

INFORMATION BILL 2016
(BILL NO. 34 OF 2016)

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BILL NO. 34 OF 2016**A BILL**

FOR AN ACT TO GIVE EFFECT TO SECTIONS 25 AND 150 OF THE CONSTITUTION OF THE REPUBLIC OF FIJI, TO FACILITATE THE RIGHT OF ACCESS TO INFORMATION HELD BY THE GOVERNMENT AND PUBLIC AGENCIES, TO CORRECT OR DELETE FALSE OR MISLEADING INFORMATION THAT DIRECTLY AFFECTS A PERSON, TO PROMOTE ACCESS TO INFORMATION AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Information Act ~~2016~~ 2018.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette, provided however that the Minister may, by notice in the Gazette, prescribe different dates as to when this Act comes into force with respect to a public agency.

Interpretation

2. In this Act, unless the context otherwise requires—

“Commission” means the Accountability and Transparency Commission established under section 121 of the Constitution;

“Constitution” means the Constitution of the Republic of Fiji;

“day” means any day other than a Saturday, Sunday or public holiday;

“directly affects” has the meaning given to that term in section 6(4);

“disciplined force” has the meaning given to that term under section 163(1) of the Constitution;

“exempt matter” means any matter or information that is exempt from disclosure under this Act;

“Government” means the Government of the State;

“Government company” means a company where all of the stock or shares in the capital is or are beneficially owned by the Government, whether such shares are held in the name of a Minister, public officer, nominee of the State or otherwise;

“information” means any material in any form, including a record, report, correspondence, opinion, recommendation, press statement, circular, order, logbook, agreement, sample, model, data or document such as—

- (a) a map, plan, drawing or photograph;
- (b) any paper or other material on which there is a mark, figure, symbol or perforation that is capable of being interpreted;
- (c) any article or material from which a sound, image or writing is capable of being reproduced with or without the aid of any other article or device; or
- (d) any article on which information has been stored or recorded either mechanically or electronically,

provided that the material directly affects a determination or decision made by a public agency in relation to the person making a request under section 6;

“information officer” means a person designated under section 36;

“Minister” means the Minister responsible for the administration of this Act;

“permanent resident” means a person who has been granted a permanent residence permit by the permanent secretary responsible for immigration;

“personal information” means any information held in respect of a natural person, excluding any information that is held in respect of the person in the person’s capacity as an officer or employee of a public agency or as an independent contractor engaged by a public agency;

“public agency” means—

- (a) an office created by, or continued in existence under, the Constitution;
- (b) an office in respect of which the Constitution makes provision;
- (c) a commission established by, or continued in existence under, the Constitution or any written law;
- (d) a Government ministry, department, division or unit;
- (e) a disciplined force;
- (f) a court or tribunal established by, or continued in existence under, the Constitution or any written law;
- (g) a statutory authority;
- (h) a Government company; or
- (i) an office established by written law,

but does not include a public agency that is exempted under section 21 from the provisions of this Act; and

“State” means the Republic of Fiji.

Application

3. This Act binds the State in such manner, and subject to such limitations, as prescribed in this Act.

Objectives

4. The objectives of this Act are to—

- (a) give effect to the right of access to information under sections 25 and 150 of the Constitution;
- (b) recognise the right of a person to access information held by a public agency in accordance with the procedures prescribed in this Act;
- (c) ensure that a person is informed of the operations of a public agency, including, in particular, the rules and practices followed by the public agency in its dealings with members of the public; and
- (d) allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure that the information is correct, accurate, complete and not misleading.

PART 2—RIGHT TO INFORMATION

Division 1—Access to information

Right of access to information

5. Subject to this Act, a person may access any information held by a public agency.

Request for access to information

6.—(1) Subject to subsection (2), any person who is a natural person and is a citizen or a permanent resident of the State may request the Commission to make available to the person any information held by a public agency.

(2) Notwithstanding any other provision in this Act, the information requested by a person under subsection (1) must be information which—

- (a) directly affects the person making the application; and
- (b) comes into existence upon or after the commencement of this Act.

(3) A request made under subsection (1) must—

- (a) be made in the form prescribed by regulations made under this Act;
- (b) specify the public agency with which the information is held;
- (c) specify the particulars of the information requested or such other particulars as are necessary for the identification of the information requested;
- (d) subject to section 12, specify the form preferred by the person making the request for accessing the information;
- (e) comply with any other requirement of the Commission; and
- (f) be accompanied by such fee as prescribed by regulations made under this Act.

