



**LINION
PEP
MORISIEN**

Avek lepep pou lepep



“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19, United Nations Universal Declaration of Human Rights. Signed December 10, 1948

UNESCO Finds 125 Countries Provide for Access to Information (2019)

Proposed amendment to section 12 of the Constitution

Section 12 (1) (A) – which reads as follows

Article

1. Every citizen and resident of the Republic of Mauritius has the right of access to:
 1. Information held by the State and organs of the State and
 2. Information held by another person and required for the exercise or protection of any right or fundamental freedoms
2. Every person has the right to the deletion or correction of untrue, misleading or partial information that directly or indirectly jeopardises the interests of the person.
3. The State and its organs shall publish and publicise any important information affecting the Nation as soon as possible.

Section 12 of the constitution as Amended

12 Protection of freedom of expression

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

1 (A)

- a. Every citizen and resident of the Republic of Mauritius has the right of access to:
 - i. Information held by the State and organs of the State and
 - ii. Information held by another person and required for the exercise or protection of any right or fundamental freedoms
- b. Every person has the right to the deletion or correction of untrue, misleading, or partial information that directly or indirectly jeopardises the interests of the person.
- c. The State and its organs shall publish and publicise any important information affecting the Nation as soon as possible.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

- (a) In the interests of defence, public safety, public order, public morality or public health;
- (b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or
- (c) For the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Freedom of Information Act 2022

Preamble

Recognising that access to information is a fundamental human right guaranteed by Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and of the African Charter on Democracy, Elections and Governance.

Acknowledging that the freedom of access to information includes the right to request and freely receive information.

Acknowledging that the duty to impart information is higher specially if the information involves public interest.

Subscribing to the principles that freedom to information is indispensable to true and effective democracy, good governance, equal opportunity, justice, fairness and fight against systemic corruption.

Convinced that a statute expressly dedicated to Freedom of Information is essential and vital to the promotion of effective, equitable and easily accessible of this right.

Act No 001 of 2022

Arrangement of sections

Section

Contents

Contents	3
Part I – Preliminary	6
01.Short Title	6
02.Title: This act shall be known as the Freedom of Information Act 2022.....	6
03.General Principles.....	6
04.Interpretation	6
Part – II	8
05.Objects of the Act.....	8
06.Scope of this Act.....	8
07.Act to bind the State:.....	8
08.Non- Application of this Act.....	8
09.Primacy of the Present Act	8

Part- III – Publication of certain information	9
10.Requirement of a Publication Mechanism	9
11.Access to Publication Mechanism/ Scheme	9
12.Automatic Mandatory Publication – Transparency Duty	9
Part IV	11
13.Exemptions	11
14.Criminal Enquiry	11
15.Commercial Or/ And Trade Secrets	11
16.Privileged Information communication	12
17.Cabinet deliberations	12
18.Personal Information	12
19.Health, Wellbeing and Safety	12
Part V	13
20.Policy Making	13
Part VI	14
21.Time Limits	14
22.Interpretation	14
23.Transparency within Public Service.....	14
24.Public Finance and Duty of Minister Responsible for Finance/ Budget	14
25.Whistleblowers	14
26.Reports by Public Entities	15
27.Annual Reports	15
28.Duty of the Cabinet Secretary	15
29.Publicising of the functions of public service agencies and organisations	16
30.Assistance of Ministry of Justice.....	16
Part VII	17
31.Good faith disclosure.....	17
32.Right of access.....	17
33.Access to documents other than under this Act	17
34.Access to certain documents.....	17
35.Duty to assist the requester	17
36.Request for access.....	17
37.Duty to maintain records.....	18
Part VIII	19
38.Training of officials	19
39.Access to documents.....	19
40.Time limit for determining request.....	19

