

VIRGIN ISLANDS

FREEDOM OF INFORMATION ACT, 2012

ARRANGEMENT OF SECTIONS

Section

PART I
PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Statement of purpose.
4. Application of Act.
5. Act to bind the Crown.

PART II
ESTABLISHMENT OF A FREEDOM OF INFORMATION UNIT

6. Establishment of Information Unit.

PART III
PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

7. Publication of information concerning functions, etc. of public authorities.
8. Certain documents to be available for inspection and purchase.
9. Unpublished documents not to prejudice public.

PART IV
RIGHT OF ACCESS TO INFORMATION

10. Right of access.
11. Access to certain documents.
12. Access to documents otherwise than under this Act.
13. Request for access.
14. Duty to assist applicant.
15. Freedom of Information Officer to direct request and acknowledge receipt of request.
16. Time limit for determining requests.
17. Transfer of request for access.
18. Access to documents.

19. Deletion of exempt information.
20. Fees for access to documents.
21. Forms of access.
22. Deferral of access.
23. Refusal of access in certain cases.
24. Decisions to be made by authorised persons.
25. Reasons for decisions to be given.

PART V EXEMPT DOCUMENTS

26. Documents of the Governor's Office.
27. Cabinet documents.
28. Documents affecting national security, defence, and international relations.
29. Documents affecting enforcement or administration of law.
30. Documents affecting legal proceedings or subject to legal professional privilege.
31. Documents to which secrecy provisions apply.
32. Documents affecting personal privacy.
33. Documents relating to trade secrets, business affairs etc.
34. Documents affecting national economy.
35. Documents containing material obtained in confidence.
36. Documents disclosure of which would be contempt of court or contempt of the Legislature.
37. Disclosure of exempt documents in the public interest.
38. Crown privileges in judicial proceedings not affected.
39. Duty of authorities to act in good faith.

PART VI ENFORCEMENT BY COMPLAINTS COMMISSIONER

40. Appeal to the Complaints Commissioner.
41. Decision on appeal.
42. Implementation of decision.
43. Complaints Commissioner's powers generally to investigate.
44. Investigations on Complaints Commissioner's initiative.
45. Appeal from Complaints Commissioner's decisions and orders.
46. Decisions and orders of Complaints Commissioner binding.

PART V11 MEASURES TO PROMOTE OPENNESS

47. Promotion of openness.
48. Whistleblowers.
49. Guidance on duty to publish.
50. Maintenance of records.
51. Training of officials.

PART VIII
MISCELLANEOUS

- 52. Correction of personal information.
- 53. Protection against actions for defamation or breach of confidence.
- 54. Protection in respect of offences.
- 55. Report to the House of Assembly.
- 56. Preservation of official documents.
- 57. Regulations.

Schedule

I Assent

Governor
, 2012

VIRGIN ISLANDS

No. of 2012

A Bill for

AN ACT to provide members of the public with the right of access to official documents of the Government and public authorities and to provide for connected matters.

[Gazetted , 2012]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Freedom of Information Act, 2012 and shall come into operation on a day to be appointed by the Governor, by Proclamation published in the *Gazette*.

Interpretation.

2. In this Act unless the context otherwise requires

“applicant” means a person, that is to say, a member of the public, who has made a request in accordance with section 13;

“Archives” means the Archives and Records Management Department established under section 3(1) Archives and Records Management Act, 2010;

No. 5 of
2010

S.I. 2007
No. 1678
UK

“Constitution” means the Virgin Islands Constitution Order 2007;

“Complaints Commissioner” means the Complaints Commissioner appointed under section 110 of the Constitution;

“document” means information recorded in writing regardless of form or medium;

“exempt document” means a document that, by virtue of any provision of Part IV, is an exempt document;

“exempt information” means information that, if included in a document, causes the document to be an exempt document;

“Information Unit” means the Freedom of Information Unit established under section 6;

“member of the public” includes an individual, an association, organisation, firm, company or other body, whether the individual or body is within or outside the Territory;

“Minister” means the Minister to whom responsibility for information is assigned;

“official document” means a document held by a public authority in connection with its functions as such, whether or not it was created by that authority, and whether or not it was created before the commencement of this Act and, for the purposes of this definition, a document is held by a public authority if it is in its possession, custody or control;

“personal information”, about an individual, includes

- (a) information relating to the race, nationality or ethnic origin, colour, religion, age, sex or marital or family status of the individual;
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual;
- (c) information relating to the sexual life of the individual;
- (d) information relating to the financial transactions in which the individual has been involved;
- (e) any identifying number, symbol or other particular assigned to the individual;
- (f) the address, telephone number, fingerprints or blood type of the individual;
- (g) the personal opinions or views of the individual except where they relate to another individual;
- (h) correspondence sent to a public authority by the individual that is implicitly or explicitly of a private or confidential nature, and any

reply to that correspondence that would reveal the contents of the original correspondence;

