

CAYMAN ISLANDS



**Freedom of Information Act
(2021 Revision)**

FREEDOM OF INFORMATION (GENERAL) REGULATIONS

(2021 Revision)

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(2021 Revision)FREEDOM OF INFORMATION (GENERAL)
REGULATIONS
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PART I - PRELIMINARY

Citation

1. These Regulations may be cited as the *Freedom of Information (General) Regulations (2021 Revision)*.

Definitions

2. In these Regulations —

“**chief officer**” has the meaning given by the *Public Service Management Act (2018 Revision)*;

“**consent**” means any freely given, specific, informed and unambiguous indication of a person’s wishes by which a person, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to that person;

“**information manager**” means any person appointed under section 49 of the Act and includes any person who has the power to carry out any of the functions of an information manager as prescribed in these Regulations;

“**personal information**” means information (including information forming part of a database) or an opinion, whether true or not, about an individual, whether living or dead, whose identity is apparent, or can reasonably be ascertained, from the information or opinion, and includes the particulars set out in Schedule 1; and

“**public interest**” means but is not limited to things that may or tend to —

- (a) promote greater public understanding of the processes or decisions of public authorities;
- (b) provide reasons for decisions taken by Government;
- (c) promote the accountability of and within Government;
- (d) promote accountability for public expenditure or the more effective use of public funds;
- (e) facilitate public participation in decision making by the Government;
- (f) improve the quality of services provided by Government and the responsiveness of Government to the needs of the public or of any section of the public;
- (g) deter or reveal wrongdoing or maladministration;
- (h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
- (i) reveal untrue, incomplete or misleading information or acts of a public authority.

PART II - RIGHT OF ACCESS

General

Repealed

3. **Repealed** by regulation 3 of the *Freedom of Information (General) (Amendment) Regulations, 2020 [SL 152 of 2020]*.

Applications by third parties

4. (1) No application for access to a record may be made on behalf of a third party unless the record applied for relates to personal information, in which case regulation 13(2) applies.
- (2) Where an application referred to in paragraph (1) is made on behalf of a third party, the information manager dealing with the application shall treat the person making the application as the applicant.



Provision of access

5. (1) Subject to paragraph (2), where a public authority grants access to a record under section 14 of the Act, that record shall be provided to the applicant as soon as practicable.
- (2) Where a fee is payable for granting access to a record, the record shall be provided to the applicant within fourteen calendar days from the date the fee is received by the public authority.

Reasonable search

6. (1) An information manager shall make reasonable efforts to locate a record that is the subject of an application for access.
- (2) Where an information manager has been unable to locate the record referred to in paragraph (1), the information manager shall make a record of the efforts that information manager made.

Receipt and acknowledgement of requests

7. (1) An officer in a public authority to whom an application is given or transmitted shall accept it and pass it to the information manager as soon as practicable but not later than two working days from the date of receiving the application.
- (2) In the circumstances referred to in paragraph (1) the date of receipt of the application by the public authority shall be the date on which the application was initially received by the officer.
- (3) Not more than ten calendar days after receipt of an application that meets the requirements of section 7 (2) of the principal Act the information manager shall dispatch to the applicant a written acknowledgement in the form set out in Schedule 2.

Access to records during working hours

8. The preparation of records by a public authority for the purpose of granting access and the inspection, viewing or listening to or collection of copies of records shall be done during the working hours of the public authority unless otherwise authorised by the chief officer.

Transfer of requests

9. (1) As soon as practicable after receipt by the public authority of an application the information manager shall make a determination under section 8 of the principal act as to whether the application should be referred to another public authority.
- (2) Where an application is transferred to another public authority, the information manager shall within ten calendar days dispatch correspondence to the applicant indicating that the public authority has transferred the application to the appropriate public authority, naming the authority.