Part IX	20
41.Vexatious, repetitive or unreasonable request	20
42.Information Commission Office	20
43.The Information Commissioner	20
44.Qualification of the Information Commissioner	20
45.Terms of Office.....	20
PART X	21
46.Criminal Offences	21
47.Referral to the Director of Public Prosecution (DPP) and Police.....	21
48.Prosecution and Jurisdiction	21
49.Offences and Penalties – Forfeiture	21
50.Fines for Violations	21
51.Dismissal of Public Servant	22
PART XI- Miscellaneous	23
52.Independence of powers.....	23
53.Reports of the Information Commissioner	23
54.Salary and expenses	24
55.Power of the Information Commissioner to examine record	24
56.Removal of the Information Commissioner.....	24
57.Review of the Decision of Public Authority	24
58.Regulations.....	25
59.Director of Public Prosecutions	25
60.Commission on the Prerogative of Mercy	25
61.Confidentiality and Oath	26
62.Oath to be taken.....	26
63.Service of Notice	26
64.Commencement.....	26
FIRST SCHEDULE (section 4 of the Act).....	27
SECOND SCHEDULE (section 62 of the present Act).....	28

Part I – Preliminary

01.Short Title

This Act may be cited as the Freedom of Information Act 2022 or FOIA for sake of convenience.

02.Title: This act shall be known as the Freedom of Information Act 2022

03.General Principles

To give meaningful weight to this Act the following principles should be taken into consideration:

- a) Every individual whether a citizen or a resident of the Republic of Mauritius has a right to access to information subject to such limitations as are necessary and narrowly established for reason of vital public interest;
- b) Public bodies hold information not for their own interest but as trustees of the public and custodians of the public good;
- c) The right of access to information is a right to request and receive information;
- d) The right of access to information imposes an onus on all public bodies and officials to disseminate vital information that the public would generally want to know including their functions, activities and their future plans;
- e) The right of access to information does not impose any duty to provide a reason or justification on the person requesting the information
- f) The right of access to information applies to private entities that receive public resources and benefits whether engage in public function or not

04.Interpretation

In this Act, unless the context otherwise requires-

- “Access to Information” is the right of any citizen and resident of the Republic of Mauritius to request, receive, reproduce and retain records and documents held by public bodies and private entities which are receiving public funds and performing public duties and public sectors. See Schedule 1.
- “Act” means the Freedom of Information Act
- “Citizen” means any individual who has the Mauritian nationality and any private entity which is controlled by one or more Mauritian citizens.
- “Constitution” means the Constitution of the Republic of Mauritius
- “Court” means any judicial body of the Republic of Mauritius
- “Exempt Information” means the information that may be withheld by a public or private body in accordance with Part IV of this Act.
- “Documents” means any retrievable or reviewable record which may be written, printed, audio, visual, electronic or otherwise.

- “Person means any individual, partnership, corporation, joint venture, trust, estate, unincorporated entity, government, local government, parastatal bodies or any judicial entity.
- “Private bodies” include any entity, business or otherwise, owned by private persons.
- “Public authorities” means any agency, ministry, or institution of the government or creatures of the Constitution or person acting on behalf of such agency, ministry or institution
- “Public bodies” refer to all agencies, entities, corporations; companies, parastatal bodies, owned wholly, substantially, or having a stake by the government of the Republic of Mauritius
- “Public function” refers to any act normally carried out by the government, local government, parastatal bodies or any of its agencies, ministries and institutions
- “Public services” means services rendered for or to the general public at a cost price or free and includes all types of public services.
- “Publication mechanism” means publication by public authority providing detailed information to the public at large on the activities, functions and power of that authority and all information it publicizes.
- “Permanent resident” of the Republic of Mauritius means a person who:
Resides in the Republic of Mauritius including those living in a third country, who has exiled following the excision of the Chagos Archipelago from the Republic of Mauritius and is not:
 - i. A person who has been declared persona non-grata;
 - ii. A person who is unlawfully in the Republic of Mauritius or is on the Chagos Archipelago without the express approval of the Prime Minister;
 - iii. A person who is under the obligation to leave the Republic of Mauritius and who has not entered a case before the Supreme Court to challenge the legality of the departure order
- “Publication Scheme” means publication by a public authority providing detailed information to the public of its activities which it publishes
- “Public record” means a record regardless of its form, source date of creation or official status whether it was created by the body that holds it and whether or not it is classified exempted or not;
- “Requester” means a person who has applied or request access to a document or information.