(4) For the purposes of this Act, information “directly affects” a person if the information is about the person or a determination or decision made by a public agency regarding the person making the request under this section, provided that information relating to the determination or decision of a public agency or an approval or authorisation granted by a public agency to a person does not directly affect another person (“second person”), or a determination or decision regarding the second person, merely because the public agency has denied or refused an application, approval, claim or request made by the second person.

Determination of request by the Commission

7. Subject to this Act, the Commission must, within 10 days from the receipt of the request, determine whether the request is to be accepted or refused.

Acceptance of request by the Commission

8. If the Commission accepts the request made under section 6, the Commission must, within 20 days from the receipt of the request—

- (a) forward the request to the relevant public agency;
- (b) direct that public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and

- (c) inform the person who made the request that the request has been accepted by the Commission and that the public agency has been directed to make the information available to that person.

Refusal of request by the Commission

9.—(1) The Commission must refuse a request made under section 6 if the Commission is satisfied that the—

- (a) information requested does not comply with the requirements in section 6(2);
- (b) request does not substantially comply with the requirements in section 6(3);
- (c) information requested is exempt from disclosure under section 20; or
- (d) information requested is held by a public agency that is exempt under section 21.

(2) If a request is refused under subsection (1), the Commission must, within 20 days from the receipt of the request, provide the person who made the request with a written statement of the decision and the reason for the refusal.

Transfer of request to another public agency

10.—(1) Notwithstanding section 12, where the Commission forwards a request to a public agency under section 8 or this section and the information to which the request relates is—

- (a) not held by that public agency but is, to the knowledge of that public agency, held by another public agency (“second public agency”); or
- (b) reasonably believed by that public agency to be more closely connected with the functions of the second public agency,

the public agency to which the request is forwarded must notify the Commission in writing within 10 days from the receipt of the request from the Commission.

(2) The Commission must, within 10 days from the receipt of the written notice under subsection (1)—

- (a) transfer the request to the second public agency;
- (b) direct the second public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and
- (c) inform the person who made the request that the request has been transferred to the second public agency and that the second public agency has been directed to make the information available to that person.

Urgent requests

11. Where the information requested in a request made under section 6 is strictly a matter of urgency concerning the life or liberty of a person, the particulars of the information specified in the request must, subject to this Act, be provided as soon as reasonably practicable from the receipt of the request and in the manner determined by the Commission.

*Division 2—Facilitation of request**Public agency to provide assistance and information*

12.—(1) A public agency to which a request has been forwarded by the Commission under section 8 or 10 must—

- (a) render effective and timely assistance;
- (b) provide, where reasonably practicable, all the particulars of the information specified in the request; and
- (c) provide access to the information, as soon as reasonably practicable and within 20 days from the receipt of the request from the Commission,

to the person who made the request under section 6.

(2) Notwithstanding subsection (1), a public agency may impose a charge for the expenses involved in making the requested information available.

(3) Pursuant to subsection (2), the public agency must notify the person who made the request of the charge required to be paid and the person must pay such charge in order to access the information.

(4) Any charge under subsection (2) must be reasonable and based on—

- (a) in the case of information contained in documents, the nature and estimated quantity of documents;
- (b) the estimated expenses involved in making the information available;
- (c) the estimated time for preparing the information; and
- (d) in the case of an urgent request under section 11, any expenses incurred pursuant to that urgent request.

Forms of access

13.—(1) Subject to subsection (2), any information which a public agency is directed under section 8 or 10 to make available to the person who has made the request may be made available in any of the following ways—

- (a) by giving the person a reasonable opportunity to inspect the information;
- (b) by giving the person a copy of the information;
- (c) in the case of information that is an article or material from which sounds or images are capable of being reproduced, by giving the person a copy of the article or material or by making arrangements for the person to hear those sounds or view those images; or