Unreasonable diversion of resources

10. (1) Before a public authority makes a decision to refuse access under section 9(c) of the principal Act (on the basis that the request would unreasonably divert its resources) the information manager shall send written communication to the applicant —
- (a) explaining how the request is likely to unreasonably divert resources; and
 - (b) inviting consultation with a view to narrowing the request.
- (2) Written communication sent under paragraph (1) automatically suspends the thirty-day period referred to in section 7(4) of the principal Act (for responding to the application) until the date when the applicant agrees to narrow the request to such extent as may be agreed by the public authority.
- (3) The information manager shall make a determination on “unreasonable diversion of resources” on a case by case basis and for this purpose —
- (a) the resources to be considered are the existing resources of the public authority reasonably required to process the request consistent with attendance to other priorities including —
 - (i) identifying, locating or collating the records within the public authority’s filing systems; and
 - (ii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters; and
 - (b) the types of factors which shall be considered to determine whether the diversion of resources would be unreasonable include —
 - (i) the nature and size of the public authority;
 - (ii) the number, type and volume of records falling within the request; and
 - (iii) the work time involved in fully processing the request.
- (4) In this regulation, a reference to the time spent by a public authority in searching for, locating or collating a record within a public authority’s filing system or otherwise spent in processing the application does not include —
- (a) where the record is not found in the place in which, according to the filing system of the public authority (referred to in this regulation as the “relevant filing system”) it ought to be located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the record had been found in that place; or
 - (b) where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the record is located, any time other



than such time as would have been spent by the public authority in searching for or retrieving the record if the relevant filing system had indicated the place in which the record is located and the record had been found in that place.

Personal information and third party rights

Notice to third parties

- 11.** (1) Where an information manager intends to grant access to a record which the information manager believes contains third party personal information relating to a living individual, the information manager shall, within fourteen calendar days of receipt of the application, send the third party written notice of the application for access.
- (2) A notice under paragraph (1) shall —
- (a) state that a request has been made by an applicant (without naming the applicant) for access to a record containing personal information about the third party;
 - (b) describe the contents of the request, the record concerned and the nature of the personal information;
 - (c) afford the third party an opportunity to consent in writing to the disclosure of that third party's personal information or make written representations to the public authority explaining why the information should not be disclosed;
 - (d) state that the third party should respond within twenty-eight calendar days from the date of the notice (and the notice shall be dispatched on the date of the notice); and
 - (e) state that a decision will be made by the public authority whether or not to grant access to the third party's personal information in accordance with the Act and these Regulations.
- (3) If the third party does not respond to a notice under paragraph (1) within the time specified in paragraph (2)(d), or the information manager is not satisfied that the notice has reached the third party, the information manager shall make such further attempts as are practical to contact the third party, either by telephone, fax, email, or other feasible means of communication.
- (4) If no access is intended to be given to a record that contains third party personal information relating to a living individual, no notice shall be given to a third party under this regulation.

Notification of decisions to grant access and right of appeal

- 12.** (1) On reaching a decision to grant access or partial access to third party personal information, the information manager shall, as soon as reasonably practicable, send separate written notification of that decision to the applicant and to the third party.
- (2) A notice under paragraph (1) shall state —
- (a) the decision taken by the public authority in relation to the request;
 - (b) the options available to the applicant under sections 33 and 42 of the Act; and
 - (c) if the third party has not consented in writing to the disclosure, that —
 - (i) the third party has a right of appeal under paragraph (3);
 - (ii) access to the record will be given unless the third party appeals the decision to the Ombudsman under paragraph (3);
 - (iii) if the third party intends to appeal the decision of the Ombudsman, that the third party must notify the public authority of the third party's intention to do so;
 - (iv) the record will be withheld from the applicant until the third party's time for appeal to the Ombudsman has expired; and
 - (v) if the third party appeals to the Ombudsman, the decision of the Ombudsman will replace the public authority's decision.
- (3) Where the third party is dissatisfied with the decision, or any part of the decision, under paragraph (1), the third party may appeal to the Ombudsman within thirty calendar days from the date of receipt of the notice of the decision.
- (4) If the third party appeals within the period specified in paragraph (3), the public authority shall not provide access to the record and shall await the decision of the Ombudsman.
- (5) If there is no appeal within the period specified in paragraph (3), the record may be released to the applicant on the first day following that period.

Application for access: personal information

- 13.** (1) Any person applying for access to that person's personal information shall provide proof of identification acceptable to the information manager confirming that that person is the person to whom the information relates.
- (2) Where the applicant is not the person to whom the personal information relates, the person applying for the information shall provide sufficient proof of that person's authority to apply for the information and have access to it and such proof includes but is not limited to —
- (a) a power of attorney;
 - (b) a court order; or



- (c) probate or letters of administration.