- (i) the views and opinions of another individual about the individual;
- (j) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

“prescribed” means prescribed by the Minister by regulations made under this Act;

“public authority” includes

- (a) the House of Assembly, or any Committee of the House;
- (b) the Cabinet as constituted under the Constitution;
- (c) a Ministry or a department or division of a Ministry;
- (d) a local authority;
- (e) a public statutory corporation or body;
- (f) a body corporate or an incorporated body established for a public purpose, which is owned or controlled by the Government;
- (g) any other body or organisation that is designated in an Order under section 4 (3) to be a public authority or any office deemed to be a public authority under section 4(6) for the purposes of this Act;

“records” means recorded information regardless of form or medium created, received and maintained by a public office or individual in the pursuance of its or his or her legal obligations, such as an original or a copy of a manuscript, paper, letter, register, report, book, magazine, map, chart, plan, drawing, picture, photograph or machine-readable record or a part of it either handwritten, drawn, printed or produced in any other way on paper or on any other material except granite and officially produced or prepared, or received, in an office in the course of its official functions; any cinematograph, film, microfilm recording, tape, all other audio visual materials, disc, computer or machine-readable records including all electronic records received or made in an office of a public authority;

“responsible Minister” in relation to a public authority means the Minister of to whom responsibility for the public authority is assigned.

3. (1) The purpose of this Act is to provide members of the public with the right of access to information in the possession of public authorities by Statement of purpose.

- (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorisations, policies, rules and practices;
- (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities; and
- (c) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect or misleading.

(2) The provisions of this Act shall be interpreted so as to further the purpose set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

4. (1) Subject to subsection (2), this Act applies to Application of Act.

- (a) a public authority; and
- (b) an official document created by or held by a public authority not earlier than five years immediately preceding the commencement of this Act.

(2) The Minister may, by Order subject to affirmative resolution of the House of Assembly, declare that this Act shall apply to official documents created by or held by a public authority at such date, being earlier than the five years referred to in subsection (1) (b), as may be specified in that Order.

(3) The Minister may by Order, subject to affirmative resolution of the House of Assembly, declare that this Act shall apply to any body or organisation that is supported directly or indirectly by Government funds and that provides a service of a public nature or to such aspects of its operations as may be specified in the Order.

(4) An Order under subsection (3) may be made subject to such exceptions, adaptations or modifications, as the Minister may consider appropriate.

(5) This Act does not apply to

- (a) a commission of inquiry issued by the Governor;
- (b) the security or intelligence services (as defined in subsection (7)) in relation to their strategic or operational intelligence-gathering activities;
- (c) private holdings of the National Archives where the contract or other arrangements under which the holdings are held do not allow disclosure in the circumstances prescribed under this Law;
- (d) such public authority or function of an authority as the Minister may by Order, subject to affirmative resolution of the House of Assembly, determine.

(6) For the purposes of this Act

- (e) the Governor, in relation to his or her executive functions, or in his or her capacity as the holder of that office, shall not be deemed to be a public authority, but the Governor's Office, and the staff of the Governor's Office in their capacity as members of that staff in relation to those matters that relate to the administration and business of the office, shall be deemed to be a public authority;
- (f) in relation to its or his or her judicial functions, a court, or the holder of any judicial office or other office pertaining to a court in his or her capacity as the holder of that office, shall not be deemed to be a public authority;
- (g) a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters that relate to court administration, shall be deemed to be part of a public authority.

(7) In subsection (5) "security or intelligence services" includes

- (a) the Royal Virgin Islands Police Force;
- (b) the Financial Investigation Agency;
- (c) the Department of Customs.

Act to bind the
Crown.

5. This Act binds the Crown.

PART II **ESTABLISHMENT OF A FREEDOM OF INFORMATION UNIT**

6. (1) For the purpose of promoting and facilitating the right of access to official documents by the general public there shall be a Freedom of Information Unit. Establishment of Information Unit.

(2) The Information Unit shall consist of

- (a) a Freedom of Information Officer, who shall be its administrative head; and
- (b) such other officers to assist the Freedom of Information Officer;

and the Governor shall, in accordance with section 91 of the Constitution, appoint the Freedom of Information Officer and the other officers.