- (d) in the case of information that is a document where words are recorded in a way in which the words are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document.
- (2) A public agency must make the information available in the form preferred by the person who made the request unless to do so would—
- (a) impair the efficient administration of the public agency;
 - (b) be detrimental to the preservation of the information or, having regard to the physical nature of the information, would otherwise not be appropriate; or
 - (c) involve an infringement of copyright, other than copyright owned by the State or a public agency, subsisting in matter contained in the information.
- (3) If information cannot be made available in the form preferred by the person who made the request, the public agency—
- (a) may provide the information in another form as determined by the public agency; and
 - (b) must give the person a written statement of the reason for not making the information available in the form preferred by the person who made the request.
- (4) If the person who made the request has indicated that access to information be given in a particular form and access in that form is refused but given in another form, the person is not required to pay a charge in respect of the giving of access that is greater than the charge that the person would have been required to pay had access been given in the form preferred by the person who made the request.
- (5) This section does not prevent a public agency from giving access to information in any other form agreed upon between the public agency and the person who made the request.
- (6) A public agency must refuse to give access to information unless any charge payable in respect of dealing with the request, or giving access to the information, has been paid.
- (7) In giving access to information, a public agency must take such measures as reasonably practicable to ensure that persons with disabilities are able to access such information in accordance with the rights of persons with disabilities as prescribed under section 42 of the Constitution.

No charge for requests for personal information

14. A charge, other than the prescribed fee, must not be made for making available personal information about the person who made the request unless the charge is a requirement under a written law that regulates information about that personal information.

*Information stored electronically etc***15.** If—

- (a) it appears to a public agency that a request relates to information of a kind that is not contained in a written document held by the public agency; and
- (b) the public agency may create a written document containing information of that kind by the use of equipment that is usually available to it for retrieving or collating stored information,

the public agency must deal with the request as if it were a request for a written document so created and the public agency is deemed to hold such a document.

*Deletion of exempt matter from documents***16.** If—

- (a) a request is made for access to a document containing any exempt matter;
- (b) it is reasonably practicable to give access to a copy of the document from which the exempt matter has been deleted; and
- (c) it appears to the public agency concerned, whether from the particulars of the information specified in the request or after consultation with the person who made the request, that the person would wish to be given access to such a copy,

the public agency must give access to the person accordingly.

Information provided out of time

17. Where a public agency fails to provide the person who made the request with the particulars of the information specified in the request within the period prescribed in section 12 or the extended period determined by the Commission in section 18, the information must be provided free of charge by the public agency to the person, and any payment of any charge paid to the public agency must be reimbursed to the person.

Extension of time

18.—(1) The Commission may extend the period prescribed in section 12 if—

- (a) the request is made to access a large quantity of documents, or necessitates a search through a large quantity of documents, and complying with the prescribed period would unreasonably interfere with the operations of the public agency;
- (b) consultations are necessary to make a determination on the request; or
- (c) the information cannot be reasonably provided to the person who made the request within the prescribed period.

(2) Any extension under subsection (1) must be reasonable having regard to the nature of the circumstances and must be for a further period not exceeding 90 days.

(3) The Commission must provide the person who made the request with a written notice of the extension as soon as reasonably practicable after a decision has been made to extend the prescribed period, and such notice must specify the period of the extension and state the reason for the extension.

Refusal of request by public agency

19.—(1) A public agency may refuse a request if the public agency is satisfied that—

- (a) all reasonable measures have been taken to locate the information requested and no such information exists or the information cannot be located; or
- (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public agency from its other operations.

(2) A public agency must refuse a request if the public agency is satisfied that the information requested is exempt matter.

(3) If a public agency refuses a request under subsection (1) or (2), the public agency must provide the Commission and the person who made the request with a written statement of the decision and the reason for the decision.

Division 3—Exemption from disclosure

Exemption from disclosure of information

20. Notwithstanding anything contained in this Act, the following information is exempt from disclosure and any request made under section 6 for such information must be refused by the Commission—

- (a) information, the disclosure of which would adversely affect the sovereignty, security or scientific or economic interests of the State;
- (b) information, the disclosure of which would lead to the incitement or commission of an offence;
- (c) information expressly forbidden to be published by any court of law or tribunal or which would constitute a contempt of court;
- (d) information, the disclosure of which would cause a breach of the privileges of Parliament or a committee or subcommittee of Parliament;
- (e) information that is subject to legal professional privilege;
- (f) information available to a person in the exercise of the person's fiduciary duty, unless the Commission is satisfied that the disclosure of such information is in the public interest;
- (g) information received in confidence from a foreign government or an international organisation;
- (h) information, the disclosure of which would endanger the life or safety of any person or identify the source of information or assistance given in confidence for the purposes of law enforcement or security;

- (i) information which would impede the process of investigation, apprehension or prosecution of an alleged offender;
- (j) Cabinet documents, including records of deliberations of meetings or decisions of Cabinet;
- (k) information which relates to personal information, the disclosure of which has no relationship to or does not affect any public activity or interest, or which would cause the unwarranted invasion of privacy of the person, unless the Commission is satisfied that the disclosure of such information is in the public interest;
- (l) information which is classified by Cabinet as an official or State secret and certified in writing by the Secretary to ~~the~~ Cabinet;
- (m) information, the disclosure of which would endanger or harm any protected site or the environment;
- (n) a trade secret, business know-how, commercially sensitive information and proprietary information relating to the intellectual property of a business; and
- (o) any other information, the disclosure of which, the Commission deems is not in the public interest.

