REPUBLIC OF SEYCHELLES

INFORMATION COMMISSION

A “How To” Manual

Implementation of the
Access to Information Act, 2018

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FOREWORD

This manual is a product of over a year's endeavour and was started by a Committee set up by Vice President Vincent Meriton consisting of senior representatives from the Vice President's Office, the Department of Public Administration, the Department of Information, the Department of Information, Communications Technology and the Attorney General's Office.

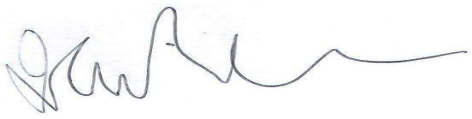
On behalf of my fellow Commissioners, Antonio Lucas and Desire Payet I would like to thank them for the work they put in and the product they gave to us on our appointment as the Information Commission.

We, along with our Chief Executive Officer, Ms. Thereza Dogley, and Ms. Victoria Lemieux a World Bank Consultant Professor from Vancouver, have revised and added to it.

The intention is to provide an easy to follow guide for all users (Information Officers, Heads of Information Holders, most importantly the general public, and of course, ourselves) to the workings and procedures of the Access to Information Act, 2018.

It will be published on our website and we recommend that all public bodies include it on their website.

We hope you will all read it and use it, and most of all find it helpful.



John Richardson

Chief Information Commissioner

10th February 2020

INTRODUCTION

Statement of Purpose

Freedom of information is considered an important human right. In 1946, the United Nations General Assembly passed one of its very earliest resolutions, which stated that:

> "*Freedom of information is a fundamental human right … the touchstone of all freedoms to which the United Nations is consecrated.*"

Freedom of information helps people to live in a less corrupt society where the environment is respected. It ensures that their fundamental rights and their privacy are respected. It also makes a country more secure, its government more efficient, and its political system more democratic. Moreover, it guarantees better decision-making, an efficient economy, and leads to individuals receiving better treatment from institutions.

However, freedom will be bereft of all effectiveness if people have no access to information. Indeed, access to information is of the essence in any country, which aspires to be a real democracy. The United Nations also recognises it as a fundamental right. Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

> "*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.*"

Access to information is basic to the democratic way of life, especially in societies that are in transition from authoritarian political systems or are emerging from conflicts; there may be a great public hunger for information especially about human rights violations that took place. Moreover, it is a human right that, in one way or another, is symbiotically linked to the realisation of all other human rights. The public will not be able to fundamentally confront and deal with both past and present violations of their human rights if the struggle for access to information itself remains in the shadows.

Article 28 of the Constitution of the Republic of Seychelles "*recognises the right of access by the public to information held by a public body performing a governmental function subject to limitations contained in clause (2) and any law necessary in a democratic society.*" It affirms the fundamental right of access to information and, as such, seeks to promote a culture of good governance, transparency and accountability, integrity in the public sector, and the promotion of public participation in government affairs. It equally affirms the fundamental right to equal protection under the law, and as such, guarantees the protection of the privacy or rights or freedoms of others.

The Access to Information Act, 2018 is not only an incredibly important tool in helping citizens understand how their government works but also a legislative milestone in the light of the pre and post 1993 political environment in Seychelles. However, the law itself is only the first step. Its implementation, including the task of transforming the culture of administration into a more democratic and accountable one, will be a great challenge.

This "How To" Manual is intended to assist public bodies in meeting the requirements of the law. The manual itself complies with Section 52(1) of the Access to Information Act,

2018 that requires an implementation plan (including an operational plan and an information publication plan).

It establishes the broad framework by which the access to information (ATI) system will operate, which public bodies will customize as necessary in order to produce their own manuals. An electronic version of the manual will be kept on the websites of the Information Commission and all public body. It will be frequently updated to keep the public abreast of developments and changes regarding the contact details of Information Officers of public bodies and general information on the Act.

The Information Commission and all public bodies hopes that this manual will serve as an important and meaningful tool for all the public to enjoy their constitutional right of Access to Information.

The contact details of Information Commission office is;

P.O. Box 1342, 3rd Floor, KLA Residence,
Mont Fleuri, Victoria, Seychelles
Tel:4303188, Website: www.infocom.sc,
Email: enquires@infocom.sc

Overview of the ATI Act

It is with great pride and joy that the Information Commission presents the first edition of the "How To" Manual in terms of the Access to Information Act, 2018 (the "ATI Act"). This guide will be translated into all the three official languages of the Republic of Seychelles for easy access by all the people of our beautiful country.

To move from a deeply rooted culture of secrecy and bureaucracy to a culture of transparency and accountability is a mammoth challenge. The prejudice against responsive and open governance is certainly not confined to the previous order. The continuous hostile and ignorant responses in respect of the ATI Act are proof of this observation.

It is of critical importance that the citizens of Seychelles are informed about the ATI Act and how the right of access to information can work for their benefit. Participation in democratic processes can only be effective if it is informed participation. It is however important that the ATI Act reaches far beyond the traditional political civil rights and that it adds a new dimension to public debate on everyday issues that citizens have to face.

Public bodies must understand that their responsibilities under ATI Act are not intended to be a costly burden but rather an essential mechanism to ensure good governance and the transformation of our society. The right to access information, as well as the other entrenched rights, should not only be approached in a non-adversarial manner but also used as a vehicle to change our society. The ATI Act is central to the transformation of our society. The rule of law and the democratic constitutional state will perish if there is not open and accountable government.

Definitions

What is the Access to Information Act, 2018 (the ATI Act)?

An Act to foster good governance through enhancing transparency, accountability, integrity in public service and administration, participation of persons in public affairs including exposing corruption, to recognise the right of access to information envisaged in Article 28 of the Constitution and for matters connected therewith and incidental thereto.

What is Information?

For the purposes of the ATI Act, "information" is defined to include "*any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held in the possession or under the control of the public body.*"

What is a Public Body?

"Public Body" means a body specified in the Schedule to the ATI Act, namely:

1. Any authority, body, or institution performing government functions, legislative functions or judicial functions established or constituted;

    (a) by or under the Constitution; or

    (b) by any written law.

