

**THE FREEDOM OF INFORMATION LAW, 2007
(LAW 10 OF 2007)**

**THE FREEDOM OF INFORMATION (GENERAL) REGULATIONS,
2008**

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CAYMAN ISLANDS

**THE FREEDOM OF INFORMATION LAW, 2007
(LAW 10 OF 2007)**

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2008**

In exercise of the powers conferred by sections 13 and 57 of the Freedom of Information Law, 2007, the Governor in Cabinet makes the following Regulations-

**PART I
PRELIMINARY**

1. (1) These Regulations may be cited as the Freedom of Information (General) Regulations, 2008. Citation

(2) These Regulations shall come into force immediately upon the coming into force of the Law or relevant portion of the Law.

2. In these Regulations- Definitions

“chief officer” means-

- (a) in the case of a ministry, the Permanent Secretary of that ministry;
- (b) (i) in the case of the Portfolio of Internal and External Affairs, such public officer in the Portfolio as may be designated by the Governor;
- (ii) in the case of the Portfolio of Legal Affairs, such public officer in the Portfolio as may be designated by the Governor;
- (iii) in the case of the Portfolio of Finance and Economics, such public officer in the Portfolio as may be designated by the Governor; and
- (iv) in the case of the Portfolio of the Civil Service, such public officer in the Portfolio as may be designated by the Governor;

- (c) in the case of a statutory authority or a Government company, the person appointed as chief officer (by whatever name called) by the board of that authority or company, or by other relevant authority;
- (d) in the case of the Audit Office, the Auditor-General;
- (e) in the case of the judicial administration, the court administrator or such other suitable person as may be designated by the Chief Justice; and
- (f) in the case of the Office of the Complaints Commissioner, the Complaints Commissioner;

“information manager” includes any person who has power under the Law or these Regulations to do the thing in relation to which the expression is used;

“personal information” means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including but not limited to-

- (a) the individual's name, home address or home telephone number;
- (b) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;
- (c) the individual's age, sex, marital status, family status or sexual orientation;
- (d) an identifying number, symbol or other particular assigned to the individual;
- (e) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;
- (f) information about the individual's health and health care history, including information about a physical or mental disability;
- (g) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;
- (h) anyone else's opinions about the individual; or
- (i) the individual's personal views or opinions, except if they are about someone else;

but does not include-

- (i) where the individual occupies or has occupied a position in a public authority, the name of the individual or information relating to the position or its functions or the terms upon and subject to which the individual occupies or occupied that position or anything written or recorded in any form by

- the individual in the course of and for the purpose of the performance of those functions;
- (ii) where the individual is or was providing a service for a public authority under a contract for services, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service; or
 - (iii) the views or opinions of the individual in relation to a public authority, the staff of a public authority or the business or the performance of the functions of a public authority; and

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

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

PART II RIGHT OF ACCESS

General

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

Applying for access
Schedule 1

(2) For convenience the Freedom of Information Unit may authorize a form, which an applicant is encouraged to use but need not use, and such form

may, in addition to the particulars referred to in Schedule 1, contain such other notes as the Unit may consider necessary or expedient.

Applications by third parties

4. No application may be made on behalf of a third party unless the record applied for relates to personal information, in which case section 13 of the Law applies.

Provision of access

5. A record shall be provided to the applicant as soon as practicable but not later than fourteen calendar days counting from the date the fee is received by a public authority.

Reasonable search

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

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

Receipt and acknowledgement of requests

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

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

(3) Not more than ten calendar days after receipt of an application that meets the requirements of section 7 (2) of the Law the information manager shall dispatch to the applicant a letter of acknowledgement in the form set out in Schedule 2.

Schedule 2

Access to records during working hours

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

Transfer of requests

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

(2) Where an application is transferred to another public authority, the information manager shall within ten calendar days dispatch correspondence to

the applicant indicating that the public authority has transferred the application to the appropriate public authority, naming the authority.

10. (1) Before a public authority makes a decision to refuse access under section 9 (c) of the Law (on the basis that the request would unreasonably divert its resources) the information manager shall send written communication to the applicant-

Unreasonable diversion
of resources

- (a) explaining how the request is likely to unreasonably divert resources; and
- (b) inviting consultation with a view to narrowing the request.

(2) Written communication sent under paragraph (1) automatically suspends the thirty-day period referred to in section 7 (4) of the Law (for responding to the application) until the date when the applicant agrees to narrow the request to such extent as may be agreed by the public authority.