Fees

Fees in general

- 14.** (1) The fees in Schedule 3 apply.
- (2) Where access is granted to a record and the record is to be inspected on the premises of the public authority no fee is payable.
- (3) Before access is given to a record the information manager shall give the applicant an estimate of the fees, and the fees shall be paid before access is granted, except fees for reproduction, which may be paid at the time of collecting the information.
- (4) Payment may be made by such method as the public authority may specify and for this purpose the public authority may specify payment by cash, cheque, money order or electronic bank card.
- (5) The application shall be deemed to have been withdrawn where the applicant fails within thirty calendar days of receipt of the notification of fees —
- (a) to respond;
- (b) to set an appointment for inspection; or
- (c) to present themselves at the public authority to receive copies of the record.
- (6) Where before the expiry of the period referred to in paragraph (5) the applicant applies for an extension the information manager may, where the information manager thinks appropriate, extend that period for a further thirty calendar days.
- (7) During the periods referred to in paragraph (6) the information manager shall do that person's best to remind the applicant that payment needs to be made within the time allowed.

Waiver of fees

- 15.** (1) No fee shall be charged where the chief officer or information manager is of the view that the applicant is of inadequate means or for any other good reason.
- (2) An application for a waiver shall be made in writing to the chief officer or information officer setting out the grounds on which a waiver is requested.
- (3) An application for a waiver shall be made no later than fourteen calendar days from the date of receipt of the estimate of the fees.

Expedited service

- 16.** (1) The information manager may in the information manager's discretion expedite the processing of a request where the applicant shows that there is a compelling need or urgency justifying any request being dealt with earlier than other pending applications.

- (2) Without limiting the generality of the power contained in paragraph (1), expedited service shall be provided where —
- (a) the record is required for judicial or quasi-judicial proceedings relating to the applicant's life or liberty and has to be made available to the court or tribunal concerned earlier than the record would otherwise be made available under the regular periods specified under the principal Act or these Regulations;
 - (b) production of the record within the periods specified under the principal Act or these Regulations would endanger public health and public safety; or
 - (c) production of the record within the periods specified under the principal Act or these Regulations would endanger the life of the applicant or seriously affect the applicant's health, or deprive the applicant of their liberty.
- (3) The request for expedited processing shall be made at the time of submitting the application for information.
- (4) Where an information manager decides to give an expedited service, the record shall be produced within a maximum of ten calendar days.

PART III - REPEALED

Repealed

- 17. Repealed** by regulation 10 of the *Freedom of Information (General) (Amendment) Regulations, 2020 [SL 152 of 2020]*.

Repealed

- 18. Repealed** by regulation 10 of the *Freedom of Information (General) (Amendment) Regulations, 2020 [SL 152 of 2020]*.

Repealed

- 19. Repealed** by regulation 10 of the *Freedom of Information (General) (Amendment) Regulations, 2020 [SL 152 of 2020]*.

PART IV - INTERNAL REVIEW

Internal review

- 20. (1)** Subject to sections 33 and 34 of the Act and this regulation, the power to conduct an internal review may be delegated to a person of equal or superior rank to the person who made the initial decision.



- (2) Where a chief officer or Minister made the initial decision —
- (a) no internal review shall be conducted; and
 - (b) any appeal against the initial decision shall be made to the Ombudsman.

PART V - INFORMATION MANAGERS

Functions of information managers

21. An information manager shall —

- (a) ensure persons who are applying for access to personal information prove their identity;
- (b) conduct interviews with applicants to ensure that the appropriate records are located;
- (c) ensure that applicants are fully informed of the status of their applications;
- (d) inform applicants when it is known that a record is already published and if requested provide information as to where the information can be accessed or provide access to that information;
- (e) monitor the inspection of records;
- (f) make a record of all applications for access as required by these Regulations and maintain a disclosure log for the public authority of all applications granted;
- (g) coordinate throughout the public authority the information required to be published under section 5 of the principal Act;
- (h) transfer applications to other public authorities after consultation with the appropriate information manager on the functions and duties of the public authority and the existence or otherwise of the records required by the applicant in that public authority;
- (i) assist persons who have limited ability to read or write English or with any mental or physical disability;
- (j) authenticate copies of records in the manner authorised by the Attorney General under section 10(4) of the principal Act;
- (k) examine records to which access has been applied for to determine whether —
 - (i) the record is exempt in its entirety;
 - (ii) the record contains exempt matter;
 - (iii) access should be granted; or
 - (iv) the grant of access should be deferred under section 11 of the principal Act;

- (l) publish in a newspaper on an annual basis the relevant publication scheme, and this function may be performed in conjunction with other public authorities; and
- (m) keep up to date their knowledge of the principal Act, the laws relevant to the administration of their public authority, the Code of Practice on Records Management, and the laws and practices affecting the management of records and information.