PART III **PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION**

7. (1) A public authority shall cause to be published within twelve months

- (a) the appointed day;
- (b) its establishment; or
- (c) the coming into operation of an Order under section 3 (2) which specified that public authority,

Publication of information concerning functions, etc. of public authorities.

whichever is later, an initial statement of its organization and functions, containing the information specified in the Schedule. Schedule

(2) The Schedule applies for the purposes of making available to the public the records described in that Schedule.

(3) The information required under subsection (1) shall be published in such manner and be updated with such frequency as may be prescribed.

(4) The Minister may by Order amend the Schedule.

8. (1) This section applies to documents that are provided by a public authority for the use of, or are used by, the public authority or its officers in making decisions or recommendations, under or for the purposes of any enactment or scheme administered by the public authority, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being

Certain documents to be available for inspection and purchase.

- (a) manuals or other documents containing interpretations, statements of policy, rules, guidelines, practices, procedures or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the public authority;
- (b) documents containing particulars of such a scheme, not being particulars contained in any other enactment; and
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme.

(2) A public authority shall

- (a) cause copies of all documents to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) cause to be published in the *Gazette* and in a newspaper circulating in the Territory, not later than twelve months after the date of commencement of this Act, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, available and the place or places where copies may be inspected or may be purchased; and
- (c) cause to be published in the *Gazette* and in a newspaper circulating in the Territory, within twelve months after the date of first publication of the statement under paragraph (b) and thereafter at intervals of not more than twelve months, a statement bringing up to date information contained in the previous statement or statements.

(3) Where the public authority does not comply fully with paragraph (a) of subsection (2) before the expiration of twelve months from the date of commencement of this Act, it shall, before that time, comply with that paragraph as far as is practicable.

(4) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such a document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(5) A document from which exempt information has been excluded in accordance with subsection (4) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(6) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2) (b) without exempt information being disclosed, the public authority shall cause that fact to be published.

(7) Where a public authority comes into existence on or after the date of commencement of this Act, subsections (2) and (3) shall apply in relation to that public authority as if the references in those subsections to the date of commencement of this Act were references to the date the public authority so comes into existence.

9. If a document required to be made available in accordance with section 8, being a document containing a rule, guideline, practice or procedure relating to a function of a public authority, was not made available and included in a statement in the *Gazette* and in a newspaper circulating in the Territory, as referred to in that section, a member of the public who was not aware of that rule, guideline, practice or procedure shall not be subjected to any prejudice by reason only of the application of that rule, guideline, practice or procedure in relation to the thing done or omitted to be done by him or her if he or she could lawfully have avoided that prejudice had he or she been aware of that rule, guideline, practice or procedure.

Unpublished documents not to prejudice public.

PART IV **RIGHT OF ACCESS TO INFORMATION**

10. (1) Subject to this Act, every person shall have a right of access in accordance with this Act, to an official document other than an exempt document. Right of access.

(2) An applicant for access to an official document shall not be required to give any reason for requesting access to that document.

11. Where

Access to certain documents.

- (a) an official document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or
- (b) an official document is available for purchase by the public in accordance with arrangements made by a public authority,

the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

12. Nothing in this Act shall prevent a public authority from publishing or giving access to a document (including an exempt document), otherwise than as required by this Act, where it has the discretion to do so or is required by law to do so.

Access to documents otherwise than under this Act.

Requests for access.

13. (1) An applicant who wishes to obtain access to an official document of a public authority shall make a request in writing to the Freedom of Information Officer for access to the document from the public authority.

(2) A request shall identify the official document or shall provide such information concerning the document as is reasonably necessary

(a) to allow an officer of the Information Unit to effectively direct the request to the appropriate public authority; and

(b) to enable the authorised person or responsible officer of the public authority to identify the document with reasonable effort.

(3) A request may specify in which of the forms of access set out in section 21 the applicant wishes to be given access.

(4) Subject to section 23, a request may be made for access to all official documents of a particular description that contain information of a specified kind or relate to a particular subject matter.

Duty to assist applicant.

14. (1) The Freedom of Information Officer shall take reasonable steps to assist any person who

(a) wishes to make a request under section 13; or

(b) has made a request that does not comply with the requirements of section 13 (2),

to make a request in a manner which complies with that section.

(2) Where a request in writing is made to the Freedom of Information Officer for access to an official document from a public authority, the Freedom of Information Officer shall not refuse to direct the request to the appropriate public authority on the ground that the request does not comply with section 13 (2), without first giving the applicant a reasonable opportunity of consultation with the Freedom of Information Officer with a view to the making of a request in a form that complies with that section.

Freedom of Information Officer to direct request and acknowledge receipt of request.

15. The Freedom of Information Officer shall within five working days of receipt of the request made under section 13

(a) direct the request to the appropriate public authority; and

(b) acknowledge in writing the receipt of the request, informing the applicant of the name and address of the appropriate authority and the date that the request was referred to the appropriate authority.