2. A body owned, controlled or financed by government.

3. Civil society organisations financed directly or indirectly by funds provided by the government.

What is a Third Party?

"Third Party" means a person other than a public body or the requestor.

What is Third Party Information?

"Third Party Information" means personal information or commercial and confidential information of a third party.

What is Personal Information?

“Personal Information” is information or opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

What is a Head of the Information Holder?

“Head of the Information Holder” means the administrative head of the public body holding the information requested. Titles held by an administrative head may include Principal Secretary or Chief Executive Officer.

What is an Information Officer?

"Information Officer" means a person designated as the Information Officer of a public body in accordance with section 7 of the ATI Act, which states that, “*The head of every public body shall, in consultation with the Minister responsible for that public body, designate a suitable officer of that body as Information Officer for the purposes of this Act.*”

What is a Requestor?

“A Requestor” means a person who requests access to information under the ATI Act or any person acting on behalf of the person requesting access.

CHAPTER ONE – INFORMATION OFFICER [SECTION 7]

1.1 Information Officer

An Information Officer is an independent public official responsible for promoting and enforcing the Access to Information Act, 2018. The head of every public body shall, in consultation with the Minister responsible for that public body, designate a suitable officer of that body as the Information Officer for the purposes of this Act.

1.2 Scope of Position

The Information Officer is the main point of contact in a public body for people who wish to access information; he or she is to provide information as stipulated by the Access to Information Act, 2018. He or she is to interact with the Information Officers from other government entities and across sectors, as well as with the Information Commission, to ensure the release of accurate information to the public.

1.3 Key Responsibilities

- Provide information about the public body, produced by the public body or maintained in the public body.
- Manage and maintain the following public domain information:
    - Database;
    - Handbook;
    - Manuals;
    - Website page, and
    - Records management system.
- Maintain a social media presence.
- Identify and procure information, which cuts across another portfolio, which either started its journey from the public body, or is to end in the public body.
- Conduct information audits from time to time to make sure that the information remains relevant and add new information.
- Perform a public information-monitoring role, such as being aware of implementing measures for rumour control.
- Ensure that the information managed is kept safe, secure and easily accessible.
- Maintain records on what is being requested, the frequency of requests, and for what purpose requests are made.
- Prepare a statutory annual report for submission to the Commission.

1.4 Oversight of the Information Officer

The Information Officer, while undertaking his access to information duties, is responsible to the Information Commission.

1.5 Remuneration of the Information Officer

A person continuing with current duties and only taking on the responsibilities of the Information Officer will retain their current package and be paid the Responsibility Allowance.

1.6 Absence of the Information Officer

Should the Information Officer be absent on leave such as maternity, sick, or annual leave for a period up to 6 months, the Head of the public body shall ensure that there is a temporary replacement, that the Information Commission is notified, and that the appointment is gazetted.

1.7 Knowledge of the Information Officer

The ideal candidate would be a person of some seniority who has worked in the organisation for many years and understands its culture, operations, and terminology.

CHAPTER TWO – PROACTIVE DISCLOSURE [SECTION 5]

2.1 Proactive Disclosure of Information

2.1.1 What is Proactive Disclosure?

Every public body should provide as much information as possible to the public through various means of communications so that the public has minimal need to use the ATI Act to obtain information. Proactive disclosure is the act of releasing information before it is requested. It refers to an environment where information is released routinely (e.g., through electronic means such as publishing information on a website), with the exception of information that the Government is required to protect due to foreseeable harm to the Government, society or particular citizens and others as defined in law.

Section 5(1) of the ATI Act states that public bodies should publish certain information, e.g., manuals, name of Information Officer, prescribed forms, etc., within 30 days of it being generated or received unless that information is exempted from release by the ATI Act. Section 5(2) of the ATI Act describes additional types of information that public bodies must publish annually, e.g., detailed travel and hospitality expenses for each employee and officer.

2.1.2 What are the Principles, Strategies and Standards to Ensure Proactive Disclosure?

- Making decisions to release specific information without the need for an access application under the ATI Act
- Using discretion, where appropriate, to release documents that may be technically exempt.
- Publishing datasets in accessible formats that promote their reuse.
- Making sure website pathways to access proactively released information are clear.
- Adding metadata to documents to make them discoverable through search engines.
- Only refusing to release documents when there is valid reason.

2.1.3 What Information Should be Proactively Disclosed?

All public bodies have to ensure that the following existing categories of information about them are in order, as these have to be published proactively. New information that falls in the proactive disclosure category will have to be published within 30 days after it is generated. Section 5(1) of the ATI Act identifies the following categories:

(a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other consequences, to or for which persons may be entitled or liable;

(b) the names, designations and other particulars of the Information Officer of the public body, including his or her contact details and electronic addresses where persons may submit requests for information;

(c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public body;

(d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of its policies, or similar documents;

(e) where meetings of the public body, including its boards, councils, committees or similar other bodies are open to members of the public, the process for direct or indirect engagement and where a meeting is not open to the public, the body shall proactively make public the contents of submissions received, the process for decision making and decisions reached;

(f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the amounts allocated and expended, the criteria for accessing the subsidy and the beneficiaries;

(g) all contracts, licenses, permits, authorisations and public-private partnership granted by the public body;

(h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body; and

(i) any other information as directed by the Information Commission.

2.1.4 Other Information that Should be Published Annually

Section 5(2) of the ATI Act states that all public bodies are required to annually publish:

(a) the particulars of its organisation, functions and duties;

(b) information containing interpretations or particulars of Acts or policies administered by the body;

(c) details of its processes and procedures for creating, keeping, organising and maintaining information;

(d) a list of all the categories of information held by it or under its control;

(e) a directory of its employees including their powers, duties and titles, indicating the permanent staff, the temporary staff and the outsourced staff, recruitment procedures and vacancies;

(f) the salary band for each public employee and officer, including the system of compensation as provided in its laws, and the procedures followed in its decision-making process, including channels of supervision and accountability;

(g) detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefits received by each employee and officer;

(h) a description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted for the purpose of advice to or managing the public body;

(i) the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports;

(j) the annual reports submitted to the Information Commission under section 54 of the ATI Act; and

(k) any other information as directed by the Information Commission.

