Memorandum

on the

Nigerian

Freedom of Information Bill

by

ARTICLE 19
The Global Campaign for Free Expression

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Introduction

The Nigerian House of Representatives is currently considering a Freedom of Information Bill which provides individuals with a legally enforceable right to access information held by public authorities. ARTICLE 19 has long argued that freedom of information (FOI) laws are fundamental to democracy and accountability, arguing in its flagship publication, *The Public's Right to Know: Principles on Freedom of Information Legislation* that, "Information is the oxygen of democracy." We therefore fully support the initiative to introduce FOI legislation in Nigeria.

The Information Committee of the Nigerian House of Representatives is currently reviewing the FOI Bill before returning it for final consideration in the House. A group of members of the Information Committee, including the Chairman, the Honourable Uche Maduako, met with representatives of ARTICLE 19 on 20 April 2000 to discuss the Bill. As a result of those discussions, ARTICLE 19 is submitting this Memorandum to the Information Committee, looking at a number of issues of mutual interest, with a view to ensuring that the Bill is fully consistent with international standards in this area and that it promotes maximum disclosure of information to individuals.

The key issues addressed in this Memorandum are the need for an administrative mechanism to review refusals by public authorities to grant access, the system of costs, time limits for providing information, the extent to which the courts and legislative bodies should be covered and disclosure in the public interest. References to the Nigerian Freedom of Information Bill in

this Memorandum are to a draft provided to ARTICLE 19 in1999, which includes a total of 34 sections.

Independent Administrative Body

Most FOI legislation provides for decision-making at three levels, by the public authority to whom the original request is made, by an independent administrative body with specific powers in relation to freedom of information and by the courts. These laws generally establish an independent administrative body, such as an information commissioner (IC), with various powers to ensure that the legislation is being applied properly and in a timely fashion.

The rationale for the three levels of decision-making is as follows. It seems obvious that requests for information should originally go to the public authority which holds the relevant information and that this body should be given an opportunity to respond to the request. In practice, in most jurisdictions the vast majority of requests are satisfactorily resolved at this level and this proportion should increase as public bodies become more familiar with the legislation and as a culture of openness gradually develops.

There are a number of reasons for establishing an independent administrative body with the power to review refusals to disclose information. In many - if not most - cases, time is of the essence and public authorities may wish to try to frustrate requests by refusing to disclose information. Providing for a right of appeal to the courts is important, but it is both costly and very slow, and is therefore a poor remedy for many applicants. Experience in other jurisdictions shows that administrative bodies are far more accessible and affordable than the courts, and that they can resolve request disputes relatively quickly. Indeed, the legislation may provide for time limits within which such administrative decisions must be made. The vast majority of disputes are solved at this level in most jurisdictions. To effectively exercise these powers, the IC and his or her staff must be able to review actual records, in camera if necessary.

Providing for an effective appeal process against refusals to disclose is not the only way an independent administrative body can promote the objectives of FOI legislation. Such bodies have also proved invaluable in addressing the culture of secrecy within the bureaucracy which is often the greatest barrier in practice to open disclosure regimes. They can be given powers to educate information officers working in public authorities about the legislation and to promote good practices. They can also play a role in exposing and embarrassing public authorities which have poor disclosure records or which actively seek to undermine the objectives of the legislation. Finally, they can play a role in monitoring and promoting compliance with any positive obligations on public authorities to publish certain material.

It is of the very greatest importance that any administrative body with the sorts of powers described above is fully independent of government and the

bureaucracy. A key way of promoting independence is through the appointments process for the lead individual, or IC, and through ensuring that this individual is someone who can command significant social support and respect.

