

OPEN DEMOCRACY BILL

(Revised draft)

(Prepared by the Task Group on Open Democracy appointed by Executive Deputy President T M Mbeki)

This draft incorporates proposed amendments and additions to the draft which was submitted to Cabinet for approval in principle after consideration of submissions received from governmental and private institutions and further deliberation.

[] Words in bold type in square brackets indicate omissions from existing clauses.

_____ Words underlined with solid line indicate insertions in existing clauses.

To give the public a general right of access to records held by governmental bodies subject to exemptions necessary to protect the public interest, personal privacy [or] and commercial confidentiality; to give individuals a right of access to, and to correct, information held by governmental or private bodies about themselves and to protect them against abuse of such information by governmental or private bodies; to provide for public access to the deliberative proceedings of certain important governmental bodies; to protect persons who disclose contraventions of the law, serious maladministration or corruption in governmental bodies; to establish procedures for the enforcement of any right established under the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

ARRANGEMENT OF ACT

Section

PART I

INTRODUCTORY PROVISIONS

1. Definitions
2. Objects of Act
3. Interpretation and application of Act

PART II

PUBLICATION OF AND ACCESS TO CERTAIN INFORMATION OF GOVERNMENTAL BODIES

4. Guide on how to use Act
5. Manuals on functions of, guidelines used by, and index of records held by, governmental bodies
6. Distribution of guide and manuals
7. Information in telephone directory
8. Exclusion of exempt information [that may refused under this Act] from guide, manuals and telephone directory
9. Obligation on [G]overnmental bodies to make available [certain] records about decision-making guidelines and public safety risks

PART III

ACCESS TO RECORDS OF GOVERNMENTAL BODIES

CHAPTER 1

RIGHT AND MANNER OF ACCESS

10. Right of access to records
11. Form of requests
12. Duty to assist requesters
13. Transfer of requests
14. Preservation of records pending decision on request, complaint and appeal
15. Payment of request fee
16. Payment of deposit
17. Decision on request and notice thereof
18. Urgent requests
19. Extension of period to deal with request
20. Deemed refusal of request
21. Severability
22. Access fees
23. Access and forms of access
24. Language of access
25. Correction of personal information
26. Compensation for inaccuracy]
27. Reports to Commission

CHAPTER 2

GROUND FOR REFUSAL OF ACCESS TO RECORDS

28. Personal privacy
29. Health of requester
30. Third party commercial information
31. Records supplied in confidence
32. Safety of individuals and security of institutions, buildings or systems

- 33. Law enforcement and legal proceedings
- 34. Defence and security of Republic
- 35. International relations
- 36. Economic interests of Republic and commercial activities of governmental bodies
- 37. Operations of governmental bodies
- 38. Frivolous or [vexations] vexatious requests
- 39. Records that cannot be found or do not exist
- 40. Published records and records to be published
- 41. Records already open to public
- 42. Disclosure in public interest
- 43. Necessity of harm

CHAPTER 3

THIRD PARTY INTERVENTION

- 44. Notice to third parties
- 45. Representations by third parties
- 46. Decision on representations for refusal
- 47. Notice to third party of decision by head of governmental body on internal appeal
- 48. Notice to third party of decision pursuant to Public Protector's recommendation

PART IV

CORRECTION AND PROTECTION OF PERSONAL INFORMATION HELD BY GOVERNMENTAL AND PRIVATE BODIES

- 49. Application of Part and definition of personal information
 - 49A. Right of access to personal information held by private bodies
 - 49B. Correction of personal information held by private bodies
 - 49C. Correction of personal information held by governmental bodies
- 50. Use [or disclosure] of personal information by governmental or private bodies
 - 50A. Disclosure of personal information by private bodies
- 51. Disclosure of personal information [held] by governmental bodies
- 52. Record of [undeclared] uses and disclosures not stipulated in manuals to be kept by governmental bodies
- 53. Collection of personal information by governmental bodies
- 54. Retention, accuracy and disposal of personal information held by governmental bodies
- 55. [Compensation for damages] Remedies for disclosure of inaccurate personal information and a contravention of this Part

