

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 03 of 2012

Enacted by the Governor of the Islands
of Pitcairn, Henderson, Ducie and Oeno

FREEDOM OF INFORMATION ORDINANCE 2012

DATE MADE: 03 AUGUST 2012

DATE PUBLISHED: 06 AUGUST 2012 (PITCAIRN TIME)

An Ordinance to give to members of the public rights of access to information held by
public authorities

PART I – PRELIMINARY

Short title and
commencement

1. (1) This Ordinance may be cited as the Freedom of Information Ordinance 2012.

(2) This Ordinance shall come into operation on the day after it is published.

Definitions

2. In this Ordinance –
“information”

(a) means any information held by a public authority; and

- (b) includes any information held outside Pitcairn by any branch or post of any public authority; and
- (c) does not include evidence given or submissions made to—
 - (i) a Royal Commission; or
 - (ii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to or by any provision of any Ordinance, to inquire into a specified matter; and
- (d) does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsman and any public authority and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsman Ordinance, other than information that came into existence before the commencement of that investigation;

“Ombudsman” means the Ombudsman holding office under the Ombudsman Ordinance.

“personal information” means any information held about an identifiable person.

“public authority” means—

- (a) the Governor of Pitcairn;
- (b) the Government of Pitcairn and its divisions;
- (c) a body or authority, created by an Ordinance, whether incorporated or not, including the Island Council.

Application

3. (1) This Ordinance applies to public authorities.

(2) This Ordinance does not apply to—

- (a) the judicial functions of:
 - (i) a court including the Lands Court;
 - (ii) the holder of a judicial office or other office connected with a court;
- (b) the security or intelligence services in relation to their strategic or operational intelligence-gathering activities;
- (c) the Office of the Ombudsman;
- (d) the Office of the Attorney-General.

Purposes

4. The purposes of this Ordinance are—

- (a) to improve access to information, in order to strengthen governmental accountability and encourage public participation in decision-making in Pitcairn;
- (b) to protect information consistently with public interest and personal privacy.

PART II – PRINCIPLES TO GOVERN REQUESTS FOR INFORMATION

Persons eligible to apply for access to information	5. Any person may request that a public authority make available to him or her any specified information.
Form of application for information	6. (1) A person who wishes to obtain access to information shall make an application to the public authority that holds that information. (2) An application under subsection (1) – (a) may be made in writing or transmitted by email; (b) shall provide such information concerning the information as is sufficient to enable the public authority to identify it.
Reformulating application for information	7. Where the information provided by the applicant in relation to the information is not sufficient to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult the authority with a view to reformulating the application so that the information can be identified.
Duties of assistance on public authorities and transfer of requests	8. It is the duty of every public authority to give reasonable assistance to a person to make a request or to direct his or her request to the appropriate person or public authority.
Presumption in favour of disclosure of information: general right of access	9. Subject to the provisions of this Ordinance, every person shall have a right to obtain access to information unless: (a) it is exempt information under section 10; or (b) there is a good reason for withholding it in terms of section 11; or (c) one or more of the reasons in section 12 apply.
Exempt information	10. (1) Information is exempt information if either of subsections (2) or (3) apply. (2) Information is exempt information if the making available of that information would be likely— (a) to prejudice the security or defence of Pitcairn or the international relations of the Government of Pitcairn or the Government of the United Kingdom; or (b) to prejudice the entrusting of information to the Government of Pitcairn or the Government of the United Kingdom on a basis of confidence by— (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation; or (c) to prejudice the prevention, investigation, and detection of

- offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.

(3) Information is exempt information if it is information that, were it requested under the Freedom of Information Act 2000 (UK) (c. 36), would be exempt information by reason of Part II of that Act.

Good reason for withholding information

11. (1) Where this section applies, good reason for withholding information exists unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

- (2) This section applies if, and only if, the withholding of the information is necessary to—
- (a) protect the privacy of natural persons, including that of deceased natural persons; or
 - (b) protect information where the making available of the information—
 - (i) would disclose a trade secret; or
 - (ii) would be likely to prejudice unreasonably the commercial position of the person who supplied or who is the subject of the information; or
 - (c) protect information that is subject to an obligation of confidence or that any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
 - (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
 - (ii) would be likely otherwise to damage the public interest; or
 - (d) avoid prejudice to measures protecting the health or safety of members of the public; or
 - (e) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
 - (f) maintain the constitutional conventions for the time being that protect—
 - (i) the confidentiality of communications by or with the Sovereign or his or her representative;
 - (ii) collective and individual ministerial responsibility;
 - (iii) the political neutrality of officials;
 - (iv) the confidentiality of advice tendered to the Governor, and the Governor’s officials and employees; or
 - (g) maintain the effective conduct of Pitcairn affairs through—

- (i) the free and frank expression of opinions by or between or to the Governor, the Governor's officials and employees in the course of their duties; or
- (ii) the protection of such officers and employees from improper pressure or harassment; or
- (h) maintain legal professional privilege; or
- (i) enable any public authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or
- (j) enable any public authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (k) prevent the disclosure or use of information for improper gain or improper advantage.