(3) The information manager shall make a determination on “unreasonable diversion of resources” on a case by case basis and for this purpose-

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

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

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

Personal information and third party rights

Notice to third parties

11. (1) Where an information manager intends to give access to a record which he believes contains personal information, he shall, within fourteen calendar days of receipt of the application, send the third party written notice of the application for access.

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

(3) The information manager may, in exercise of the powers contained in section 7 (4), extend the period for decision making.

(4) If no access is intended to be given to a record that contains personal information no notice shall be given to a third party.

(5) The notice shall-

- (a) state that a request has been made by an applicant (without naming him) for access to a record containing personal information about the third party;
- (b) describe the contents of the request and record concerned;
- (c) state that, within twenty-eight calendar days from the date of notice (and the notice shall be dispatched on the date of the notice), the third party may, in writing, consent to the disclosure or may make written representations to the public authority explaining why the information should not be disclosed; and

- (d) state that a decision will be made within fourteen calendar days from the expiry of the twenty-eight calendar days whether or not to give the applicant access to the record or from the date a response is received from the third party if earlier.

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

Notification of decisions to grant access and right of appeal

- (a) the third party; and
- (b) the Information Commissioner;

which notice shall also state that-

- (i) the applicant has a right of appeal to the Commissioner under section 42 of the Law;
- (ii) the third party has a right of appeal under paragraph (2);
- (iii) access to the record will be given unless the third party appeals the decision to the Commissioner under paragraph (2); and
- (iv) that the record will be withheld until the third party's time for appeal to the Commissioner has expired.

(2) Where the third party is dissatisfied with the decision or any part of it, he may appeal to the Information Commissioner within thirty calendar days after the date of decision.

(3) If there is no appeal within the period referred to in paragraph (2) the record may be released but only after the expiry of thirty additional calendar days during which time the Information Commissioner may exercise his power under section 42 (3) of the Law to extend the period of appeal.

(4) Where following receipt of representations from the third party an information manager decides to claim an exemption for the record, notice of the decision shall be dispatched to the applicant within seven calendar days of the date of the decision but the applicant has the right of appeal specified in section 42 of the Law.

13. (1) Any person applying for access to his personal information shall provide proof of identification acceptable to the information manager confirming that he is the person to whom the information relates.

Application for access: personal information

(2) Where the applicant is not the person to whom the personal information relates, the person applying for the information shall provide

sufficient proof of his authority to apply for the information and have access to it and such proof includes but is not limited to-

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

Fees

Fees in general

14. (1) The fees in Schedule 3 apply.

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

(3) Before access is given to a record the information manager shall give the applicant an estimate of the fees, and the fees shall be paid before access is granted, except fees for reproduction, which may be paid at the time of collecting the information.

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

(5) The application shall be deemed to have been withdrawn where the applicant fails within thirty calendar days of receipt of the notification of fees-

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

(6) Where before the expiry of the period referred to in paragraph (5) the applicant applies for an extension the information manager may, where he thinks appropriate, extend that period for a further thirty calendar days.

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

Waiver of fees

15. (1) No fee shall be charged where the chief officer or information manager is of the view that the applicant is of inadequate means or for any other good reason.

(2) An application for a waiver shall be made in writing to the chief officer or information officer setting out the grounds on which a waiver is requested.

(3) An application for a waiver shall be made no later than fourteen calendar days from the date of receipt of the estimate of the fees.

16. (1) The information manager may in his discretion expedite the processing of a request where the applicant shows that there is a compelling need or urgency justifying any request being dealt with earlier than other pending applications.

Expedited service

(2) Without limiting the generality of the power contained in paragraph (1), expedited service shall be provided where-

- (a) the record is required for judicial or quasi-judicial proceedings relating to the applicant's life or liberty and has to be made available to the court or tribunal concerned earlier than the record would otherwise be made available under the regular periods specified under the Law or these Regulations;
- (b) production of the record within the periods specified under the Law or these Regulations would endanger public health and public safety; or
- (c) production of the record within the periods specified under the Law or these Regulations would endanger the life of the applicant or seriously affect his health, or deprive him of his liberty.

(3) The request for expedited processing shall be made at the time of submitting the application for information.

(4) Where an information manager decides to give an expedited service, the record shall be produced within a maximum of ten calendar days.

PART III AMENDMENT AND ANNOTATION

17. (1) An application for amendment or annotation of a record shall contain the particulars set out in Schedule 4.

Form of application
Schedule 4

(2) For convenience the Freedom of Information Unit may authorize a form which an applicant is encouraged to use but need not use and such form may, in addition to the particulars referred to in Schedule 4, contain such other notes as the Unit may consider necessary or expedient.