Delegation of functions

- 22.** (1) An information manager may delegate such of that information manager's functions as that information manager thinks necessary or expedient but shall remain accountable for the discharge of those functions.
- (2) Any complaint against the information manager concerning the service provided by the information manager that is not a matter which is subject to internal review shall be referred to the chief officer of the public authority.

Sharing of information managers

- 23.** A public authority may agree with one or more other public authorities to appoint one information manager.

Duty to keep register of applications

- 24.** (1) The information manager shall, in the monitoring and tracking computer system used by Government, keep a register of applications in electronic form.
- (2) The register of applications referred to in paragraph (1) shall include —
- (a) an application number;
 - (b) the name of the applicant;
 - (c) the date of the application;
 - (d) a summary of the applicant's request;
 - (e) the decision made in relation to the applicant's request, including the specific section or sections of the Act relied upon where the request was not granted in full;
 - (f) the date the response was sent to the applicant;
 - (g) whether an internal review was requested by the applicant and the outcome of that review; and
 - (h) whether an appeal was made to the Ombudsman by the applicant and the outcome of that appeal.



List of public authorities

- 25.** Without limiting the scope of “public authority” as defined in section 2 of the principal Act, the Cayman Islands National Archive shall, for the convenience of the public, cause to be published in the Gazette, on the Government’s website or in such other manner and with such frequency as it may think fit, a list of public authorities.

PART VI - MISCELLANEOUS**Requests on behalf of minors**

- 26.** (1) In this section “child” means a person under the age of sixteen years.
- (2) A parent or guardian of a child may, without obtaining the consent of the child, apply for and be granted access to information (including personal information) relating to that child but access shall not be granted —
- (a) if, in the opinion of the Information Manager, such information is of such a nature as not to be ordinarily made available to a parent in the normal course of dealing with a public authority; or
 - (b) if, in the opinion of the Information Manager, after consultation with the Director of Children and Family Services, the granting of access to such information would not be in the best interests of the child.

SCHEDULE 1

(Regulation 2)

SCOPE OF “PERSONAL INFORMATION”

1. The scope of “personal information”, as defined in regulation 2, includes —
 - (a) the individual’s name, home address and home telephone number;
 - (b) the individual’s race, national or ethnic origin, colour, and religious or political beliefs or associations;
 - (c) the individual’s age, sex, marital status, family status and sexual orientation;
 - (d) an identifying number, symbol or other particular assigned to the individual;
 - (e) the individual’s fingerprints, other biometric information, blood-type, genetic information and inheritable characteristics;
 - (f) information about the individual’s health and health care history, including information about a physical or mental disability;
 - (g) information about the individual’s educational background;
 - (h) information about the individual’s financial records;
 - (i) information about the individual’s employment history;
 - (j) information about an individual gathered in the course of assessments related to the individual’s skills, aptitudes and capabilities, including psychometric testing conducted for employment purposes;
 - (k) information about the individual’s criminal history, including criminal records where a pardon has been given;
 - (l) another person’s expression of opinion about the individual; and
 - (m) the individual’s personal views or opinions, except if those views or opinions are about someone else.
2. The scope of “personal information”, as defined in regulation 2, does not include —
 - (a) where the individual occupies or has occupied a position in a public authority —
 - (i) the name and official contact details of the individual;
 - (ii) information relating to the position, or its functions;
 - (iii) the general terms upon, and subject to which, the individual would occupy that position; or

- (iv) anything written or recorded in any form by the individual, in the course of and for the purpose of, the performance of the functions of the position; and
- (b) where the individual is or was providing a service for a public authority under a contract for services —
 - (i) the name of the individual;
 - (ii) information relating to the service, or the terms of the contract;
 - (iii) anything written or recorded in any form by the individual, in the course of and for the purposes of, the provision of the service; or
 - (iv) the views or opinions of the individual in relation to a public authority, the staff of a public authority, the business or the performance of the functions of a public authority.