Exempt public agencies

21.—(1) The Minister may, following consultation with the Commission, exempt a public agency from the provisions of this Act by notice in the Gazette and the exemption will take effect on the date prescribed in the notice.

(2) The Minister may, following consultation with the Commission, revoke an exemption made under subsection (1) by notice in the Gazette and the revocation will take effect on the date prescribed in the notice.

Division 4—Failure to provide access

Complaint to the Commission

22.—(1) If a public agency fails or refuses to provide any person with the information which the public agency has been directed by the Commission to make available to that person, that person may lodge a complaint with the Commission.

(2) The Commission, upon receipt of a complaint under subsection (1), may require the public agency to provide a written explanation for the failure or the refusal to provide the information.

(3) A public agency that is required by the Commission under subsection (2) to provide a written explanation must provide the written explanation to the Commission within 10 days from the receipt of the requirement from the Commission to provide the written explanation.

Commission to facilitate access to information

23. Subject to section 19, upon receipt of the written explanation from a public agency under section 22, the Commission may undertake such steps as the Commission deems necessary, including holding meetings with the public agency and the person who made the request for the information, to facilitate the access to the information which has been requested by the person.

*Division 5—Application and appeal**Application to the High Court by the Commission*

24.—(1) If the Commission, after receipt of the written explanation from a public agency under section 22 and after undertaking such steps as necessary to facilitate access to the information, is satisfied that the public agency has failed or refused to provide access to the information contrary to this Act, the Commission may make an application to the High Court for an order requiring the public agency to provide access to the information.

(2) The High Court must, upon receipt of an application from the Commission under subsection (1), make a determination on the application within 30 days from the date of the application.

Appeal to the High Court against the Commission

25.—(1) Any person who is aggrieved by a decision of the Commission under this Act has the right to appeal that decision to the High Court on a question of law.

(2) The High Court, upon receipt of an appeal under subsection (1), must make a determination on the appeal within 30 days from the date of the appeal.

PART 3—RIGHT TO CORRECTION AND DELETION OF INCORRECT PERSONAL INFORMATION

Request for correction or deletion of personal information

26.—(1) If—

- (a) whether under this Act or any other written law, personal information contained in a document has been made available to a person by a public agency; and
- (b) the person claims that, or in the person's opinion, the personal information in the document is incorrect, inaccurate, incomplete or misleading,

the person may request the public agency to—

- (i) correct the document;
- (ii) delete incorrect, inaccurate or misleading information; or
- (iii) annotate the document.

(2) A request under subsection (1) must—

- (a) be in writing;

- (b) specify the particulars that are reasonably necessary to enable the document to be identified;
- (c) specify the particulars that the person claims are necessary to correct, or delete information in, the document; and
- (d) specify a postal address to which notices under this Part are to be sent.

Determination of request for correction or deletion of personal information

27. When a public agency receives a request under section 26, the public agency must, within 10 days from the receipt of the request, determine whether the request is to be accepted or refused.

Acceptance of request for correction or deletion of personal information

28.—(1) If the public agency accepts the request made under section 26, the public agency must, in accordance with the particulars of the request—

- (a) correct the document;
- (b) delete incorrect, inaccurate or misleading information; or
- (c) annotate the document,

within 30 days from the receipt of the request.

(2) The public agency may include written comments on the document when annotating personal information under this section.

Refusal of request for correction or deletion of personal information

29.—(1) A public agency may refuse a request under section 26, if—

- (a) the public agency is satisfied that the information in the document is correct, accurate, complete and not misleading;
- (b) the public agency is satisfied that the request contains particulars that are incorrect, inaccurate, incomplete or misleading; or
- (c) the procedures for correcting or deleting the information in the document are specified by or provided for under any other written law, whether or not the correction or deletion of the information in the document is subject to a fee or charge.