Schedule 4

- Manner of amending personal records
18. (1) Information on a paper record shall be corrected by ruling through the information found to be incorrect and writing the correct information next to it.
- (2) The amendment shall not obliterate the text of the record as it existed before the amendment and shall be sealed.
- (3) The information manager shall insert the following-
- “Amended on [insert date] under s. 29 (1) of the FOI Law, 2007”.
- (4) Where the incorrect information is not found in a particular place, a clear reference to the file where the correct information is held shall be added to the folio or record holding the incorrect information.

- Manner of annotating personal records
19. (1) Annotation of records shall be completed by adding a file note to the record summarizing the applicant’s statement cross-indexed to the material claimed to be incomplete, incorrect, out of date or misleading.
- (2) The annotation of the record shall be clearly displayed on the cover of all the applicant’s files.

**PART IV
INTERNAL REVIEW**

- Internal review
20. (1) Subject to the other provisions of this regulation, an internal review shall be conducted by-
- (a) the Minister, for decisions made in relation to sections 15, 16 and 18 of the Law; and
 - (b) the chief officer in all other circumstances;
- or the power to conduct the review may be delegated to a person of equal or superior rank to the person who made the initial decision but no review shall be conducted by the person who made the initial decision.
- (2) Where the Minister made the initial decision, no internal review shall be conducted and an appeal lies to the Information Commissioner.

**PART V
INFORMATION MANAGERS**

- Functions of information managers
21. An information manager shall-
- (a) ensure persons who are applying for access to personal information prove their identity;

- (b) conduct interviews with applicants to ensure that the appropriate records are located;
- (c) ensure that applicants are fully informed of the status of their applications;
- (d) inform applicants when it is known that a record is already published and if requested provide information as to where the information can be accessed or provide access to that information;
- (e) monitor the inspection of records;
- (f) make a record of all applications for access as required by these Regulations and maintain a disclosure log for the public authority of all applications granted;
- (g) coordinate throughout the public authority the information required to be published under section 5 of the Law;
- (h) transfer applications to other public authorities after consultation with the appropriate information manager on the functions and duties of the public authority and the existence or otherwise of the records required by the applicant in that public authority;
- (i) assist persons who have limited ability to read or write English or with any mental or physical disability;
- (j) authenticate copies of records in the manner authorized by the Attorney General under section 10 (4) of the Law;
- (k) examine records to which access has been applied for to determine whether-
 - (i) the record is exempt in its entirety;
 - (ii) the record contains exempt matter;
 - (iii) access should be granted; or
 - (iv) the grant of access should be deferred under section 11 of the Law;
- (l) publish in a newspaper on an annual basis the relevant publication scheme, and this function may be performed in conjunction with other public authorities; and
- (m) keep up to date their knowledge of the Law, the laws relevant to the administration of their public authority, the Code of Practice on Records Management, and the laws and practices affecting the management of records and information.

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

Delegation of functions

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

Sharing of information managers

23. A public authority may agree with one or more other public authorities to appoint one information manager.

Duty to keep register of applications

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

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

List of public authorities

25. Without limiting the scope of "public authority" as defined in section 2 of the Law, the Cayman Islands National Archive shall, for the convenience of the public, publish in the Gazette and publicise in such other manner as it may think fit, a list of public authorities.

PART VI MISCELLANEOUS

Requests on behalf of minors

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

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

- (a) if, in the opinion of the Information Manager, such information is of such a nature as not to be ordinarily made available to a parent in the normal course of dealing with a public authority; or
- (b) if, in the opinion of the Information Manager, after consultation with the Director of Children and Family Services, the granting

of access to such information would not be in the best interests of the child.

SCHEDULE 1

(Regulation 3)

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

Name of the public authority to which the application is being made.

Details of applicant.

[Unless the request is for personal information you do not need to give your real name]

Mrs, Ms, Miss, Mr, Other.

Surname (Family name).

First name.

Middle names.

Postal address.

E-mail address.

Postal code.

Details of request.

[Where known, kindly state the subject-matter of the information requested, the period and/or geographic area to which the information relates, the dates relevant to the information needed or the name or other identification of the document.]

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

The name of the person to whom the information relates.

The authority which entitles you to apply on behalf of the person (attach authorization).

Identity Verification.

Office use only.

Type of identification.

Identification number.

Format:

Photocopy

Compact disc

Transcript

Other (please specify)

Inspect/view/listen to the record

Date.