Refusal of request on administrative grounds

12. (1) A public authority may refuse to grant a request if—
- (a) the information requested does not exist or cannot be found after all reasonable steps have been taken to find it;
 - (b) the request does not contain sufficient information to enable the authority to identify the record by taking reasonable steps;
 - (c) granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority;
 - (d) publication of the information is required by law and is intended to be effected not later than three months after the receipt of the request by the authority;
 - (e) the request is frivolous or vexatious;
 - (f) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or
 - (g) the fee payable under section 18 has not been paid.
- (2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

Reasons for refusal to be given

13. Where a request is refused, the public authority shall give to the applicant—
- (a) the reason for its refusal; and
 - (b) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 10 or section 11 and there is no

- countervailing public interest; and
- (c) give to the applicant information concerning the applicant's right, by way of complaint under section 23 to an Ombudsman, to seek an investigation and review of the refusal.

Decisions on information requests

14. (1) A public authority shall respond to an application as soon as practicable but not later than:
- (a) thirty calendar days after the date of receipt of the application; or
 - (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority;
- (2) The public authority to whom a request is made in accordance with section 6 or is transferred shall—
- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge, subject to section 18; and
 - (b) give, post, or send by electronic means notice of the decision to the person who made the request.

Extension of time limits

15. The public authority may extend the period of thirty calendar days for a further period, not exceeding thirty calendar days, in any case where there is reasonable cause for such extension.

Manner of access to records

16. (1) A public authority shall give access to a record under this Act by providing the requester with the information in the record in any of the following forms or manners that it considers appropriate—
- (a) a reasonable opportunity to inspect the record;
 - (b) a copy of the record;
 - (c) a transcript of the information;
 - (d) an electronic machine-readable device or other electronic device that contains the information;
 - (e) a reasonable opportunity to hear or view the record, where the record is of sound or visual images;
 - (f) a decoded copy of the information, where the information is in shorthand or another code;
 - (g) such other means as may be determined by the public authority.
- (2) Where a public authority decides to grant a request and the request is for access to a record in a particular form or manner, access shall be given in that form or manner unless the authority is satisfied that—
- (a) access in another form or manner specified in subsection (1) would be significantly more efficient; or
 - (b) the giving of access in the form or manner requested would—
 - (i) be physically detrimental to the record,

- (ii) involve an infringement of copyright (other than copyright owned by the Crown, the Government or the public authority concerned),
- (iii) conflict with a legal duty or obligation of the public authority concerned, or
- (iv) affect the protection of an exempt record from disclosure.

(3) Where a public authority decides to grant a request but, for reasons set out in subsection (2), does not give access to the record requested in the form or manner specified in the request, the authority shall give access in such form or manner as the authority considers appropriate.

Partial access

17. (1) Where an application is made to a public authority for access to information which contains matter to which this Ordinance does not apply by reason of section 3(2), the authority shall grant access to a copy of the information with the exempt matter deleted.

- (2) A public authority that grants access to a copy of the information in accordance with this section shall inform the applicant—
 - (a) that it is such a copy; and
 - (b) of the legal provision by virtue of which such deleted matter is exempt matter.

Reasonable fees to be charged

18. The communication of information may be made conditional upon the payment by the person making the request of a reasonable fee which shall not exceed the actual cost of searching for, reproducing, preparing and communicating the information.

PART III – REVIEW OF DECISIONS

Functions of Ombudsman

19. (1) It shall be a function of the Ombudsman to investigate and review any decision in which a public authority—
- (a) refuses to make information available to any person in response to a request made by that person in accordance with section 6; or
 - (b) decides, in accordance with this Ordinance, in what manner or, in accordance with section 18, for what charge a request made in accordance with section 6 is to be granted; or
 - (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 6.
- (2) An investigation and review under subsection (1) may be made by an Ombudsman only on complaint being made to an Ombudsman in writing.

- (3) If, in relation to any request made in accordance with section 6, any public authority fails to comply with section 14 within the time limit fixed by that section (or, where that time limit has been extended under this Ordinance, within that time limit as so extended), that failure shall be deemed, for the purposes of subsection (1), to be a refusal to make available the information to which the request relates.
- (4) Undue delay in making information available in response to a request for that information, shall be deemed, for the purposes of subsection (1), to be a refusal to make that information available.

Mediation

20. (1) The Ombudsman may at any time attempt to have the matter that is the subject of an application for review resolved by negotiation, conciliation, mediation or otherwise.
- (2) Participation in the mediation is voluntary and any party to it may withdraw at any time.
 - (3) The mediator appointed by the Ombudsman may decide to terminate the mediation at any time, in which case the mediator shall provide reasons for so deciding.
 - (4) Anything said or admitted during the mediation and any document prepared for the purposes of the mediation shall not be admissible in evidence against any person in any subsequent proceedings concerning a matter that is the subject of the mediation and no evidence in respect of the mediation may be given.