16. (1) Where a request has been directed under section 15 to a public authority, the public authority shall take reasonable steps to enable an applicant to be notified in writing of the approval or refusal of his or her request (including a deferral of access under section 22) as soon as practicable, but in any case not later than thirty days from the date on which the request was referred to it under section 15. Time limit for determining requests.

(2) When an applicant is notified under subsection (1), the public authority shall forthwith provide the Freedom of Information Officer with a copy of such notification.

17. (1) Where the Freedom of Information Officer directs a request to a public authority for access to a document and the request has been misdirected, the public authority to which the request has been misdirected shall transfer the request to the appropriate public authority and inform the Freedom of Information Officer and the person making the request accordingly. Transfer of request for access.

(2) Where a request is transferred to a public authority in accordance with subsection (1), it shall be deemed to be a request made to that public authority and received on the date on which it was originally referred to the public authority to which the request was misdirected by the Freedom of Information Officer under section 15.

18. Where a request for access to an official document is duly made and Access to documents.

- (a) the request was approved by the public authority; and
- (b) subject to section 20, any prescribed fee required to be paid before access is granted has been paid,

access to the document shall, if possible, be given forthwith, but in any case not later than fourteen working days from the date on which any fee required to be paid is paid.

19. (1) Where Deletion of exempt information.

- (a) a decision is made not to grant a request for access to an official document on the ground that it is an exempt document;
- (b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the public authority shall give the applicant access to such a copy of the document.

(2) Where access is granted to a copy of a document in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any information deleted is exempt information.

(3) Where an applicant is granted access to a copy of a document in accordance with this section the public authority shall inform the Freedom of Information Officer.

Fees for access to documents.

20. (1) Subject to any exceptions prescribed by regulations, a public authority shall not charge an applicant a fee for the making of a request for access to an official document.

(2) Where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee.

(3) Notwithstanding subsection (2), where a public authority fails to comply with section 15, any access to an official document to which the applicant is entitled pursuant to his or her request shall be provided free of charge.

(4) Notwithstanding subsection (2), where a public authority fails to give an applicant access to an official document within fourteen working days of the receipt of payment of the relevant prescribed fee, the applicant shall, in addition to access to the official document requested, be entitled to a refund of the fee paid.

(5) The fees prescribed to be payable by the applicant shall be commensurate with the cost of the material utilised in making the documents available.

21. (1) Access to an official document may be given to an applicant in one or more of the following forms:

Forms of access.

- (a) the applicant may be afforded a reasonable opportunity to inspect the document;
- (b) the public authority concerned may furnish the applicant with a copy of the document;
- (c) in the case of a document that is an article or anything from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear or view those sounds or visual images;
- (d) in the case of a document by which or in which words are
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sound; or

- (ii) contained in the form of shorthand writing or in codified form,

the applicant may be furnished with a printed transcript of the words or data recorded or contained in the document.

(2) Subject to subsection (3) and to section 19, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the form of access requested by the applicant

- (a) would interfere unreasonably with the operations of the public authority;
- (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright subsisting in a person other than copyright owned by the Government,

access in that form shall be refused, but access may be given in another form.

22. (1) A public authority that receives a request may defer the provision of access to the official document concerned

Deferral of access.

- (a) until the happening of a particular event, including the taking of some action required by law or some administrative action; or
- (b) until the expiration of a specified time,

where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Without prejudice to the generality of subsection (1), a public authority may defer the provision of access to an official document requested

- (a) if the document has been prepared
 - (i) for presentation to the House of Assembly or for the purpose of being released to the media, a particular person, or body;
 - (ii) solely for inclusion, in the same or in an amended form, in a document to be prepared for a purpose specified in subparagraph (i), and the document is yet to be presented or released; or

(b) if publication of the document within a particular period is required under the provision of any enactment, until the expiration of that period.

(3) Where the provision of access to an official document is deferred in accordance with this section, the public authority shall

- (a) inform the applicant of the reason for the deferral indicating as far as practicable, the period for which the deferral will operate; and
- (b) inform the Freedom of Information Officer of the deferral of access under this section.

Refusal of access in certain cases.

23. A public authority dealing with a request may refuse to grant access to an official document in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that

- (a) the work involved in processing the request would substantially and unreasonably interfere with the normal operations of the public authority, and if before refusing to provide information on these grounds, the public authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference; or
- (b) the request is frivolous or vexatious, or forms part of a pattern of manifestly unreasonable requests from the same applicant or from different applicants who, in the opinion of the public authority, appear to have made the requests acting in concert.

