\_\_\_

Type of entry to be amended: \_\_\_\_\_

Please explain how the entry is incorrect or incomplete. What should the entry say to be more accurate or complete?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of the Applicant

\_\_\_\_\_  
Date of Application

\_\_\_\_\_  
Name and signature of Information Officer

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Made this                      day of                      2014

Premier