2.1.5 How Information Must be Proactively Disclosed

The ATI Act requires public bodies to disclose certain information proactively in a manner, which the Information Commission will specify. This will most likely be in the most cost-effective format, which is the electronic format. As such, all public bodies are requested to have an operational and up-to-date website.

Other ways of publishing information include:

- Brochures/pamphlets
- Booklets
- Print newsletters
- Reports
- Posters (in marketplaces, at post offices, libraries, other government buildings)
- Contributions to debates in print and online media
- Radio (adverts, plays)
- Mobile phone platforms
- Social media

2.2 Requirements for Websites

2.2.1 New Website

The internet provides global access to information, therefore all Public Bodies should have a website that the public can utilize to access the information. All new public sector websites will need to meet accessibility standards.

2.2.2 Key Roles and Personnel

Name the personnel that is going to occupy the below listed roles.

System Administrator – this could be an in-house or contracted-out role, but in either case will ensure that the website is up-to-date. The individual in this role should have knowledge of Information Technology.

2.2.3 Content

1. General Content

Make sure you have the following;

- Mission Statement
- Organisation's Vision
- Organigram
- Contact Details
- Access to Information menu

2. Documentation

The following Document Categories are required:

List down the documentation within their categories; such as listed below (refer to Table1 for an example)

a) Forms
b) Procedures
c) Processes
d) Rules
e) Manuals
f) Regulations

Table1.

Document Name	Category	Soft Copy/Hard Copy	Last Updated
Client Registration Form	Forms	Soft Copy	01/02/2018

3. Services

What are the Services on offer from your Organisation?

This is better visualised using a table (refer to Table2 for an example)

Table2.

Service Name	Operating Hours	Service Fee SCR/-	Procedure	Contact Details of Officer in charge of the service	Documents Required	How Long it takes
Business Registration	8:00 am – 3:00pm	SCR/- 100		John Doe (+248) 4123456	ID CARD	1 Day

4. Social Media

a) Do you have a social media presence? YES/NO
b) List the person updating the Social Media Page ----------
c) How often is the Social Media Page Updated? ----------
d) It is also advisable to have a Social Media Policy in place internally to regulate and standardise the posts on your page.

2.2.4 Existing Website

Social Media

a) Do you have a social media presence? **YES/NO**
b) List the person updating the Social Media Page ----------
c) How often is the Social Media Page Updated? ----------
d) It is also advisable to have a Social Media Policy in place internally to regulate and standardise the posts on your page.
e) List the URL of your site ----------
f) Where is it hosted/Hosting solution? ----------
g) Who built the site? ----------
h) When was the site last updated? ----------
i) How does the site get updated? ----------
j) List the person responsible for updating the site ----------

2.2.5 Definition

- System Administrator – Organises team members and specialises in facilitating, reporting and analysing projects under the supervision of the project manager.

2.3 Proactive Publication List

This should be presented in a standard format and include the following:

1) Name of information
2) Format of information
3) Frequency of update of information
4) Location/where published
5) Date of last verification of publication

2.4 Interaction of the ATI Act with Other Legislation

2.4.1 How Does the ATI Act Affect Data Protection?

The Data Protection Act, 2003, currently under review by the World Bank, gives rules for handling information about people. It includes the right for people to access their personal data. The Access to Information Act and the Data Protection Act come under the heading of information rights and will be regulated by the Information Commission.

2.4.2 How Does the ATI Act Affect Copyright and Intellectual Property?

The ATI Act does not affect copyright and intellectual property rights that give owners the right to protect their original work against commercial exploitation by others. If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations (to be developed). The Information Commission does not have any powers to regulate copyright or the re-use of information.

When giving access to information under the ATI Act, you cannot place any conditions or restrictions on that access. For example, you cannot require the requestor to sign any agreement before they are given access to the information. However, you can include a copyright notice with the information you disclose. You can also make a claim in the courts if the requestor or someone else uses the information in breach of copyright.

CHAPTER THREE – MAINTENANCE AND COMPUTERIZATION OF RECORDS [SECTION 4]

3.1 Records Management

Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public body should maintain all its records properly. It should ensure that the records are duly catalogued and indexed in a manner and form that facilitates the access to information.

All types of public bodies manage their recorded information for reasons that are significantly broader than compliance with access to information legislation; they create, maintain and manage records to provide tangible evidence of their business activities and transactions.

The primary purposes for records and information management are to:

- Support policy formation and managerial decision-making;
- Improve client service and support performance of business activities;
- Support consistency, continuity and productivity in operations, administration and management;
- Protect the interest of the organisation and the rights of clients, the public and employees;
- Provide protection and support in litigation, including the better management of risks associated with the existence or lack of evidence of activities or event;
- Facilitate research and development activities; and
- Enable organisations to meet legislative and regulatory requirements.

In addition, to meet the obligation and mandate of the ATI Act, public bodies need to have in place effective records and information management practices.

3.2 Access to Information of Public Bodies

Every public body shall create, keep, organise and maintain its information in a manner, which facilitates access to information, as provided in the ATI Act. Every public body shall:

a) Produce information in respect of all its activities, including those expressly provided for under section 5 of the ATI Act;

b) Arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification and access; and

c) Keep all information in its possession in a good condition and in a manner that preserves the safety and integrity of its contents.

CHAPTER FOUR – THE "RIGHT TO ACCESS" (PASSIVE DISCLOSURE) [SECTION 8]

4.1 The "Right to Access"

The "right to access" is more reactive. It refers to Government responding to requests for documents made by the public. There are no restrictions as to who may make a request. The applicant can be any person who is residing inside or outside of Seychelles, including individuals, corporations, and organisations. Subject to this Act, every person has a right to access information from a public body.