Different jurisdictions deal with the question of independence in different ways and in established democracies it is often simply assumed that the IC will be independent. One approach which may be more suitable for a country in which democratic institutions have only recently been re-established is to provide for nomination by the Chief Justice, from among those individuals who are eligible for appointment as judges of the High Court, to be approved by both legislative bodies. The IC's salary would be consistent with those of judges and the overall budget for the body would be set and approved by the House of Representatives, or an all-party Committee of the House. Reciprocally, the IC would report to the House, or the relevant Committee, rather than the executive. This provides democratic accountability to the IC without subjecting him or her to effective control by the executive, which is also likely to be the subject of most information requests.

It is common to provide for the right to appeal from decisions of the IC to the courts. This allows for standardisation of decision-making, ultimately by the highest court, and also ensures that difficult legal concepts, including the public interest, are afforded the level of attention they deserve.

In Australia, which has had a Freedom of Information Act since 1982, provision is made for appeal to two different, pre-existing independent bodies, the Administrative Appeals Tribunal and the Ombudsman. The former may entertain appeals relating to refusals to disclose a document, to charges and to delays and has the power to make a binding decision in relation to these matters. The onus is expressly stated to lie on the public authority to justify its decision to refuse to disclose a given record and the Tribunal may inspect the record, in camera, if necessary. In appropriate cases, the Tribunal may order the government to pay an applicant's costs.[1] Anyone can appeal to the Ombudsman concerning action taken pursuant to the FOI Act. The Ombudsman can make recommendations, which have considerable weight, regarding such actions, but cannot issue binding decisions.

Perhaps surprisingly, the South African Promotion of Access to Information Act, passed in February of this year, does not provide for an administrative appeal. The absence of an independent administrative body to oversee compliance with the Act has been widely criticised and it remains to be seen how effective the Act will be without such a body.

The UK FOI Bill provides for an Information Commissioner (IC) and an Information Tribunal.[2] Both bodies are derived from bodies which already exist under the Data Protection Act 1998, namely the Data Protection

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[1] Sections 55, 56 58, 61, 63 and 66 of the Australian FOI Act.

[2] References in this Memorandum to the UK FOI Bill are to the version introduced in the House of Lords on 6 April 2000. Regarding the Information Commissioner, see Section 16 of the Bill.

Commissioner and the Data Protection Tribunal. Both have so far operated independently of government influence.

The IC has a general obligation to promote good practice and compliance with the Act, and may issue recommendations specifying steps to be taken by a given public authority to bring their practice into line with the requirements of the law. Such recommendations may be the subject of a report to each House of Parliament.[3] Public authorities are required to adopt schemes relating to the publication of information specifying classes of information to be published, means of publication and any charges to be levied. Public authorities are required either to have their own publication schemes approved by the IC or to adopt a model publication scheme which has been pre-approved by the IC.[4]

The IC has significant enforcement powers in relation to individual requests for information, including regarding an unjustifiable failure by a public authority to disclose information, fees and compliance with time limits. The IC may compel the public authority to provide her with information reasonably required to come to a decision on these matters, including information claimed to be exempt except on grounds of professional legal privilege. Finally, the IC may require public authorities to take such steps as are deemed necessary to correct any breach of the Act in relation to the matters listed above. The IC may refer any failure of a public authority to comply with a notice issued by her to the courts, which shall treat such failure, where established, as a contempt of court. The IC also has significant powers of entry and inspection with which to make these powers effective.[5] Individuals or public authorities may appeal from decisions of the IC to the Information Tribunal and from there, on a point of law, to the courts.[6]

The Nigerian FOI Bill does not provide for an independent administrative body to promote compliance with its provisions and to provide an accessible form of appeal against refusals to disclose information by public authorities. Instead, it provides simply for judicial review of decisions by the courts. In ARTICLE 19's view, this is the most significant failing of this draft legislation, which otherwise establishes an excellent FOI regime. ARTICLE 19 recommends that provisions regarding an independent administrative body be included in the Nigerian Bill. This body should play a number of key roles including educating public officials regarding the FOI legislation, exposing and highlighting serious failures by public authorities to implement the spirit as well as the letter of the law and reviewing decisions by public authorities regarding individual access requests. In relation to the latter, the administrative body should have the power to compel production of any document or record, to order the public authority to disclose the record, to reduce any fees charged and to take appropriate steps to remedy any unjustifiable delays. To assist the Information Committee of the Nigerian House of Representatives in considering these recommendations, ARTICLE 19 has provided a number of specific drafting

[3] Sections 46-48.
[4] Sections 17-18.
[5] Sections 49-54.
[6] Sections 56-58.

suggestions relating to this administrative body in an Annex to this Memorandum.