(2) If a request is refused under subsection (1), the public agency must, within 20 days from the receipt of the request, provide the person with a written statement of the decision and the reason for the refusal of the request.

Notations to be included in documents

30.—(1) If a public agency has refused to correct or delete information in a document under section 29, the person may, by notice in writing, request the public agency to include in that document a notation—

- (a) specifying the particulars in which the person who made the request claims that the information is incorrect, inaccurate, incomplete or misleading; and

- (b) if the person claims that the information is incorrect, inaccurate, incomplete or misleading, setting out such information as the person claims is necessary to ensure that the information is correct, accurate, complete and not misleading.
- (2) A public agency must—
- (a) comply with the request made under subsection (1); and
 - (b) inform the person who made the request in writing of the nature of the notation.
- (3) If a public agency discloses to any other person or public agency any information contained in a document to which a request under this section relates, the public agency—
- (a) must provide to that other person or public agency, when the information is disclosed, a statement—
 - (i) that the person to whom the information relates claims that the information is incorrect, inaccurate, incomplete or misleading; and
 - (ii) setting out particulars of the notation included in the document under this section; and
 - (b) may include in the statement the reason for the refusal by the public agency to correct or delete the information in the document in accordance with the notation.

Incomplete requests

31. In relation to section 26, the public agency must—

- (a) accept a request even if the request does not contain sufficient particulars to enable the document to be identified; and
- (b) take reasonable steps to assist the person in providing such particulars.

Complaints regarding correction or deletion of information

32.—(1) If a public agency fails or refuses to comply with this Part, the person who made the request under section 26 may lodge a complaint with the Commission.

(2) The Commission, upon receipt of a complaint under subsection (1), may require the public agency to provide a written explanation for the failure or the refusal to correct or delete the information.

(3) A public agency that is required by the Commission under subsection (2) to provide a written explanation must provide the written explanation to the Commission within 10 days from the receipt of the requirement from the Commission to provide the written explanation.

Commission to facilitate correction or deletion of information

33. Upon receipt of the written explanation from a public agency under section 32, the Commission may undertake such steps as the Commission deems necessary, including holding meetings with the public agency and the person who made the request for the correction or deletion of the information, to facilitate the correction or deletion of the information which has been requested by the person.

Application to the High Court by the Commission for correction or deletion of information

34.—(1) If the Commission, after receipt of the written explanation from a public agency under section 32 and after undertaking such steps as necessary to facilitate correction or deletion of the information, is satisfied the public agency has failed or refused to correct or delete the information contrary to this Act, the Commission may make an application to the High Court for an order requiring the public agency to correct or delete the information.

(2) The High Court must, upon receipt of an application from the Commission under subsection (1), make a determination on the application within 30 days from the date of the application.

PART 4—PROMOTING ACCESS TO INFORMATION

Public agencies to make information publicly available

35. A public agency must, within 12 months from the application of this Act to that public agency, ensure that the following information is available upon request to any member of the public—

- (a) the structure, functions and responsibilities of the public agency;
- (b) a list of the entities falling under the public agency, including the location of the public agency, opening hours and subjects handled;
- (c) the title, business address and contact details of the head of the public agency and the information officer;
- (d) a directory of the public agency's officers and employees and a brief description of the powers and duties of the officers and employees;
- (e) the particulars of the public agency's finances;
- (f) the types of documents held by the public agency, including the categories of documents that are available—
 - (i) for inspection only;
 - (ii) for purchase; or
 - (iii) free of charge;
- (g) all manuals and similar types of documents that contain policies, principles, rules or guidelines in accordance with which the public agency makes decisions or recommendations;

- (h) the process to be followed by members of the public who wish to obtain information from the public agency or correct or delete personal information held by the public agency; and
- (i) such other information as may be prescribed by the Commission by notice in the Gazette,

provided that the public agency is not required to make exempt matter available.

Public agencies to designate information officers

36.—(1) A public agency must, within 20 days from the application of this Act to that public agency, designate an employee of that public agency to be the information officer of that public agency to facilitate and process requests for access to information and correction and deletion of information.

(2) The information officer must—

- (a) promote, within the respective public agency, best practices in relation to—
 - (i) the right of access to information, its importance and the role of the information officer in facilitating that right;
 - (ii) the right to correct and delete information that is incorrect, inaccurate, incomplete or misleading; and
 - (iii) record management and the archiving and disposal of records;
- (b) serve as a central contact for receiving applications under this Act;
- (c) assist persons seeking information or the correction or deletion of information under this Act;
- (d) receive complaints under this Act; and
- (e) carry out any other functions as set out in this Act or any other written law.