Any person who wishes to obtain access to information under this Act may make a request in writing to the Information Officer of the concerned public body.

Information officers responding to requests for information are not expected to create or generate records or information in response to a request for information where no such records or information already exist or have been created.

If the requested information may be inferred or assembled from existing records or information sources, then the Information Officer may release the relevant records or information sources without need of assembling the information in response to the request. The requester then may assemble the information or records themselves in order to obtain the necessary information.

4.2 Format of Application

There is no prescribed format of application for access to information from pubic bodies under the ATI Act. The application can be made on plain paper. The application should, however, have the name and complete postal address of the applicant. The Information Commission has made provision for a request form to be designed to facilitate record keeping under the law. Even so, if someone comes with a written request it is acceptable under the law. The information seeker is not required to give their reasons for seeking information.

4.3 Normal Time Period to Supply Information

In the normal course, information shall be supplied to an applicant within 21 days from the receipt of the application by the public body. If the information sought concerns the life or liberty of a person, it shall be supplied within 48 hours. More details on this subject is provided below in Table 1.

TABLE 1: Time Period for Supply of Information

Sr. No.	Situation	Time limit for disposing of applications
1	Supply of information in normal course	21 days
2	Supply of information if it concerns the life or liberty of a person	48 hrs
3	Supply of information if application/request is received after transfer from another Public body * (a) In normal course (b) In case the information concerns the life or liberty of a person	 (a) 21 days (b) 48 hrs
4	Supply of information after the Information Officer has made a request for extension due to; (a) The request is for a large amount of information or requires a search through a large amount of information and meeting the original time limit would unreasonably interfere with the activities of the information holder concerned; or (b) Consultations are necessary to comply with the request that cannot be reasonably completed within 21 days.	35 days (21 days + 14 days)
5	Supply of information after notifying within the 21 days; (a) The inexistence of or inability to find information after exhausting all means searching for it within the authority (b) The information requested has been prepared for presentation to the National Assembly (c) The information constitutes a report or part thereof that has been prepared for the purpose of reporting to an official body or an officer, but only until the report has been presented or made available to that body or person upon the expiration of 35 days from the date of the request (whichever is earlier).	 (a) 14 days (b) Delay only until the expiration of five sitting days of the National Assembly (c) 35 days
6	**Review of decision** a) Review applications must be submitted by the Information Officer to the Head of the information holder within 5 days of receipt b) Decision from Head due within 15days.	15 days

a) the public body shall make the transfer to the Public Body which hold the information within five days from date of receipt of the request.
(b) Immediately notify the requestor of the transfer in writing

4.4 Transfer of a Request Application

Section 17 (1) of the ATI Act, provides that access to the information shall be given to a requestor in one or more forms. The Information Commission has developed the different forms suitable for different request. These forms will help both the requestor and the Information Officer to get enough information to process and to be able to access the right information.

Section 18 of the ATI Act provides that the Information shall be provided to a requestor in the national language in which the information is kept.

Sometimes requests are made to a public body for information, which do not concern that public body, or only a part of which is available from the public body to which the application is made and remaining or whole of the information concerns another public body or many other public authorities.

Section 9(1) of the ATI Act provides that a person who desires to obtain any information shall make a request to the Information Officer of the public body. If an application is made to a public body requesting information which is held by another public body or the subject matter of which is more closely connected with the functions of another public body, the public body to which the application is made shall transfer the application to that other public body known to hold such information ***(refer to Transfer Form – see Annex 2).***

In such a case, the public body, while transferring the application or sending a copy of the request to the concerned public body, shall inform that public body that the application fee, if applicable, has been received. The registration number of the request should not be changed and the request should be tallied with other requests received by the authority who is providing the information. A record of the transfer should be kept. The applicant should also be immediately informed about the transfer of their application and the particulars of the public body to whom the application or a copy thereof has been sent to ***(refer to Response Transfer Letter Template - see Annex 4).***

The Information Officer of the public body who has received the request should make sure that the transfer is made promptly so not to make it difficult for the other public body to provide the information to the requestor within the time limit of 21 days. In any case, Section 13(2) of the ATI Act requires such transfer to be made within five days from the date the request is received.

4.5 Reviews

The information requested by an applicant should either be supplied to him or his application should be rejected within the time prescribed by the ATI Act. If an applicant is not supplied information within the prescribed time of 21 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him. They may prefer to make an appeal to the Head of the public body, who is the Chief Executive Officer or the Principal Secretary ***(see Annex 3 for Review Form).***

Appeals can also be made if the applicant is aggrieved by the decision of the Information Officer. Such an appeal should be filed within a period of 60 days from the date of receiving the refusal of access to the information. With good cause, a Head of a public body may entertain an appeal after the 60 days. The public body shall dispose of the appeal (make a decision and notify the requestor of that decision) within a period of 15 days of the receipt of the appeal. If the authority fails to pass an order on the appeal within the prescribed period, or if the requestor is not satisfied with the order of the authority, he may make a second appeal to the Information Commission.

A third party may appeal to the Head of the public body if it is not satisfied with the decision made by the Information Officer about disclosure of information for which the third party had objected. Such an appeal can be made within 10 days from the date of the receipt of notice from the Information Officer that they propose to disclose the concerned information. If not satisfied with the decision of the Head, the third party can refer the second appeal to the Information Commission within 15 days.

4.6 Various Forms

The following forms could be seen at the Annexes:

1. Information Request Form
2. Information Transfer Form
3. Information Review Form
4. Standard Template Letter Informing the Requestor of the Transfer of Request
5. Standard Template Letter Acknowledging Receipt or Request
6. Standard Template Letter Denying a Request
7. Standard Template Letter Responding to a Review
8. Standard Template Letter of Information Officer Informing Requester of an Extension
9. Standard Template Letter of Information Officer Informing Third Party

4.7 Request Flow Diagram (see Annex 10)

Annex 10 provides a graphical overview of a request flow.