Part – II

05.Objects of the Act

The objects of the Act are:

- (1) To extend the scope of human rights by giving access to the information in possession of Public Authorities;
- (2) To create a general right of access to information which are in possession of the public authorities save those which are labelled as exempt.
- (3) To create a culture of transparency and good governance.
- (4) To create a right to bring about the amendment of record concerning personal information that is misleading, incorrect or incomplete.
- (5) The provision of this Act shall be interpreted so as to further the objects of this Act.

06.Scope of this Act

This Act shall apply to and cover:

- a) All public authorities and bodies at all branches and different levels of the government, public corporations, commissions, committees, sub committees, boards and any other related bodies financed or supported in whole or in part by public resources
- b) All private bodies that receive one cent of public fund or any benefit of whatever kind; and
- c) All academic institutions, hospitals, laboratories an other research centers

07.Act to bind the State:

- d) This Act shall bind the State

08.Non- Application of this Act

This Act does not apply to:

- (1) The President of the Republic
- (2) The meetings that the Prime Minister or the President of the Republic have with other Head of States which does not bind the Republic of Mauritius.
- (3) (a) The deliberations of a Commission of Inquiry instituted by the President of the Republic or any commission of inquiry set up by the National Assembly.
(b) All reports of the Commission of Inquiry shall be made public one day after the President of the Republic or the Speaker of the National Assembly has received a certified copy.

09.Primacy of the Present Act

Save for the Constitution, this Act is and shall be the primary law governing the right of access to Information & Freedom of Information.

This Act shall prevail over any and all subsequent inconsistent statutes except a subsequent statute that clearly and specifically amends or repeals it.

Part- III – Publication of certain information

10. Requirement of a Publication Mechanism

Every public authority or body shall establish, regularly, maintain and update a widely easily accessible and user-friendly publication scheme whereby the public authority or public body automatically and routinely provides detailed information in clear language regarding its core and ancillary functions, nature of its activities, operations and the information it possesses.

Minimum contents of publication scheme. The publication shall contain at a minimum:

- (a) The full name, designation, functions and contact details of the information officer appointed and maintained by the authority in keeping in line with this Act;
- (b) A fair description of the types and categories of documents and information held by the public authority, the exact location of the documents and a clear statement of the public right to review, request, receive and retain copies of any of such documents or information; and
- (c) Clear statement that describes fully the powers of the public authority concerned supported by concrete examples.
- (d) Any agreement or arrangement made by the public authority with third parties for the discharge of its functions.
- (e) Such procedures which may be followed to access, review, copy, and receive the whole or any part of the documents or information.

11. Access to Publication Mechanism/ Scheme

The publication scheme of every public authority or body shall be widely accessible in a clear language. The hard and soft copies of the publication scheme shall be readily available at the offices and sub-offices of the authority and at all Citizens Advice Bureau (CAB) and public libraries.

12. Automatic Mandatory Publication – Transparency Duty

Without any prejudice to the duty of a general publication scheme established under this Act, every public authority is under the transparency duty to publish and maintain the publication of certain vital and key classes of documents as soon as they are generated by the authority, received by the authority, irrespective whether there has been a request made for them or not.

List of documents subject to automatic publication:

The classes of documents to be automatically published by every public authority, without any delay, shall include among others:

- a) The enabling legislation of the agency, authority or body;
- b) The subsidiary legislations, regulations, code of conduct, fees prescribed for any service by the agency, authority or body;
- c) Policies, procedures, rules, manual books;
- d) Its annual budgets, supplementary budgets, loans, grant in aid government donations, international donations with its memorandum of understanding, donations from individuals supported with documentary evidence;
- e) The financial accounts, internal audits and external audits of the agency/ authority.

- f) Organisational charts and the person responsible with his/her CV attached;
- g) Lines of reporting;
- h) Employed persons on holidays and the reasons behind;
- i) Disciplinary committees, staff under suspension or facing criminal charge;
- j) Staff on leave without pay and staff on leave with pay;
- k) Staff on overseas mission;
- l) Staff having obtained scholarships and the procedures for same;
- m) Reported fraud;
- n) Procedures for appealing decisions of the authority or its officers;
- o) Such other information that would help members of the public to interact with the authority and or monitors its performance.