PART 5— ACCOUNTABILITY AND TRANSPARENCY COMMISSION

Functions and powers of the Commission

37. The Commission has such power, authority, duty and function as prescribed in this Act.

Guidelines and directions

38.—(1) The Commission may from time to time issue guidelines and directions for the performance of the Commission's functions and for the handling of requests for access to information.

(2) In addition to the powers and functions prescribed in this Act, the Commission is also responsible for—

- (a) publishing guidelines on minimum standards and best practices for public agencies to proactively publish information and make information publicly available;

- (b) publishing guidelines to public agencies on information and records management, including the manner in which access to information can be made more efficient by public agencies;
- (c) publishing guidelines on the creation, management and disposal of records and, subject to the availability of resources, the digitising of records and use of the internet as far as possible to publish information by public agencies;
- (d) training information officers and other employees of public agencies on the right to information and the effective implementation of this Act;
- (e) promoting public awareness in relation to the application of this Act; and
- (f) disseminating information to the public in relation to the framework and procedures for the exercise of a person's rights under this Act, including publishing material in relation to exempt matter.

Commission to maintain confidentiality

39.—(1) Any member, staff, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act, unless—

- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function of the Commission under this Act;
- (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of civil or criminal proceedings or proceedings under this Act or any other written law; or
- (c) it is necessary to do so for reporting a breach of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or ~~to~~ imprisonment for a term not exceeding 5 years; or ~~to~~ both.

Annual report

40. The annual report published by the Commission must—

- (a) include a report on the exercise of the Commission's functions under this Act during the year; but
- (b) not contain the names of any person making a request under this Act.

PART 6—MISCELLANEOUS

Unlawful access

41. A person who, in order to gain access to personal information of another person, knowingly deceives or misleads the Commission or any public agency to provide such information commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or ~~to~~ imprisonment for a term not exceeding 5 years; or ~~to~~ both.

Relationship with other written laws

42. This Act does not affect the operation of any written law that—

- (a) requires information held by a public agency to be made available;
- (b) enables a person to obtain access to information held by a public agency; or
- (c) enables a person to ensure that the person's personal information held by a public agency is accurate, complete and not misleading.

Defunct public agencies

43. Any information held by a public agency that has ceased to exist is deemed to be held—

- (a) if the former public agency's functions have been transferred to another public agency, by the other public agency;
- (b) if the former public agency's functions have been transferred to 2 or more other public agencies, by the public agency to which the information most closely relates; or
- (c) if the former public agency's functions have not been transferred to another public agency, by such other public agency to which the information most closely relates as determined by the Commission.

Documents in certain public agencies

44. Any information held by—

- (a) the National Archives of Fiji;
- (b) the Fiji Museum;
- (c) a library of a public agency; or
- (d) any other prescribed public agency,

but that has been produced by a public agency other than those in paragraphs (a) to (d) are deemed to be held by the other public agency.

Protection in respect of actions for defamation or breach of confidence

45.—(1) If access to information is given pursuant to this Act, and the person providing access to the information believes in good faith that this Act permits or requires the access to be given—

- (a) no action for defamation or breach of confidence lies against—
 - (i) the Commission;
 - (ii) the public agency;
 - (iii) an employee or officer of the public agency or the information officer of the public agency; or

(iv) a person acting under the direction of the Commission, the public agency or information officer of the public agency,

by reason of the giving of access to the information; and

(b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the producer of the information or any other person by reason of the producer or other person having supplied the information to the public agency.

(2) The giving of access to information pursuant to this Act is not to be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information or its contents by the person to whom access is given.

Protection in respect of certain criminal actions

46. If access to a document is given pursuant to this Act, and the person by whom the access is made believes in good faith that this Act permits or requires the access to be given, neither the person who provides access to the information nor any other person concerned in giving access to the information commits an offence merely as a result of the giving of access to the information.

Indemnity

47. No matter or thing done by—

(a) the Commission;

(b) a public agency; or

(c) any person acting on behalf, of or under the direction, of the Commission or a public agency,

will, if the matter or thing was done in good faith for the purposes of this Act, subject the Commission, the head of the public agency or any person so acting, personally to any action, liability, claim or demand.