4.8 Deemed Refusal

Section 14 of the ATI Act, state that if an Information Officer fails to give a decision on a request for information within a time specified in section 11(1) of the Act or, where that time period has been extended in accordance with section 12, within any extended period of time, the information officer is deemed to have refused the request.

4.9 Deferral of Access

Section 15 (1) of the ATI Act, provides that an Information Officer who receives a request for information may defer the provision of access to the information if –

a) The Information has been prepared for presentation to National Assembly but only until the expiration of five sitting days of the National Assembly; or

b) The information constitutes a report or part therefore that has been prepared for the purpose of reporting to an official body or person acting in their capacity as an officer of the state, but only until the report has been presented or made available to that body or person or upon the expiration of 35 days from the date of the request, whichever is earlier.

CHAPTER FIVE – PUBLICATION OF INFORMATION MANUAL [SECTION 53]

Every public body must make and publish a publication manual in the manner prescribed and submit that manual to the Information Commission. For standard purposes, the Information Commission shall create a model publication manual that all public bodies shall use.

An information manual is a short document (about two pages long) setting out your high-level commitment to proactively publish information. It is suitable for all sectors and consists of seven commitments and seven classes of information.

The information manual commits you to publish certain classes of information. It also specifies how you should make the information available, what you can charge, and what you need to tell members of the public about the manual.

5.1 Contents of the Manual

Section 53 subsection (1) of the ATI Act states that, "*As soon as possible but in any event within two years of the coming into operation of this Act, or within 6 months of the establishment of the public body, whichever is the earlier, all information holders shall prepare information manuals, publish them in such manner as may be prescribed, and submit them to the Information Commission.*"

Manuals referred to in subsection (1) shall include the categories of information that the information holder will proactively disclose and those, which will be made available only through the formal request process as per Section 53, subsection (2) of the ATI Act.

5.2 List of Categories/Index to the Records of the Public Body

The list of categories/index to the records of the public body will include:

1. Description of the records
2. Name of custodian
3. Contact details of custodian
4. Retention period
5. Security classification/exemption status of information

CHAPTER SIX – REPORTING REQUIREMENTS [SECTION 54]

6.1 Annual Report to the Information Commission

Section 54 of the ATI Act states that the Information Officer of each public body shall annually, but no later than the end of the first quarter, submit to the Information Commission a report stating in relation to the body in respect of the preceding year —

(a) The number of requests for access received;

(b) The number of requests for personal information received;

(c) The number of requests for access granted in full;

(d) The number of requests for access refused —

  i. in full; and

  ii. in part;

(e) The number of times each provision of Part III was relied on to refuse access in full or in part;

(f) The number of cases in which the periods stipulated in section 11 were extended in terms of section 12;

(g) The number of review applications lodged with the head of the information holder;

(h) The number of reviews lodged on the ground that a request for access was regarded as having been refused in terms of section 14;

(i) The number of cases in which, as a result of a review, access was given to information;

(j) The number of appeals filed before the Information Commission and the outcome of those appeals;

(k) A description of the steps or efforts taken by the Head of the body to encourage all officers of that body to comply with the provisions of this Act;

(l) Any facts which indicate an effort by the body to administer and implement the spirit and intention of this Act according to its submitted plan;

(m) Particulars of any penalties imposed against any person under this Act;

(n) Particulars of any disciplinary action taken against any person under this Act;

(o) Particulars of any difficulties encountered in the implementation of this Act in terms of the operations of the body, including issues of staffing and costs; and

(p) Recommendations for reform, or amendment of this Act, other legislation, or practice relevant to the optimal realisation of the objectives of this Act.

According to section 54 subsection 2, the Information Commission may impose a fine not exceeding SCR100, 000 on public bodies that do not comply with the annual reporting obligation.

Section 54 Subsection (3) also states that public bodies shall incorporate the annual report submitted to the Information Commission under the ATI Act into their annual reports submitted to the National Assembly.

The Information Officer of each public body shall annually, but no later than the end of the first quarter, submit to the Information Commission a report stating the categories of information that have been proactively disclosed by the public body, including those documents referred to in section 5 of the ATI Act, and the place where the public can access that information.

CHAPTER SEVEN – HANDLING OF REVIEWS [SECTIONS 34 and 63]

Deciding appeals under the ATI Act is a quasi-judicial function. It is, therefore, necessary that the public body should see to it that justice is not only done but it should also appear to have been done. In order to do so, the order passed by the public body should be a speaking order giving justification for the decision arrived at.

A requestor may apply for a review of any decision of an Information Officer An application for review shall be filed by a requestor with the Information Officer of the public body within 60 days of the receipt of the relevant decision of an information officer, and shall include the identity of the request and decision for which the review is requested.

If the Head of a public body concludes their review (within the 15 day prescribed timeframe) and determines that the requestor should be supplied information contrary to of what was decided by the Information Officer, they may either (i) pass an order directing the Information Officer to give such information to the requestor (in full or in part); or (ii) give the information to the requestor (in full or in part. The requestor should be notified in writing the decision made.

In the first case, the Head of the public body should ensure that the Information Officer immediately supplies the ordered information to the requestor. It would however, be better if the Head of the public body chooses the second course of action and the Head themselves furnishes the information to the requestor along with the order passed by him in the matter.

If the Information Officer does not implement the order passed by the Head of the public body and the Head of the public body feels that intervention of higher authority is required to get his order implemented; the Head should bring the matter to the notice of the Information Commission. The Information Commission is, according to the provisions of the ATI Act, competent to take action against the Information Officer.

7.1 Right of Review in the ATI Act

Section 34 of the ATI Act stipulates the following on the review of decisions

(1) The Head of the Information Holder may on application, review a decision taken by the Information Officer under this Act.

(2) A requestor may apply for a review of any decision of an Information Officer.

(3) A third party may apply for a review of a decision of an Information Officer to grant access to information containing its third party information.

(4) An application for review under subsection (2) shall be filed with the Information Officer of the public body within 60 days of the receipt of the relevant decision of an Information Officer.

(5) An application for review under the subsection (3) shall be filed with the Information Officer of the relevant body within 10 days of the receipt of a decision of an Information Officer.