Costs

It is essential for the success of freedom of information regimes that costs are not so high as to inhibit access in practice. While access regimes do cost public authorities money, they also provide intangible benefits in efficiency, professionalism and accountability within the civil service. Costs to public authorities must be viewed in the context of the Act's role in advancing democracy and public participation. Examination of the functioning of a number of long-standing FOI regimes, demonstrates a number of key points.[7] First, as public authorities become more efficient at record-keeping and dealing with access, the cost of access requests decreases. Second, even high application fees recover only a tiny proportion of the overall costs to public authorities and yet such fees can exercise a significant deterrent effect. Third, the actual number of access requests made is often significantly lower than initially expected, thereby keeping costs down.[8] Finally, the vast majority of access requests relate to personal information which is relatively easy to identify.

In Australia, costs to public authorities are relatively low. Between 1992 and 1995, the total cost of the FOI system fell from $AUS12.7M ($US7.5M) to $AUS10.4M ($US6M). The average cost of an FOI application to a public authority fell from $AUS376 to $AUS278.[9] Costs to applicants are also relatively low. The Australian system seeks to provide a balance between a strict application of the user pays principle, which would clearly discourage applications and cause the regime to fail in its objective of providing access to information, and placing unreasonable financial and administrative burdens on public authorities. These authorities have a discretion to levy various charges, including hourly search and preparation fees and copying expenses,[10] and may require the applicant to pay a deposit,[11] but must give applicants an estimate in advance of the charges they intend to impose.[12] Access to documents will not usually be given until the charges are paid.[13] Anyone may seek remission of fees for any reason, including financial hardship or because disclosure in the information is in the general public interest. Decisions to

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[7] See, for example, Report 77 of the Australian Law Reform Commission into the Commonwealth of Australia Freedom of Information Act. Available in full at http://charlotte.anu.edu.au/alrc/report77.

[8] In Australia, for example, it was estimated that the Department of Employment would receive between 100,000 and 200,000 applications in the first year of operation of the Act. In fact, the Department received 166 applications. See *Anticipated and actual levels of requests under the Australian FOI Act 1982*, February 1987, Campaign for Freedom of Information, London.

[9] See Attorney-General of Australia, *FOI Annual Report 1994-1995,* page 1.

[10] Charges are regulated by sections 29 and 30 of the FOI Act 1982 and by the FOI(Fees and Charges) Regulations.

[11] Regulation 12 of the FOI(Fees and Charges) Regulations.

[12] Section 29 FOI Act, 1982.

[13] Regulation 11 of the FOI (Fees and Charges) Regulations.

refuse to reduce or waive fees are subject to appeal under the general appeal provisions of the Act.

All applicants pay an initial $AUS30 ($US20) fee and may then be required to pay search and retrieval charges of $AUS15 per hour and decision making charges of $AUS20 per hour. In recognition of the fact that personal information about applicants is easily identified, hourly fees for personal information requests are capped at two hours. Rates are also set for other services, including supervising the inspection of documents and producing transcripts. Photocopying can be charged at 10 cents per page. A fee of $AUS40 may be levied if an applicant decides to request an internal review of a refusal to grant access, while a $AUS300 filing fee is charged for review by the Administrative Appeals Tribunal (although a non-binding appeal to the Ombudsman is free).