Decisions to be made by authorised persons.

24. An authorised person for the purpose of making a decision in respect of a request made to a public authority, may be

- (a) the responsible Permanent Secretary;
- (b) the Head of the Department;
- (c) the Chief Executive Officer of the public authority; or
- (d) subject to regulations, a designated responsible officer of the public authority acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the responsible Permanent Secretary, Head of Department, or Chief Executive Officer of the public authority.

Reasons for decisions to be given.

25. (1) Where in relation to a request for access to an official document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the

document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;
- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 19, state that the document is a copy of a document from which exempt information has been deleted;
- (d) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his or her right to complain to the Complaints Commissioner in that regard and, under **section 43**, as regards any refusal to grant access to a document;
- (e) inform the applicant pursuant to **section 44**, of his or her right to apply to court for judicial review of the decision and the time within which the application for review is required to be made.

(2) A public authority is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

PART V **EXEMPT DOCUMENTS**

26. (1) An official document is an exempt document if it is

Documents of
the Governor's
Office.

- (a) a document of the Foreign and Commonwealth Office held by the Governor's Office on behalf of the Foreign and Commonwealth Office; or
- (b) a document relating to the exercise of any power with respect to which the Governor is empowered by the Constitution or under any other law to act in his or her discretion.

(2) For the purpose of this Act “the Foreign and Commonwealth Office” means the Foreign and Commonwealth Office of the United Kingdom, including its overseas staff at the Governor's Office.

27. (1) An official 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 of Government to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;
- (b) an official record of any deliberation or decision of the Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by the Cabinet;
- (d) a document that is a draft copy of, or a part of, or contains an extract from, a document referred to in paragraph (a), (b) or (c); or
- (e) 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 officially published.

(2) Subsection (1) does not apply to a document that contains material of a purely factual nature or reports, studies, tests or surveys of a statistical, technical or scientific nature unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet.

(3) For the purpose of this Act, a certificate signed by the Cabinet Secretary or a person performing the duties of the Cabinet Secretary, certifying that a document is one of a kind referred to in subsection (1), establishes conclusively that it is an exempt document of that kind.

(4) Where a document is a document referred to in subsection (1) (d) or (e) by reason only of a matter contained in a particular part or particular parts of the document, a certificate under subsection (3) in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(5) In this section, any reference to “the Cabinet” shall be read as including a reference to a committee of the Cabinet.

28. (1) An official document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure

- (a) would prejudice the security, defence or international relations of the Virgin Islands;
- (b) would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of the Virgin Islands.

(2) Where a responsible Minister is satisfied that the disclosure under this Act of a document would be contrary to the public interest for a reason referred to in subsection (1), he or she may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the document is an exempt document referred to in subsection (1).

(3) Where a responsible Minister is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

29. An official document is an exempt document if its disclosure under this Act would, or would be reasonably likely to

- (a) prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

Documents affecting legal proceedings or subject to legal professional privilege.

30. (1) An official 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.

(2) A document of the kind referred to in section 8 (1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of a matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).

31. An official document is an exempt document if it is a document to which a prescribed provision of an enactment, being a provision prohibiting or restricting

Documents affecting enforcement or administration of law.

Documents to which secrecy provisions apply.

disclosure of the document or of information or other matter contained in the document, applies.

Documents
affecting
personal privacy.

32. (1) An official document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual, including a deceased individual.

(2) Subject to subsection (4), the provisions of subsection (1) do not apply in any case where the application for access is made by the person to whose affairs the document relates.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to the court for judicial review of the decision and the time within which the application for review is required to be made.

(4) Where a request is made to a public authority for access to a document that contains information of a medical or psychiatric nature concerning the person making the request and it appears to the public authority that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the public authority may direct that the document containing that information, that would otherwise be given to that person is not to be given to him or her, but is to be given instead to a medical practitioner to be nominated by him or her.

Documents
relating to trade
secrets, business
affairs etc.

33. (1) An official document is an exempt document if its disclosure under this Act would disclose

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

(ii) the disclosure of the information under the Act would be contrary to public interest by reason that the disclosure would be reasonably likely to prejudice the ability of the Government or public authority to obtain similar information in the future for the purpose of administration of a law or the administration of matters administered by the public authority.

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to an official document by reason only of the inclusion in the document of information concerning

- (a) the business or professional affairs of that person; or
- (b) the business, commercial or financial affairs of an undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.

34. (1) An official document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

Documents affecting national economy.

(2) The kinds of documents to which subsection (1) may apply include but are not restricted to, documents containing information 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) proposals for expenditure;
- (f) foreign investment in the Virgin Islands;
- (g) borrowings by the Government.