SCHEDULE 2

(Regulation 7)

FORM OF LETTER OF ACKNOWLEDGEMENT

Dear [Name]

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

Your request is being dealt with under the terms of the Freedom of Information Law.

We will undertake the necessary research in order to respond to your request within the prescribed period of thirty calendar days, which count includes weekends and public holidays.

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

Yours Sincerely,

Information Manager

[Name, address, e-mail address and telephone number]

SCHEDULE 3

(Regulation 14)

FEES

This Schedule prescribes the fees for standard formats, which shall be supported (as applicable) by all public authorities providing copies of records under the Freedom of Information Law.

Copies may be made available in non-standard formats, at a price to be determined by the public authority, not exceeding the actual material and labour costs incurred to produce the copy.

1. Photocopy:
 - (a) Black and white copy (all sizes) - \$1.00 per page;
 - (b) Color copy (all sizes) - \$1.50 per page.
2. Photographs:
 - (a) Black and white / colour (digital photographic print from digital file, scanned hardcopy or existing negative);
 - (i) 8 ½ x 11 (or smaller) - \$5.00;
 - (ii) 8 ½ x 14 - \$7.50;
 - (iii) 11 x 17 - \$10.00;
 - (b) Black and white (photocopy or standard print-out) - \$1.00;

(c) Colour (photocopy or standard print-out) - \$1.50.

3. Conversion of an analogue audio or video record (eg tape or reel-to-reel) into digital MP3 or DivX file format: an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
4. Microfilm duplication 35 mm (\$ 1, 500.00 per roll of 1, 000 ft microfilm; minimum order of 10ft at a cost of \$ 150.00. Microfilm duplication 16 mm (\$ 380.00 per roll of 100 ft microfilm. A minimum order of 10ft at a cost of \$ 38.00. Microfilm print-out Black and white copy (all sizes) - \$1.00 per page.
5. Transcripts - an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the transcription.
6. Conversion of a microfilm record into digital JPEG file format: an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
7. Blue print reproduction (\$3.00 per sheet).
8. Maps and plans (\$5.00 per page).
9. Print-out of a digital document or database report Black and White copy (all sizes) - \$1.00 per page.
10. Provision of a digital record (text or image) in standard PDF, JPEG or TIF file format: (a) by email -no charge; (b) on compact disc or DVD - \$2.00.
11. Conversion of a paper record (text or image) into digital PDF, JPEG or TIF file format: the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
12. Digital text files converted to audio formats for visually impaired the actual costs incurred by the Computer Services Department, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium.
13. Posting of record: Where access to the record to which the request relates is to be given in the form of the provision of a copy of the record and the copy provided is, at the request of the applicant, to be sent by post or courier, a charge

in respect of the posting or delivery of the copy not exceeding the actual cost of post or delivery.

14. Shipping cost (actual cost of shipping method chosen by applicant and a preparation charge of \$20.00).

15. Expedited service: \$ 50.00 payable on making the application.

SCHEDULE 4

(Regulation 17)

PARTICULARS TO BE SET OUT IN THE FORM OF APPLICATION FOR AMENDMENT OR ANNOTATION OF A PERSONAL RECORD

Name of the public authority to which the application is being made (if known).

Details of applicant.

Mrs, Ms, Miss, Mr, Other.

Surname (Family name).

First name.

Middle names.

Postal address.

Home phone number.

E-mail address.

Fax number.

Work fax number.

If you are making this request on behalf of another person please state:

The name of the person:

The authority which entitles you to apply on behalf of that person (attach authorization).

Identity Verification:

Office use only

Identity verified? (personal information only), Yes or No.

Type of identification.

Identification number.

Do you claim that your personal information is incomplete, incorrect, out of date or misleading.

What record do you believe is incomplete, incorrect, out of date or misleading?

What particular information in the record do you believe is incomplete, incorrect, out of date or misleading?

What is the amendment you are requesting? What do you claim is the correct information?

How do you believe these Government records came to be wrong?

Please provide any additional information which you think will assist us in making a decision.

Please list any original documents you have attached as supporting evidence.

The applicant must complete this section.

Signature:

Date:

Made in Cabinet the day of , 2008.

Clerk of the Cabinet.

These Regulations were affirmed by the Legislative Assembly on the.....
day of, 2008 by Government Motion No.....in
compliance with section 57 of the Freedom of Information Law, 2007 (Law 10 of
2007).

Clerk of the Legislative Assembly.

(BHS 9: 16th September, 2008)