Although some applications can be expensive, most authorities impose few, if any, fees (apart from the application fee) and the average cost of an access request is low. In 1994-1995, for example, only 16.3% of requests were subjected to fees and the average cost was $AUS33.97 per application.[14]

The South African Promotion of Access to Information Act provides a detailed section on fees, to be supplemented by regulations.[15] The section addresses similar concerns to the Australian charging regime and provides for "request" fees and "access" fees. Requests for personal information are exempt from request fees. For requests which are granted, access fee may be charged to cover search and reproduction costs where the time spent was reasonably required and exceeded the number of hours specified in the regulations for such tasks. Applicants not requesting personal information may be asked for a deposit (refunded if the information is not released) and information will not be released until the full charges are paid. Charges may be challenged through the normal review procedures of the Act. The government may, by regulation, exempt people or categories from fees, cap fees, set out how fees are to be calculated, exempt particular documents from fees and provide that where the costs of collecting a fee exceeds the fee itself, the fee will be waived. It remains to be seen how this regime will work in practice. Similar fee charging systems are to be established under the UK Freedom of Information Bill.[16]

The provision regarding fees in the Nigerian FOI Bill are consistent with international standards in this area and ARTICLE 19 does not recommend any significant changes to these provisions. In particular, we recommend that the Bill retain the reference to "reasonable standard charges", the fee waiver for requests in the public interest and the ban on "uneconomic" fee collection and advance payments.

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[14] See Attorney-General of Australia, *FOI Annual Report 1994-1995*, page 14.
[15] Section 22 of the Promotion of Access to Information Act 2000.
[16] Section 8 of the Bill.

Time Limits

Time limits within which decisions must be made on access requests are an important means of ensuring that public authorities process requests efficiently and that applicants are satisfied and receive their information within a reasonable time. The latter is often of the greatest importance as information may lose its value or interest over time. Time limits must, therefore, balance the reasonable needs and interests of the applicant with the practical capacity of public authorities to process requests. A common way of doing this is to provide for a relatively strict initial time limit which may then be extended where necessary. This ensures that public authorities are under some obligation to act quickly, often with salutary effects in terms of promoting efficient record-keeping and access mechanisms, while allowing for extension where provision within the original time limit is unrealistic.

In Australia, the FOI Act originally provided for a decision period of 60 days.[17] As time progressed, however, and public authorities became more efficient at processing requests, the time limits were reduced to 45 days and then to the current 30 days. Where a public authority is required to consult a third party before releasing information, the limit may be extended by a further 30 days.[18] Failure to make a decision within 30 days means that the request is deemed to have been refused and may be subject to the appeal procedures.[19] The vast majority of FOI applications are processed within the 30 day limit[20] although some public authorities regularly take more than 60 days to process requests.[21] From the perspective of applicants, delays in the processing of requests remain a problem, although there is often negotiation between public authorities and applicants to allow for extensions of time beyond the statutory limits, generally to the satisfaction of all parties.[22]

The situation is similar in the new South African Promotion of Access to Information Act, although reasons for extending the time limits are wider. The initial time limit is set at 30 days[23]and this may be extended for a further thirty days for a number of reasons,[24] including where the request is for a large number of records, where it would unreasonably interfere with the activities of the public body concerned, where consultation between different public authorities is required or where the applicant consents to an extension. Applicants may appeal through the normal procedures in the Act against the extension of time limits and a request is deemed to have been refused if it has not been decided within the relevant time limit.

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[17] Section 19, FOI Act, 1982.
[18] Section 15(6).
[19] Section 56, FOI Act, 1982.
[20] 78.1% in 1995. See Attorney General's annual report 1994-5, *Op.Cit.*, page 10.
[21] Most notably the Departments of Immigration and of Primary Industry and Energy.
[22] See Australian Law Reform Commission Report 77, *op.cit.*, Chapter 7.
[23] Section 25, Promotion of Access to Information Act, 2000.
[24] Section 26.