(6) An application for review shall identify the request and decision of the Information Officer, which is the subject of the review.

(7) If an application under subsection (1) is lodged after the expiry of 60 days, the Information Officer may, upon good cause shown and with the approval of the head of the information holder**,** allow the late lodging of the application**.**

(8) As soon as possible, but in any event within five days after receipt of a review application, the Information Officer shall submit to the head of the information holder;

(a) the review application;

(b) the Information Officer's reasons for the decision; and

(c) The information that is the subject of the review,

and notify the requestor and, where relevant, the third party in writing that the documents have been so submitted.

7.2 Decision on Review

Section 35 of the ATI Act stipulates the following about making and communicating decisions on review:

(1) The Head of the Information Holder to whom a review application is submitted in accordance with section 34 shall as soon as reasonably possible, but in any event within 15 days after the review application is received by the Information Officer —

(a) make a decision; and

(b) notify the requestor or the third party, as the case may be, of that decision in writing.

(2) If the Head of the Information Holder determines to grant access to the information, the notice to the requestor referred to in subsection (1) shall state —

(a) the reproduction fee or transcription fee, if any payable;

(b) the form in which access will be given; and

(c) that the requestor may appeal to the Information Commission under section 58 against the decision in respect of the reproduction fee, or transcription fee payable or the form of access and the process for lodging that appeal.

7.3 Review by the Information Commission

A requestor or a third party may appeal against the decision of the Head of the information holder in writing to the Information Commission.

The Information Commission may, on conclusion of the appeal proceedings before it, issue orders or recommendations on any matter before it, including —

(a) affirming the decision of the information holder;

(b) varying the type of access originally granted or requested;

(c) setting aside the decision of the information holder and making a ruling;

(d) requiring the information holder to take such steps as may be necessary to secure compliance with its obligations under the ATI Act; or

(e) mandating negotiation, conciliation, and arbitration, pursuant to section 48(2)(a).

The Information Commission may issue such directions, as it considers necessary to enforce its decisions.

The Information Commission may impose a fine not exceeding SCR.25,000 in cases where the Information Officer without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under Part II of the Act or in bad faith denied the request for information or knowingly gave incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing of information.

CHAPTER EIGHT – APPLICATION OF EXEMPTIONS [SECTIONS 20-30]

This chapter is intended to help public bodies understand the concept of Exceptions in the effective administration of the ATI Act, as outlined in Sections 20 to 30.

8.1 Refusal [Section 20]

An Information Officer may refuse to grant access to information if the information requested for falls within an exemption stated in Part III of the ATI Act.

8.2 Personal Information of a Third Party [Section 21]

An Information Officer may refuse a request for information if its release would involve the unreasonable disclosure of personal information about a natural third party, including a deceased individual. However, a request shall not be refused where—

a) the third party does not make a representation under section 33(3) stating why access to the information should not be granted;

b) the third party consents to the disclosure;

c) the third party has been deceased for more than 10 years;

d) the information is in the public domain;

e) the information relates to the physical or mental wellbeing of an individual who is under the care of the requestor and who is —

   i. under the age of 18 years; or

   ii. incapable of understanding the nature of the request, and giving access would be in the individual's interests;

f) the information is about a deceased individual and the requestor is— the individual's next of kin or legal representative;

   i. making the request with the written consent of the individual's next of kin or legal representative;

   ii. the executor of the deceased's estate; or

   iii. the trustee of a trust which can benefit from the deceased individual's estate;

g) the information relates to the position or functions of an individual who is or was an official of the information holder or any other public body;

h) the information was given to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it was given, that the information belongs to a class of information that would or might be made available to the public.

8.3 Commercial and Confidential Information of an Information Holder or a Third Party [Section 22]

An Information Officer may refuse a request for information if it contains —

(a) trade secrets of the information holder or a third party; or

(b) Information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or third party.

A request may not be refused where—

(a) the disclosure of the information would facilitate accountability and transparency of decisions taken by the information holder;

(b) the information relates to the expenditure of public funds;

(c) the disclosure of the information would reveal misconduct or deception;

(d) the third party consents to the disclosure; or

(e) the information is in the public domain.

8.4 Protection of Life, Health and Safety of an Individual [Section 23]

An Information Officer may refuse a request for information where the release of the information is likely to endanger the life, health or safety of an individual.

8.5 National Security and Defence [Section 24]

An Information Officer may refuse to grant access to information if such access would cause substantial prejudice to the security or defence of the state, where "security or defence of the state" means—

(a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities;

(b) intelligence relating to —

i. the defence of the state; or

ii. the detection, prevention, suppression or curtailment of subversive or hostile activities;

(c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b);

(d) the identity of a confidential source; or

(e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons.

"Subversive or hostile activities here means":

(a) an attack against the state by a foreign element;

(b) acts of sabotage or terrorism aimed at the people of the state or a strategic asset of the state, whether inside or outside the state; or

(c) a foreign or hostile intelligence operation.

8.6 International Relations [Section 25]

An Information Officer may refuse to grant access to information:

(a) supplied by or on behalf of the state to another state or an international organisation in terms of an international agreement with that state or organisation which requires the information to be held in confidence;

(b) required to be held in confidence by international law;

(c) on the positions adopted or to be adopted by the state, another state or an international organisation for the purpose of present or future international negotiations; or

(d) that constitutes diplomatic correspondence exchanges with another state or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the country,

If the release of the information would cause substantial prejudice to the international relations of the state.

8.7 Economic Interests of the State [Section 26]

An Information Officer may refuse to grant access to information if the disclosure of such information would cause serious prejudice to the economy of the state by disclosing prematurely decisions to change or continue economic or financial policy relating to:

(a) exchange rates;

(b) the regulation of banking or credit;

(c) taxation;

(d) the stability, control and adjustment of prices of goods and services, rents and other costs and rates of wages, salaries and other income; or

(e) the entering into of overseas trade agreements.