Regulations

48. The Minister may, in consultation with the Commission, make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

INFORMATION BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 Section 25 of the Constitution of the Republic of Fiji (**‘Fijian Constitution’**) provides for the right of every person to access information held by the Government and to correct or delete false or misleading information that affects a person.
- 1.2 Further, section 150 of the Fijian Constitution provides that a written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.
- 1.3 The Information Bill 2016 (**‘Bill’**) is therefore a fulfilment of the requirement to enact legislation giving effect to sections 25 and 150 of the Fijian Constitution.

2.0 CLAUSES

- 2.1 The Bill is divided into 6 Parts.
- 2.2 Part 1 of the Bill provides for the preliminary provisions. These are the short title and commencement, interpretation, application and objectives provisions.
- 2.3 The objectives of the Bill, outlined in clause 4, are to—
- (i) give effect to the right of access to information under sections 25 and 150 of the Fijian Constitution;
 - (ii) recognise the right of a person to access information held by a public agency;
 - (iii) ensure that the public is informed of the operations of public agencies; and
 - (iv) allow a person to correct or delete personal information held by a public agency.

2.4 Part 2 of the Bill is divided into 5 Divisions.

- (i) Division 1 of Part 2 of the Bill provides the framework for the right to access information held by a public agency. It sets out who can request for information held by a public agency, how a request is to be made and considered, and the grounds for acceptance or rejection of such requests as well as the manner in which urgent requests may be dealt with.
- (ii) Division 2 of Part 2 of the Bill mandates assistance from a public agency that has been forwarded a request from the Accountability and Transparency Commission (**‘Commission’**) and the form or manner in which such access may be facilitated or provided.
- (iii) Division 3 of Part 2 of the Bill sets out what information and what public agencies are exempted from the provisions of the Bill.
- (iv) Division 4 of Part 2 of the Bill provides for a complaints mechanism where a public agency fails or refuses to comply with whatever obligations may arise from the Bill and the manner in which the Commission may deal with such complaints.
- (v) Division 5 of Part 2 of the Bill provides for the appeals processes. The Commission may make an appeal to the High Court against a decision of a public agency, which must make a determination on such appeal within 30 days from the receipt of such application. Similarly, any aggrieved person may make an application to the High Court in relation to a decision made by the Commission under the Bill.

2.5 Part 3 of the Bill provides for the right of a person to correct or delete incorrect, inaccurate, incomplete or misleading information held by a public agency about such person.

2.6 Part 4 of the Bill provides for the promotion of access to information, stating that within 12 months from the application of the law to a public agency, such public agency must ensure that the following information, save exempt matter, is made available upon request by any member of the public—

- (i) the structure, functions and responsibilities of the public agency;
- (ii) a list of the entities falling under it, including their location, opening hours, and subjects handled;
- (iii) the title, business address and contact details of the head of the public agency and the information officer;
- (iv) a directory of the public agency’s officers and employees and a brief description of the powers and duties of its officers and employees;
- (v) the particulars of its finances;

- (vi) documents available for inspection, purchase or free of charge;
- (vii) all manuals and similar types of documents that contain policies, principles, rules or guidelines in accordance with which the public agency makes decisions or recommendations;
- (viii) the process to be followed by members of the public who wish to obtain information from the public agency or amend their personal information held by the public agency; and
- (ix) information prescribed by the Commission.

2.7 Part 5 of the Bill provides for the functions and powers of the Commission in relation to the Bill. The Commission is responsible for publishing guidelines on minimum standards, information and records management and training information officers and other employees of public agencies on the right to information and the implementation of the Bill. Part 5 of the Bill also mandates the Commission's duty to maintain confidentiality in relation to its functions.

2.8 Part 6 of the Bill provides for miscellaneous provisions, such as—

- (i) establishing the offence of unlawful access;
- (ii) outlining the relationship with other laws;
- (iii) clarifying the procedure in relation to defunct agencies;
- (iv) setting out the manner in which certain agencies are to be dealt with;
- (v) providing protection in respect of actions for defamation or breach of confidence;
- (vi) providing protection in respect of certain criminal actions;
- (vii) establishing an indemnity for acts done in good faith; and
- (viii) empowering the Minister to make regulations.

3.0 MINISTERIAL RESPONSIBILITY

3.1 This Act comes under the responsibility of the Minister responsible for information.

A. SAYED-KHAIYUM
Attorney-General