The UK FOI Bill also provides for a dual system, with an initial time limit of 20 days which may be extended.[25]

The Nigerian FOI Bill provides for an initial time limit of seven days, which may be extended for another seven days. ARTICLE 19 is not in a position to assess how realistic this is within the Nigerian context but notes that these time limits are shorter than is commonly the case in other jurisdictions. ARTICLE 19 does, however, recommend retention of the dual system which allows for a relatively short initial time frame and then for a possible extension where justified.

Courts and Legislative Bodies

Some of the earlier Acts did not cover all branches and levels of government, sometimes completely excluding the courts and legislative bodies. However, it is now established that universal application to bodies which undertake public functions is a fundamental principle underlying effective freedom of information systems. Any legitimate secrecy needs of the courts and legislative bodies should be dealt with in the same way as for other public authorities, that is to say through a specific exemption provision so that information need not be disclosed where the body can show it comes within the scope of that exemption. ARTICLE 19 recommends that no department or branch of government, whether part of the executive, legislature or judiciary, should be exempted from the provisions of an FOI law.

When balancing this principle against the need to maintain the authority and impartiality of the judiciary and the effectiveness of legal processes, a number of jurisdictions have distinguished between the administrative and judicial functions of courts. The former are generally subject to FOI laws in the same way as other public authorities while the court's judicial functions may be excluded. This is the case in both Australia and South Africa where courts and tribunals, although not judges themselves, are subject to the FOI Act, but only in relation to matters of an administrative nature.[26] Various bodies dealing with administrative court functions are to be subject to the UK FOI Bill.[27]

In relation to parliament, the new South African legislation defines the bodies subject to the Act to include: *any other functionary or institution when- (i) exercising a power or performing a duty in terms of the Constitution.*[28] This would cover the South African Parliament, although individual members of parliament are specifically excluded.[29] The UK FOI Bill will cover the House of Commons and House of Lords, as well as subsidiary legislative bodies.[30]

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[25] Section 9.
[26] Sections 5 and 6 of the Australian FOI Act, 1982 and Section 12 of the South African Promotion of Access to Information Act 2000.
[27] See Schedule 1.
[28] Section 1 of the Promotion of Access to Information Act.
[29] *Ibid.* section 12.
[30] See Schedule 1.

The Australian FOI Act specifically excludes parliamentary bodies from its ambit, although Royal Commissions and the legislative bodies of territories under the jurisdiction of the federal government are specifically included.[31] These are the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department. The original rationale for these exclusions is unclear and there has been significant criticism of them. Some of these bodies argue that they ought not to be covered by the Act as they do not provide services to the public or perform a public service role.[32] This argument fundamentally misunderstands the nature of parliamentary democracy, in which all acts of the civil service are undertaken in the public interest, and the purpose of an FOI Act, to provide maximum openness and accountability to the public for whose benefit the civil service exists. Despite their formal exemption, the Senate Standing Committee on FOI has expressed the view that all parliamentary bodies should act as if they were covered by the FOI Act. The Department of the Senate, with the full support of the President of the Senate, has always acted as if it were bound by the Act.[33]

The Nigerian FOI Bill defines public/government institutions widely to include all legislative, executive, judicial, administrative or advisory bodies and clearly encompasses the courts and legislative bodies. In line with the comments above, however, it subjects the requirement of disclosure to specific exemptions which these bodies may be in a position to take advantage of, for example relating to law enforcement. ARTICLE 19 does not recommend any changes to these provisions in the Nigerian Bill.

Public Interest Disclosure

In order to maintain the principle of maximum disclosure underlying any freedom of information regime, it is vital to ensure that any refusals to disclose are subject to a public interest override. Public interest overrides provide for disclosure of information, even though this is likely to cause harm to a protected interest, where the overall public benefits of having the information disclosed outweigh any potential harm to the interest sought to be protected. For example, a public interest test might mandate disclosure of information exposing corruption in the armed forces even though this affected national security, on the basis that the longer term public interest was best served by exposing and hence rooting out the corruption.