8.8 Law Enforcement [Section 27]

An Information Officer may refuse to grant access to information, if such access would cause prejudice to:

(a) the prevention or detection of crime;

(b) the apprehension or prosecution of offenders;

(c) the administration of justice;

(d) the assessment or collection of any tax or duty; or

(e) endanger the security and life of an informant relating to a crime or investigation.

8.9 Privileged Documents [Section 28]

An Information Officer may refuse to grant access to information if it:

(a) consists of confidential communication between a medical practitioner and his or her patient;

(b) consists of confidential communication between a lawyer and his or her client;

(c) consists of confidential communication between a journalist and his or her source; or

(d) would otherwise be privileged from production in legal proceedings,

(e) Unless the patient, client, source or person, as the case may be, entitled to the privilege consents to the release or has waived the privilege.

8.10 Academic or Professional Examination and Recruitment Processes [Section 29]

Section 29 subsection 1 states that an Information Officer may refuse a request for information relating to an academic or professional examination or recruitment or selection process prior to the completion of that examination or recruitment or selection process if the release of the information is likely to jeopardise the integrity of that examination or recruitment or selection process.

Section 29 subsection (2) provides that Information referred to under subsection (1) shall be released on request after the academic or professional examination or recruitment or selection process has been completed.

8.11 Proposal Submitted to Cabinet [Section 30]

An Information Officer may refuse a request for information relating to a proposal submitted to the Cabinet for consideration and minutes and decisions of the Cabinet unless authorised by the Cabinet Secretary for such release.

8.12 Vexatious Requests Or Provision In Other Law For Information

Section 32 (1) state that An Information Officer may refuse a request if the request is manifestly vexatious. Subsection (2) state that an information Officer may refuse a request in cases where any written law other than this Act provides for giving the information requested.

8.13 Severance

Section 31.(1) Where a portion of a record or document containing requested information is exempt from release under this Part, the exempt portion of the information shall be severed or redacted from the record or document and access to the remainder of the information shall be granted to the requestor.

Therefore, if the requested information falls within an exception under the ATI Act, where possible, Information Officers may release that portion of a record that or body of records or information that falls outside of the exemption by redacting. (i.e., obscuring the non-releasable part of the text/information) or severing that portion of the record or body of records or information that may be released from that which cannot be released.

CHAPTER NINE – FEES [SECTION 19]

In accordance with Section 19 (1) of the ATI Act, a requestor is not required to pay any fee —

(a) in relation to time spent by an information holder searching for the information requested; or

(b) in relation to time spent by the information holder examining the information to determine whether it contains exempt information or deleting exempt information from a document.

Subsection (2), an information holder may charge the requestor a reproduction fee as may be prescribed.

Subsection (3) states that where a request is made that a written transcription, be produced of any information provided to the requestor, the information holder may recover the costs of such transcription at such rate as may be prescribed from the requestor.

To encourage use of the ATI Act, all fees will be waived for the time being. A fee schedule proposal will be developed after time is allowed to gain experience with providing access under the ATI Act. Processing and handling of small fees can be more expensive for public bodies than cost of reproducing and providing access to information for free.

CHAPTER TEN – ANNEXES

10.1 ANNEX 1 - Information Request Form

Registration Number:

Is this Request for Personal information? Yes ☐ No

Are you requesting this information on behalf of someone?: Yes No

***If yes attach certificate of approval/affidavit**

Name:

NIN:

Address:

Email: **Phone number:**

Description / Details of request:

.....
.....
.....
.....
.....
.....
.....

Is this the first request for this information? : Yes ☐ No ☐

Does this request relate to any other request issued?: Yes ☐ No ☐

What is your preferred mode of contact for enquiry about request or for notification of information readiness?

Email: ☐ Post: ☐ Phone: ☐

Official use:

Format of information: Hard copy ☐ Digital ☐

Information Officer's notes:

.....
.....
.....

10.2 ANNEX 2 – Information Transfer Form

To Information Officer:

From Information Officer:

Registration Number of Request:

Date and time Information Request lodge:

Reasons for Transfer:

……
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……
……

Internal Notes:

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The transferred request should keep its registration number and be tallied as a normal request by the MDA providing the information.

10.3 ANNEX 3 – Information Review Form

Registration Number of Denied Request:

Name:	
NIN:	
Address:	**Phone number:**
Email:	

Reasons for Requesting Review of Decision:
…… …… …… …… …… …… …… ……
Internal Notes:
…… …… …… …… …… …… …… ……
Decisions:
…… …… …… …… …… ……

The request form should be attached to the review form when it is forwarded to the Head of Information Holder.

10.4 ANNEX 4 – Standard Template of Letter Informing the Requestor of the Transfer of Request

Date

Address Of Requestor

Dear Sir/Madam

TRANSFER OF INFORMATION REQUEST

Your request has been recorded with registration number……. transferred to ……. holds the information you are requesting.

Please make use of the registration number in any further communication with the mentioned Ministry /Department /Agency your request.

Yours Sincerely,

…….

10.5 ANNEX 5 – Standard Template of Response Letter Acknowledging Receipt of Request

Date

Address Of Requestor

Dear Sir/Madam

ACKNOWLEDGMENT OF RECEIPT OF INFORMATION REQUEST

Your request has been recorded with registration number …….

Please make use of the registration number in any further communication with us your request.

Yours Sincerely,

…….

10.6 ANNEX 6 - Standard Template of Letter Response to Denial of a Request

Date

Address of Requestor

Dear Sir/Madam

REQUEST DENIED

After thorough review of your request you are hereby informed that it has been denied based on the following reasons.

……
……
……
……
……
……
……
……
……..

If you find that the reason provided are unsatisfactory, you can appeal your case to the Head of the Organisation.

Thank you for your understanding.

Yours Sincerely,

……..

10.7 ANNEX 7 - Standard Template of Letter Response to Review

Date

Address of Requestor

Dear Sir/Madam

REVIEW DECISION

Kindly find herewith the review decision for your application holding registration number …….

After reviewing your case your request is herewith……..

……
……
……
……
……
……..

Thank you for your attention.