Documents containing material obtained in confidence.

35. (1) An official document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and

- (a) the information would be exempt information if it were generated by a public authority; or

(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information

- (a) acquired by a public authority from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

Documents disclosure of which would be contempt of court or contempt of the Legislature.

36. An official document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown

- (a) be in contempt of court;
- (b) be contrary to an order made or given by a commission or by a tribunal or other person or body having power to take evidence on oath;
- (c) infringe the privileges of the Legislature.

Disclosure of exempt documents in the public interest.

37. Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds,

has or is likely to have occurred or in the circumstances giving access to the official document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

38. Nothing in this Act shall affect any rule of law that authorises the withholding of any document by the Crown in or in relation to a judicial proceeding on the ground that the publication or disclosure of the document would be injurious to the public interest.

Crown privileges in judicial proceedings not affected.

39. In considering whether or not to claim exemption under this Part, the public authority shall act in good faith and use its best endeavours to achieve the purpose of this Act to afford to members of the public maximum access to official documents consistent with public interest.

Duty of authorities to act in good faith.

PART VI

ENFORCEMENT BY COMPLAINTS COMMISSIONER

Appeal to the
Complaints
Commissioner.

40. (1) A person who has made a request for a record and has exhausted the other means of redress provided for under this Act except this section may in writing apply to the Complaints Commissioner for a decision that a public authority has

- (a) failed to indicate whether or not it holds a record;
- (b) failed to communicate the information contained in a record within the time allowed by this Act or at all;
- (c) failed to respond to a request for a record within the time limits established in this Act;
- (d) failed to provide a notice in writing of its response to a request for a record;
- (e) charged a fee that is in contravention of this Act; or
- (f) otherwise failed to comply with an obligation imposed under this Act.

(2) An appeal

- (a) shall be made within thirty calendar days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
- (b) shall, where no notification has been given, be given within the period required by this Act, within thirty calendar days after the expiration of that period.

(3) Where an appeal is not made within the period specified in subsection (2), the Complaints Commissioner may extend that period if he or she is satisfied that the appellant's delay in doing so is not unreasonable.

(4) On the consideration of an appeal, the Complaints Commissioner

- (a) may, subject to paragraph (b), make any decision which could have been made on the original application;
- (b) shall not nullify a certificate issued under this Act attesting to the fact that a document falls within the category of exempt documents.

Decision on
appeal.

41. (1) The Complaints Commissioner shall, subject to subsection (2), decide an appeal under the relevant section of this Act as soon as is reasonably practicable, and in any case within thirty calendar days, after giving both the complainant and the relevant public authority an opportunity to provide its views in writing, but the Complaints Commissioner may, for good cause, extend this period for one further period not exceeding thirty calendar days so long as before the expiry of the first period of thirty calendar days he or she gives written notice to the parties as to why the period has to be extended.

(2) In any appeal under section 40, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Act.

(3) In his or her decision pursuant to subsection (1), the Complaints Commissioner may

(a) reject the appeal;

(b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the law;

(c) in cases of egregious or wilful failures to comply with an obligation under this Act, refer the matter to the appropriate disciplinary authority.

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

42. (1) The Complaints Commissioner may, after giving a public authority an opportunity to provide its views in writing, decide that the public authority has failed to comply with an obligation under this Act.

Implementation of decision.

(2) In his or her decision pursuant to subsection (1), the Complaints Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Act, and in exercise of this power, may

(a) order the publishing of certain information or categories of information;

(b) recommend the making of certain changes to the practices of the public authority concerned in relation to the keeping, management and destruction of records, and the transfer of records to the national archives, but such recommendations shall not be at variance with any law for the time being in force in relation to such matters;

(c) recommend the provision of training to the public authority's officials on the right of access to records; or

(d) refer a matter to the appropriate disciplinary authority where there has been an egregious or wilful failure to comply with an obligation under this Act.

(3) The Complaints Commissioner shall serve notice of his or her decision on the public authority concerned and the person who was seeking access to records, which notice shall include a statement of the right of appeal.

Complaints
Commissioner's
powers generally
to investigate.

43. (1) In coming to a decision pursuant to section 41 or 42, the Complaints Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify; in the exercise of this power he or she may call for and inspect an exempt record, so however, that, where he or she does so, he or she shall take such steps as

are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to that matter.

(2) The Complaints Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Complaints Commissioner on any grounds unless the Governor, under his or her hand, certifies that the examination of such record would not be in the public interest.

(3) A certificate given by the Governor under subsection (2) shall not be subject to challenge in judicial or quasi-judicial proceedings of any kind.

Investigations on
Complaints
Commissioner's
initiative.