The “public interest” is an inherently flexible concept which is not easy to define. Very generally, the “public interest” comprises matters which are of concern to the public generally and not merely to an individual. It is, however, in the nature of the almost infinite variety of circumstances which could face public authorities and which would need to be taken into account when

[31] Section 4(1) of the FOI Act, 1982.
[32] Australian Law Reform Commission Report 77, Chapter 11.
[33] *Ibid*.

balancing different interests that any attempt to exhaustively define the term "public interest" in the legislation is likely to fail. It is a matter for the courts, acting in good faith with the specific aims of the FOI legislation in mind, to develop jurisprudential guidance as to the appropriate meaning of the "public interest" in specific situations. To assist courts in this task, FOI legislation should clearly spell out the objects it seeks to promote and should require courts to interpret these laws so as to promote those objectives. Primary among these objectives should be the goal of achieving maximum disclosure of official information.

In Australia, many exemptions are subject to public interest disclosure, either expressly or by implication.[34] There is no attempt within the Act itself to define the term. Section 3 of the Act sets out its object as providing access to government information and states that the provisions of the Act and any discretion conferred by the Act must be interpreted or exercised in a way that furthers that objective. With this in mind, courts have provided extensive guidance as to the meaning of the term "public interest" while not seeking to set down its limits in stone. A number of factors have been identified as relevant to the "public interest". These include the general interest in government information being accessible, the need to disclose reasons for official decisions, whether disclosure would contribute to public debate and whether disclosure would enhance scrutiny of government decision making and thereby improve accountability and participation.

The new South African legislation adopts a similar approach to the Australian Act. Many exemptions are subject to public interest disclosure where "the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."[35] The Act does not attempt to define the concept of "public interest" but does very comprehensively set out the objects of the Act[36] and requires courts to prefer interpretations consistent with those objects.[37] Similarly, most exemptions in the UK FOI Bill are subject to disclosure in the public interest.[38]

The Nigerian FOI Bill provides for public interest disclosure by public authorities in relation to certain exemptions, for example relating to international affairs and defence. It also provides for general public interest disclosure, but apparently only by courts of law. This may be somewhat confusing for public authorities as they appear not to be under an obligation to disclose in the public interest but may be ordered to do so on that basis by courts. ARTICLE 19 recommends that the public interest provisions in the Nigerian FOI Bill be made applicable to all exemptions and that it be clear that this test is to be applied at all stages of consideration of an application, including by the relevant public authority.

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[34] For example, ss.33A, 36, 37, 39 , 40 and 41 of the FOI Act 1982.
[35] Section 46 of the Promotion of Access to Information Act.
[36] Section 9.
[37] Section 2.
[38] Section 13.

ANNEX

Establishing an Independent Administrative Body

Drafting Suggestions

The following are specific drafting suggestions regarding the establishment of an independent administrative body to promote effective implementation of Nigerian FOI legislation. They should probably be included just before the existing provision regarding Judicial Review, at Section 23 of the draft Bill relied upon by ARTICLE 19. The provisions are therefore numbered starting with 22A. Following these specific drafting suggestions is a list of other provisions which may need to be altered or amended to take into account the establishment of this independent administrative body.

22A The Information Commissioner

(1) An Information Commissioner shall be appointed by a two-thirds majority vote of both the House of Representatives and the Senate, upon nomination by the Chief Justice.

(2) The Information Commissioner is to be independent in the exercise of his functions. Only individuals who satisfy the conditions for being appointed to the office of a Judge of the High Court may be appointed as Information Commissioner.

(3) The Information Commissioner shall enjoy all guarantees of independence and security of tenure enjoyed by senior judicial appointments, including in relation to remuneration.

22B General Functions of the Information Commissioner

(1) It shall be the duty of the Information Commissioner to promote compliance with the provisions of this Act and, in particular, to ensure that Public/Government Institutions fulfil their obligations under this Act.