Application of Ombudsman Ordinance

21. Except as otherwise provided by this Act, the provisions of the Ombudsman Ordinance shall apply in respect of investigations and other proceedings carried out under this Part in respect of decisions under Part II as if they were investigations carried out under the Ombudsman Ordinance.

Requirements of Ombudsman to be complied with within certain period

22. (1) Where, during the course of an investigation of any public authority under section 19, an Ombudsman, pursuant to any power conferred on that Ombudsman by the Ombudsman Ordinance, requires that public authority to furnish or produce to that Ombudsman any information or document or paper or thing which relates to that investigation, that public authority shall, as soon as reasonably practicable, and in no case later than 20 working days after the day on which that requirement is received by that public authority, comply with that requirement.
- (2) Where any requirement to which subsection (1) applies is made to any public authority, the chief executive (by whatever name) of that department or an officer or employee of that department authorised by

that chief executive or that public authority may extend the time limit set out in subsection (1) in respect of that requirement if—

- (a) the requirement relates to, or necessitates a search through, a large quantity of information or a large number of documents or papers or things, and meeting the original time limit would unreasonably interfere with the operations of the department or the public authority; or
- (b) consultations necessary before the requirement can be complied with are such that the requirement cannot reasonably be complied with within the original time limit; or
- (c) the complexity of the issues raised by the requirement are such that that requirement cannot reasonably be complied with within the original time limit.

(3) Any extension under subsection (2) shall be for a reasonable period of time having regard to the circumstances.

(4) The extension shall be effected by giving or posting notice of the extension to the Ombudsman within 20 working days after the day on which the requirement is received.

(5) The notice effecting the extension shall—

- (a) specify the period of the extension; and
- (b) give the reasons for the extension; and
- (c) contain such other information as is necessary.

(6) If any public authority fails to comply with any requirement to which subsection (1) applies within the time limit fixed by that subsection (or, where that time limit has been extended under subsection (2), within that time limit as so extended), the Ombudsman may report such failure to the Governor, and may thereafter make such report to the Island Council on the matter as the Ombudsman thinks fit.

(7) Notwithstanding anything in this section, an Ombudsman shall not, in any report made under subsection (6), make any comment that is adverse to any person unless the person has first been given an opportunity to be heard.

Recommendations
made by the
Ombudsman

23. Where, after making an investigation of a complaint made under section 19, an Ombudsman is of the opinion—

- (a) that the request made in accordance with section 6 should not have been refused; or
- (b) that the decision complained of is unreasonable or wrong—
the Ombudsman shall—
- (c) report his opinion and his reasons to the appropriate public authority; and

- (d) make such recommendations as he or she thinks fit; and
- (e) give to the complainant—
 - (i) a copy of his recommendations (if any); and
 - (ii) such other information as he thinks proper.

Recommendations made to public authority

24. (1) Where a recommendation is made under section 23, the public authority in relation to which it is made shall be under a public duty to observe that recommendation as from the commencement of the 21st working day after the day on which that recommendation is made to it unless, before that day, the Governor by Order otherwise directs.

(2) An Order under this section may be made for all or any of the reasons that were before the Ombudsman by whom the recommendation was made but for no other reasons.

(3) As soon as practicable after an Order is made under this section, a copy of that Order must be given to the Ombudsman who made the recommendation and to the person who requested the information.

Right of review

25. (1) Where—

- (a) a recommendation is made under section 23 in respect of a request made under section 6; and
- (b) an Order is made under section 24 in respect of that recommendation,—

the person who made that request may apply to the Supreme Court for a review of the making of that Order.

(2) An application under subsection (1) may be made on the ground that the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(3) On an application under subsection (1), the Supreme Court may—

- (a) make an order confirming that the Order was validly made; or
- (b) make an order declaring that the making of the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(4) Unless the Supreme Court is satisfied that an application brought under subsection (1) has not been reasonably or properly brought, it shall, in determining the application and irrespective of the result of the application, order that the costs of the applicant on a solicitor and client basis shall be paid by the Governor, and such costs shall be paid out of money appropriated by the Governor for the purpose.

PART IV – MISCELLANEOUS

Protections against

26. (1) Nothing in this Ordinance shall be construed as authorizing the disclosure of any information containing any defamatory matter or the

certain actions

disclosure of which would be in breach of confidence or intellectual property rights.

- (2) Where access to information referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Ordinance, no action for defamation or breach of confidence or breach of intellectual property rights shall lie against—
 - (a) the public authority or any person involved in the grant of such access, by reason of the grant of access or of any re-publication of that information; or
 - (b) the author of the information or any other person who supplied the information to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the information.
- (3) The grant of access to information in accordance with this Ordinance shall not be construed as authorization or approval—
 - (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the information or its contents by the person to whom access is granted;
 - (b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the information.

Offences

27. (1) A person commits an offence if, in relation to information to which a right of access is conferred under this Ordinance, he or she—

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the information with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one thousand dollars.

Power to make regulations

28. The Governor may make regulations—

- (a) generally for giving effect to the provisions and purposes of this Ordinance;
- (b) prescribing the period of time for the doing of any act under this Ordinance;
- (c) for anything that is required or permitted to be prescribed under this Ordinance.