44. Notwithstanding the provisions of this Act relating to appeal, the Complaints Commissioner may on his or her own initiative conduct an investigation into any matter and where he or she does so, the matter shall be treated as an appeal to the extent practicable.

Appeal from
Complaints
Commissioner's
decisions and
orders.

45. (1) The complainant, or the relevant public authority, may, within forty-five days, appeal to the High Court by way of judicial review of a decision of the Complaints Commissioner pursuant under this Act.

(2) In any appeal from a decision pursuant to section 41, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under the law.

46. Upon expiry of the forty-five day period for appeals referred to in section 45, the Commissioner may certify in writing to the court any failure to comply with a decision made under section 41 or 42, or an order under section 43, and the court may consider such failure under the rules relating to contempt of court.

Decisions and
orders of
Complaints
Commissioner
binding.

PART VII **MEASURES TO PROMOTE OPENNESS**

47. Every public authority shall

Promotion of
openness.

- (a) promote in the public authority best practices in relation to record maintenance, archiving and disposal; and
- (b) facilitate requests for records, assist the Information Unit in carrying out its duties in relating to information disclosure.

48. (1) No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information on wrong-doing, or that which would disclose a serious threat to health, safety or the environment, as long as he or she acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing or a serious threat to health, safety or the environment.

Whistleblowers.

(2) For the purposes of subsection (1), "wrongdoing" includes but is not limited to

- (a) the commission of a criminal offence;

- (b) failure to comply with a legal obligation;
- (c) miscarriage of justice; or
- (d) corruption, dishonesty, or serious maladministration.

49. The Minister shall

Guidance on
duty to publish.

- (a) publish a code on minimum standards and best practices regarding the duty of public authorities to publish information pursuant to section 7; and
- (b) upon request, provide guidance to a public authority regarding the duty to publish.

50. (1) Every public authority shall maintain its records in a manner which facilitates access to information under this Act and in accordance with the code of practice provided for in subsection (3).

Maintenance of
records.

(2) Every public authority shall ensure that there are adequate procedures and facilities for the correction of personal information.

(3) The Freedom of Information Officer shall, after consultation with interested parties and upon the recommendation of the Director of the Archives, issue from time to time a code, which shall contain the practices relating to the keeping, management and disposal of records, as well as the transfer of records to the Archives.

51. Every public authority shall ensure that training is provided for its officials regarding the right to information and the effective implementation of this Act.

Training of
officials.

PART VIII **MISCELLANEOUS**

Correction of
personal
information.

52. (1) Where a document of a public authority to which access has been given under this Act or otherwise, contains personal information of a person and that person claims that the information

- (a) is incomplete, incorrect or misleading; or
- (b) is not relevant to the purpose for which the document is held,

the public authority may, subject to subsection (2), on the application of that person, amend the information upon being satisfied of the claim.

(2) An application under subsection (1) must

- (a) be in writing; and

(b) as far as practicable, specify

- (i) the document or official document containing the record of personal information that is claimed to require amendment;
- (ii) whether the information is claimed to be incomplete, incorrect or misleading;
- (iii) the information that is claimed to be incomplete, incorrect or misleading;
- (iv) the applicant's reasons for so claiming; and
- (v) the amendment requested by the applicant.

(3) To the extent that it is practicable to do so, the public authority shall, when making any amendment under this section to personal information in a document, ensure that it does not obliterate the text of the document as it existed prior to the amendment.

(4) Where a public authority is not satisfied with the reasons for an application under subsection (1), it may refuse to make any amendment to the information and inform the applicant of its refusal together with its reasons for so doing.

(5) Where a public authority receives an application for the correction of personal information under this section, the public authority shall within five working days of making a decision relating to that application inform the Freedom of Information Officer of the application and as to whether the amendment requested was accepted or refused without providing the details of such decision.

53. (1) Where access has been given to an official document and

- (a) the access was required by this Act to be given; or
- (b) the access was by an authorised person, in accordance with section 24, in the *bona fide* belief that the access was required by this Act to be given,

Protection
against actions
for defamation or
breach of
confidence.

no action for defamation or breach of confidence lies by reason of the authorising or giving of the access, against the Government or a public authority or against the authorised person or any person who gave the access.

(2) The giving of access to a document, including an exempt document, in consequence of a request shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorisation or approval of

the publication of the document or of its contents by the person to whom the access was given.

54. Where access has been given to an official document and

- (a) the access was required by this Act to be given; or
- (b) the access was by an authorised person in accordance with section 24 in the *bona fide* belief that the access was required by this Act to be given,

Protection in respect of offences.

neither the authorised person nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of authorising or giving of the access.