Part IV

13.Exemptions

Exhaustive List of exempted documents

Notwithstanding the Data Protection Act and subject to the provision of Part IV of this Act a document, information or record is exempted from disclosure only if it is clearly stipulated under one or more categories of exempted documents in this Part.

Information relating and linked with national defense, security and international relations: a document or record is exempted from disclosure or any member of the public having access if its disclosure would cause injury or substantial harm to the defense, security or international relations of the Republic of Mauritius or to any other country which the Republic of Mauritius has become privy of certain information.

A document, record or any matter exempted if it has been imparted in confidence by another country to the government.

DOCUMENTS DISCLOSURE WHICH WOULD BE CONTEMPT OF COURT OR CONTEMPT OF PARLIAMENT

A document is an exempt document if it:

- (a) Is in contempt of Court;
- (b) Infringes the privileges of Parliament;
- (c) Is contrary to an order made or given by a tribunal, commission, fact finding committee or body having power to take evidence on oath.

14.Criminal Enquiry

A document, record or data is exempted from disclosure if its disclosure would cause injury or substantial harm to

- (1) An ongoing criminal investigation
- (2) Disclose the identity of the informer
- (3) Endanger the lives of persons involved in criminal investigation
- (4) Putting at risk the safety of persons and their families, including concubines and step children, involved in criminal investigation.

15.Commercial Or/ And Trade Secrets

A document or record is exempted from disclosure if its disclosure under this Act would reveal trade secrets which will:

- (a) Affect the business competitiveness of any public body or a private body;
- (b) Destroy the commercial value
- (c) Reveal the commercial strategy of the private entity or any public body

This provision shall not apply to:

- a) Information, document or record on the general running of the business of the public body or private entity
- b) Information on the business, commercial, financial of which that person who made the request is a proprietor, co-owner or has shares in the business

16. Privileged Information communication

A document or record is an exempt document or record if it is clearly established that it is of such nature that it should be privileged from production in any legal proceedings on any privileges recognised under section 300 of the Criminal Code and the rules of evidence that have existed in the Republic of Mauritius

17. Cabinet deliberations

The full cabinet deliberations shall remain exempt for a period of 15 (fifteen) years as from the date of cabinet sittings.

18. Personal Information

- (1) A document or record is exempted from the right of access if its disclosure would constitute unreasonable disclosure of personal information about a third party.

Subsection 1 does not apply if:

- (a) The third party has consented without any ambiguity to the disclosure of the information
- (b) The third party has passed away since more than 15 years
- (c) The person making the request is the guardian of the third party
- (d) The person making the request is the next of kin of the deceased third party
- (e) The person making the request is the executor of the will of the deceased third party
- (f) The person is or was an employee or on the salary roll of a public body or any other body where taxpayers money is at stake and the information requested is in relation to his or her function as an employee

19. Health, Wellbeing and Safety

A body may refuse to indicate whether it is in possession of any information, record or data where to do so will jeopardise the health, wellbeing or safety of any individual

Law enforcement

A body may refuse to indicate whether or not it holds a record or refuse to communicate information, where to do so would be likely to cause serious prejudice to:

- a) The administration of justice,
- b) The whereabouts of a protected star witness under the witness protection scheme;
- c) The assessment or collection of any tax or duty;
- d) The operation of immigration controls;
- e) The assessment by any prosecutorial authority whether to lodge civil or criminal proceedings would be justified.

20. Policy Making

1. A body may refuse to indicate whether or not it holds a record or refuse to communicate information, where to do so would, or would likely to:
 - a) Seriously frustrate the success of a policy, by premature disclosure of that policy;
 - b) Seriously jeopardise the effective formulation or development of government policy;
 - c) Seriously undermine the deliberative process in a public body by inhibiting the free and frank exchange of views, the free flow of advice.
2. The above subsection does not apply to facts, analytical of facts, statistics, interpretation of statistics or technical data of any kind.