Yours Sincerely,

…….

10.8 ANNEX 8 - Standard Template Letter of Information Officer Informing Requester of an Extension

Date

Address of Requestor

Dear Sir/Madam

REQUEST FOR AN EXTENSION

The request you have made has been found to be a bit more complex due to the accessibility of the information in our own registry. I hereby inform you that I will need an extension of 14 more days to ensure that I convey the right information to you.

I hope that you understand and I apology for any inconvenience this delay may cause.

Thank you for your attention.

Yours Sincerely,

…….

10.9 ANNEX 9 - Standard Template Letter of Information Officer Informing Third Party

Date

Address Of Third Party

Dear Sir/Madam

NOTICE TO THIRD PARTY

A request under the Access to Information Act has been made to [Name of Public Body] for access to certain records. Included in those records is material that contains your personal information/your commercially sensitive information/confidential information, which was supplied to us by you. The records relevant to your interests have been copied, scheduled and are attached.

I am the Information Officer assigned to this request and in reviewing this request, I am required under Section 33 the Act to consult with the third party to whom the records relate.

I would ask you to review these records and if you have no objections to the release of the information, please contact me at [Insert telephone number and email address].

If you believe this information should not be released, you are entitled under Section (33) Act to make submissions about access to the records. Your submissions must be made within **10 working days** of the receipt of this letter.

Thank you for your understanding.

Yours Sincerely,

…….

10.10 ANNEX 10 - Standard Template Letter of Deferral of Access

Date

Address Of The Requestor

Dear Sir/Madam

DEFERRAL OF ACCESS

You requested access to documents relating to [*subject of request*], could not be released in this time being (*state the reason for the decision, including the provisions of this Act relied on*).

You will be able to gain access to the information requested by *(state the likely period for which access is to be deferred).*

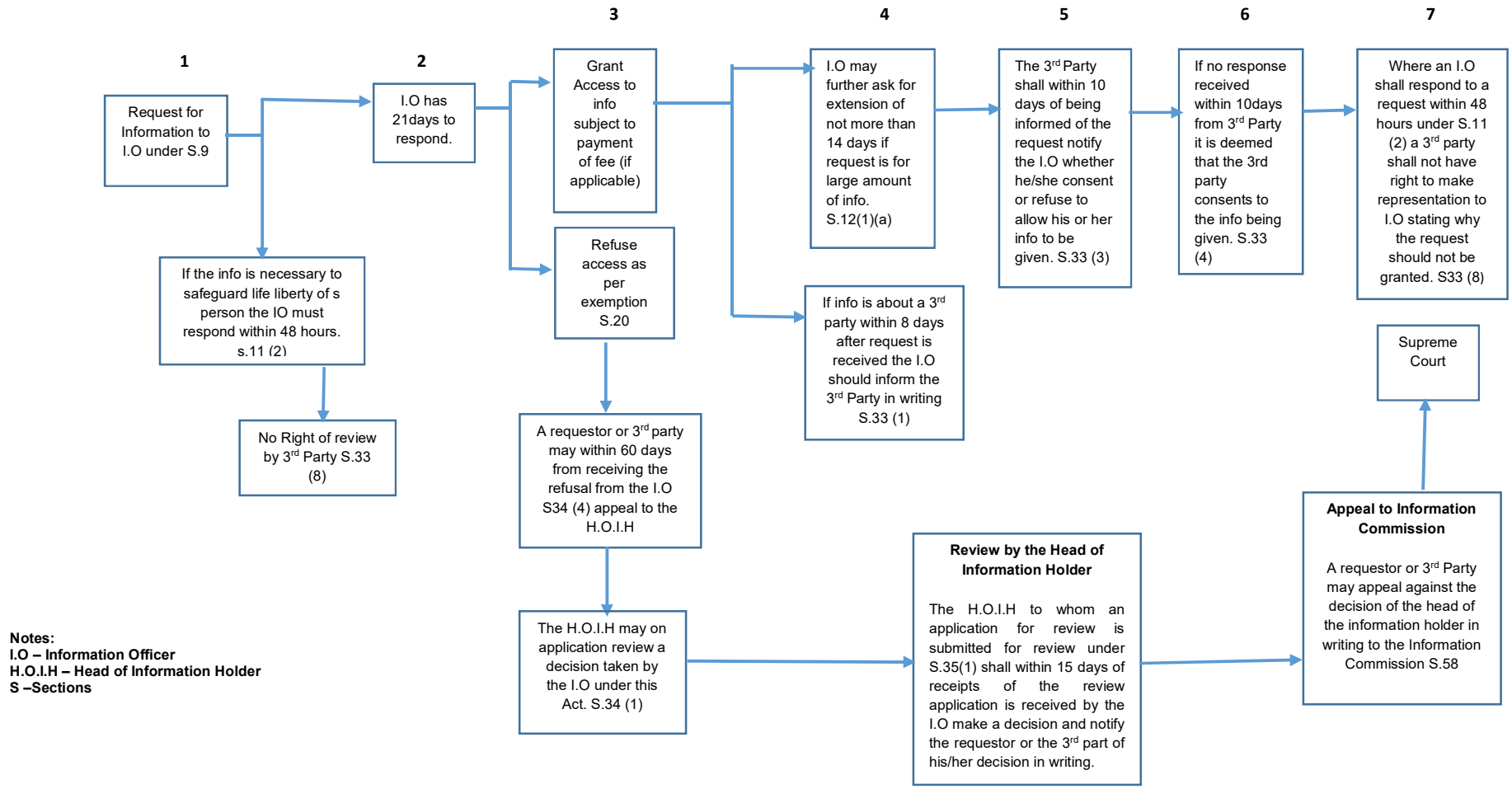
Thank you for your understanding.

Yours Sincerely,

……

10.11 Request Flow Diagram

ACCESS TO INFORMATION PROCESS UNDER THE ACCESS TO INFORMATION ACT, 2018 FLOW CHART



Notes:
I.O – Information Officer
H.O.I.H – Head of Information Holder
S –Sections