55. (1) The Minister shall, as soon as practicable after the thirty-first day of December of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before the House of Assembly.

Report to the House of Assembly.

(2) Each responsible Minister shall, in relation to a public authority within his or her portfolio, furnish to the Minister such information as he or she requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

Preservation of official documents.

56. (1) A public authority shall maintain and preserve official documents to which a right of access is conferred under this Act.

(2) A person who wilfully destroys or damages an official document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months.

(3) A person who knowingly destroys or damages an official document that is required to be maintained and preserved under subsection (1) while a request for access to the document is pending commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

Regulations.

57. (1) The Minister may make regulations generally as he or she considers necessary or expedient for giving effect to the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations

- (a) prescribing

- (i) the fees to be charged by a public authority for making of a request for access to an official document;
- (ii) the fees payable in respect of access to official documents, including where access to a document is to be given in the form of printed copies or copies in some other form, such as, on tape, disk, film or other material;
- (iii) the manner in which any fee payable under this Act is to be calculated and the maximum amount it shall not exceed;

- (b) exempting any person or category of persons from paying any fees under this Act, where the information contained in the official document for which access is requested is in the public interest;
- (c) designating the responsible officers who may make decisions on behalf of a public authority pursuant to section 24 (d) and prescribing their functions;
- (d) prescribing the requirements concerning the furnishing of information and keeping of records for the purposes of section 50;
- (e) respecting the functions, powers and procedures of the Information Unit; and
- (f) prescribing anything required or authorised by this Act to be prescribed.

(3) All regulations made under this Act shall be laid before the House of Assembly as soon as may be after the making thereof and shall be subject to negative resolution.

SCHEDULE

[Section 7]

INFORMATION TO BE PUBLISHED BY PUBLIC AUTHORITIES

1. The information referred to in section 7 of this Act is
 - (a) a description of the functions of the public authority;

- (b) a list of the departments and agencies of the public authority and
 - (i) subjects handled by each department and agency;
 - (ii) the locations of departments and agencies;
 - (iii) opening hours of the offices of the public authority and its departments and agencies;
- (c) the title and business address of the principal officer;
- (d) a statement of the records specified in subparagraph (e) being records that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of, an enactment or scheme administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;
- (e) the records referred to in subparagraph (d) are
 - (i) manuals or other records containing interpretations, rules, guidelines, practices or precedents;
 - (ii) records containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Act.

2. The principal officer of the authority shall
 - (a) cause copies of such of the records specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) within 12 months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not more than 12 months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.
3. The principal officer is not required to comply fully with paragraph 2 (a) before the expiration of 12 months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.
4. This Schedule does not require a record of the kind specified in paragraph 1 (e) containing exempt matter to be made available in accordance with paragraph 2, but, if such a record is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding record, altered only to the extent necessary to exclude the exempt matter, and cause the record so prepared to be

dealt with in accordance with paragraph 2.

5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Act, or has been specified by Order under section 4 of the Act as if the references in paragraph 3 to the appointed day were references to the day on which the public authority comes into existence or has been so specified.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

The Bill seeks to establish a legal right to information as an essential part of public administration in the Virgin Islands. The Bill was prepared by the Law Reform Commission on the basis of the deliberations and recommendations of the Law Reform Commission's Freedom of Information Legislation Committee.

The Preliminary clauses of the Bill would provide for the short title, commencement, interpretation, statement of purpose, application of the Bill and that the Bill binds the Crown.

Part II would provide for the establishment of a Freedom of Information Unit to promote and facilitate the right of access to official documents by the general public.

Part III would provide for public authorities to publish certain documents and information concerning, among other things, its functions, its decision-making powers, the categories of documents that are to be maintained and the documents that must be made available for inspection and purchase.

Part IV would make provision for the right of access to information held by Public Authorities, the duty of the Freedom of Information Officer to assist applicants, the time limit for determining requests, the transfer of requests for access, the deletion of exempt information, the forms of access, the deferral of access, the refusal of access in certain cases, the need for decisions to be made by authorised persons and the need to give reasons for decisions.

Part V would provide for exempt documents, the disclosure of exempt documents in the public interest, and the duty of authorities to act in good faith.

Part VI would allow for appeals to the Complaints Commissioner and in deciding an appeal, the Complaints Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Bill.

Part VII would provide for measures to promote openness in facilitating access to information by the public including the protection of whistleblowers and the proper maintenance of records.

Part VIII would make certain miscellaneous provisions with respect to the correction of personal information, protection against actions for defamation or breach of confidence, protection in respect of offences, review by Complaints Commissioner, judicial review, report to the House of Assembly, Regulations and the preservation of official documents.

Minister.