(2) To fulfil his obligation under sub-section one, the Information Commissioner may undertake such general activities, in addition to those provided for in section 22C, as he deems expedient for this purpose, including but not limited to:

a. developing codes of practice regarding compliance by public authorities with their obligations under this Act, in particular in relation to the disclosure of records and documents, and to the publication of documents by public authorities;

b. monitoring and reporting on the compliance by public authorities, both in general and in specific cases, with their obligations under this

Act, including by making specific recommendations for reform;

c. undertaking training activities with public officials with a view to promoting a better understanding of their obligations under this Act;
d. referring to the courts cases which reasonably disclose evidence of destruction or falsification of records, contrary to this Act; and
e. publicising the requirements of this Act and the rights of individuals under it.

(3) To assist him in fulfilling his obligations under this Act, the Information Commissioner may appoint such staff as he deems fit.

22C Individual Appeals to the Information Commissioner

(1) Any person may apply to the Information Commissioner for a determination as to whether a request for access to records has been dealt with in accordance with the requirements of this Act. An application may relate to one or more of the following: a refusal by a Public/Government Institution to grant access to a record requested under this Act; the imposition of charges in relation to a request for access to a record under this Act; a delay in granting access beyond the time limits envisaged under this Act; or a decision to extend the time limits for granting access.

(2) Upon receipt of an application under sub-section (1), the Information Commissioner shall investigate the matter and, where appropriate, give both the individual applicant and the relevant Public/Government Institution an opportunity to make representations concerning the matter.

(3) The Information Commissioner shall make a determination as to whether the requirements of this Act have been met and notify both the individual applicant and the relevant Public/Government Institution of his decision within 20 days of the original application having been made.

(4) In determining whether a refusal to grant access to a record is justified under this Act, the onus shall be on the Public/Government Institution which refused such access to justify it.

(5) The Information Commissioner may require the Public/Government Institution which holds the record to furnish him with such information as he may consider necessary to come to a proper determination under sub-section (3), including any records to which access has been refused, provided that the Information

Commissioner shall take such reasonable steps as may be necessary to protect the confidentiality of the record.

(6) Where the Information Commissioners makes a determination under sub-section (3) that the requirements of this Act have not been met, he may order the Public/Government Institution to take such reasonable steps as he considers necessary and appropriate to rectify the breach, including but not limited to providing the applicant with access to the record, reducing or reimbursing any charges levied on the applicant, imposing costs relating to the application on the Public/Government Institution, or imposing a fine on the Public/Government Institution.

(7) The Information Commissioner may refer any failure to comply with an order under sub-section (6) to the courts and, where substantiated, such failure shall, subject to the provisions of sub-section (8), be treated as a contempt of court.

(8) Either an applicant or a Public/Government Institution may appeal from a determination of the Information Commissioner under sub-section (3) or an order under sub-section (7) to the High Court.

22D Accountability of the Information Commissioner

(1) The Information Commissioner shall be accountable to the public through the House of Representatives.

(2) The Information Commissioner shall lay annually before both the House of Representatives and the Senate a general report on the exercise of his functions under this Act. This annual report shall include an audited statement of accounts, along with a proposed budget for the following year.

(3) The House of Representatives shall consider the annual report of the Information Commissioner in open session and shall vote on the proposed budget for the following year.

(4) The Information Commissioner may from time to time lay before the House of Representatives and the Senate such other reports with respect to his functions under this Act as he deems appropriate.

To take account of these provisions, alterations may also need to be made to the following sections of the FOI Bill:

- 4(2) providing for an appeal to the courts regarding a failure by a Public/Government Institution to publish certain documents;
- 9 providing for a right of appeal to the courts where a Public/Government Institution refused to provide access to a record;
- 23 providing for judicial review of any refusal to provide access to a record;

- 26 and 27 providing for access by the courts to records to which access has been refused; and
- 33(7) requiring the Attorney General to include in his or her annual report a description of any efforts taken to encourage Public/Government Institutions to comply with the Act.