SCHEDULE 2

(Regulation 7)

FORM OF ACKNOWLEDGEMENT

Dear **[Name]**

Thank you for your application dated [insert date of application], received by us on **[insert date of receipt]**.

Your request is being dealt with under the terms of the Freedom of Information Act.

We will undertake the necessary research in order to respond to your request within the prescribed period of thirty calendar days, which count includes weekends and public holidays.

If you have any queries about this letter, please contact me. Remember to quote your reference number above in any future correspondence.

Yours Sincerely,

Information Manager

[Name, address, e-mail address and telephone number]

SCHEDULE 3

(Regulation 14)

FEES

This Schedule prescribes the fees for standard formats, which shall be supported (as applicable) by all public authorities providing copies of records under the Freedom of Information Act.

Copies may be made available in non-standard formats, at a price to be determined by the public authority, not exceeding the actual material and labour costs incurred to produce the copy.

1. Photocopy:
 - (a) Black and white copy (all sizes) - \$1.00 per page;
 - (b) Color copy (all sizes) - \$1.50 per page.
2. Photographs:
 - (a) Black and white / colour (digital photographic print from digital file, scanned hardcopy or existing negative);
 - (i) 8 ½ x 11 (or smaller) - \$5.00;
 - (ii) 8 ½ x 14 - \$7.50;
 - (iii) 11 x 17 - \$10.00;
 - (b) Black and white (photocopy or standard print-out) - \$1.00;
 - (c) Colour (photocopy or standard print-out) - \$1.50.
3. Conversion of an analogue audio or video record (*e.g.* tape or reel-to-reel) into digital MP3 or DivX file format: an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
4. Microfilm duplication 35 mm (\$ 1, 500.00 per roll of 1, 000 ft microfilm; minimum order of 10ft at a cost of \$ 150.00. Microfilm duplication 16 mm (\$ 380.00 per roll of 100 ft microfilm. A minimum order of 10ft at a cost of \$ 38.00. Microfilm print-out black and white copy (all sizes) - \$1.00 per page.
5. Transcripts - an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the transcription.
6. Conversion of a microfilm record into digital JPEG file format: an amount that does not exceed the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
7. Blue print reproduction (\$3.00 per sheet).



8. Maps and plans (\$5.00 per page).
9. Print-out of a digital document or database report black and white copy (all sizes) - \$1.00 per page.
10. Provision of a digital record (text or image) in standard PDF, JPEG or TIF file format:
(a) by email -no charge; (b) on compact disc or DVD - \$2.00.
11. Conversion of a paper record (text or image) into digital PDF, JPEG or TIF file format: the actual costs incurred by the authority, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium (compact disc or DVD).
12. Digital text files converted to audio formats for the visually impaired the actual costs incurred by the Computer Services Department, based on hourly rates of staff undertaking the conversion, plus the purchase cost of any carrier medium.
13. Posting of record: Where access to the record to which the request relates is to be given in the form of the provision of a copy of the record and the copy provided is, at the request of the applicant, to be sent by post or courier, a charge in respect of the posting or delivery of the copy not exceeding the actual cost of post or delivery.
14. Shipping cost (actual cost of shipping method chosen by applicant and a preparation charge of \$20.00).
15. Expedited service: \$ 50.00 payable on making the application.

**Publication in consolidated and revised form authorised by the Cabinet this 5th day
of January, 2021.**

Kim Bullings
Clerk of the Cabinet



ENDNOTES

Table of Legislation history:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
152/2020		Freedom of Information (General) (Amendment) Regulations, 2020 ¹	30-Dec-2020	LG97/2020/s1
30/2008		Freedom of Information (General) Regulations, 2008 ²	23-Dec-2008	GE48/2008/s1

¹ Affirmed by the Cayman Islands Parliament in Government Motion 1 of 2020/2021 on 16th December, 2020.

² Affirmed by the Legislative Assembly in Government Motion 7 of 2008/2009 on 5th December, 2008.

(Price: \$4.80)