PART V

ACCESS TO MEETINGS OF GOVERNING BODIES

CHAPTER 1

RIGHT OF ACCESS TO AND HOLDING OF MEETINGS

- 56. Right of access to meetings of governing bodies
- 57. Facilities where meetings are held
- 58. [Schedule of ordinary meetings]
- 59. Notice of meetings
- 60. Provision of materials at, recordings of, and participation in, meetings
- 61. Procedure to close meetings
- 62. Disorderly conduct of persons at meetings
- 63. Minutes of meetings
- 64. Reports to Commission

CHAPTER 2

GROUNDINGS FOR CLOSURE OF MEETINGS

- 65. Personal privacy
- 66. Health of individual
- 67. Third party commercial information
- 68. Records supplied in confidence
- 69. Safety of individuals and security of institutions, buildings or systems
- 70. Law enforcement and legal proceedings
- 71. Defence and security of Republic
- 72. International relations
- 73. Economic interests of Republic and commercial activities of governmental bodies
- 74. Operations of governmental bodies
- 75. Disclosure in public interest
- 76. Necessity of harm
- 77. Closing of meeting to person or class of persons only

CHAPTER 3

THIRD PARTY INTERVENTION

- 78. Notice to third parties
- 79. Representations by third parties
- 80. Decision on representations for closed meeting

PART VI

PROTECTION OF WHISTLEBLOWERS

- 81. Exclusion of liability if disclosing contravention of law, corruption or maladministration
- 82. Exclusion of liability if disclosing information after publication
- 83. Protection against reprisals
- 83A. Notice to officials of provisions of Part and other complaint procedure

PART VII

REVIEW OF DECISIONS

CHAPTER 1

INTERNAL APPEALS

- 84. Right of internal appeal to head of governmental body
- 85. Manner of internal appeal and appeal fees
- 86. Notice to and representations by other interested parties
- 87. Decision on internal appeal
- 88. Urgent internal appeals

CHAPTER 2

COMPLAINTS TO PUBLIC PROTECTOR

- 89. Powers of Public Protector in addition to powers conferred by other laws
- 90. Assistance by Public Protector
- 91. Complaints to Public Protector
- 92. Investigation of complaint
- 93. Notice of intention to investigate
- 94. Precautions against disclosure
- 95. Findings and recommendations of Public Protector
- 96. Reports to [Open Democracy] Commission
- 97. Provincial public protectors

CHAPTER 3

INFORMATION COURTS

- 98. Establishment of Information Courts
- 99. Appeals to Information Court
- 100. Applications to Information Court
- 101. Extension of period within which appeal or application may be lodged
- 102. Jurisdiction of Information Court
- 103. Form and manner of appeal and application
- 104. Notice of appeal and application

- 105. Appearance as party to appeal and application
- 106. Appearance on behalf of party
- 107. Determination of hearing of appeal and application and urgent hearings
- 108. Procedure at appeal and application
- 109. Legal representation
- 110. Burden of proof
- 111. Decision on appeal and application
- 112. Costs
- 113. Proof of orders
- 114. Review of proceedings of Information Court
- 115. Regulations regarding appeals and applications to and proceedings before Information Court
- 116. Reports to Commission

PART VIII

GENERAL AND MISCELLANEOUS PROVISIONS

- 117. Designation of information officers and deputy information officers
- 118. Establishment and appointment of Open Democracy Commission
- 119. Functions of Commission
- 120. Meetings of Commission
- 121. Reports to Parliament by Commission
- 122. Staff and expenditure of Commission and remuneration of Commission's members
- 123. Delegation of powers and assignment of duties by Public Protector or head or information officer of governmental body
- 124. Restriction of liability
- 125. Offences
- 126. Regulations
- 127. Repeal or amendment of laws
- 128. Short title and commencement

SCHEDULE

LAWS REPEALED OR AMENDED