

ST HELENA

REVISED EDITION OF THE LAWS, 2017

CONSTITUTIONAL & ADMINISTRATIVE LAW

PUBLIC ACCESS TO GOVERNMENT INFORMATION ORDINANCE, 2021¹

Ordinance 6 of 2021

Not in force yet

No subsidiary legislation has been made under this Ordinance

PUBLIC ACCESS TO GOVERNMENT INFORMATION ORDINANCE, 2021

THIS ORDINANCE IS NOT IN FORCE YET

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 24 June 2021.

AN ORDINANCE to make provision for public access to information held by the St Helena Government; and for connected and incidental purposes.

PART 1 **PRELIMINARY**

Short title and commencement

1. This Ordinance may be cited as the Public Access to Government Information Ordinance, 2021, and comes into force on the date fixed by the Governor by notice in the *Gazette*.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
“applicant” in relation to a request for information, means the person who made the request under section 5;
“the Government” means the St Helena Government;
“information” means information recorded in any form;
“Information Officer” means the person appointed by the Governor to accept and respond to requests for information under this Ordinance;
“redacted” means where disclosable material has been separated from non-disclosable information by blocking out individual words, sentences or paragraphs, or by the removal of pages or sections prior to release of a document;
“resident” means a person who is ordinarily resident in St Helena, and includes a person who resides in St Helena—
 (a) on a long term entry permit;
 (b) by virtue of being a dependant of a person with St Helenian status; or
 (c) by virtue of being in the service of the Crown in right of the Government of St Helena or a dependant of such person;
“Supreme Court” has the meaning provided in the Interpretation Ordinance, 1968;
“vexatious”, in relation to a request means—
 (a) being frivolous or malicious, deliberately intended to cause, without sufficient public interest grounds, distress, disruption or worry to any party; or
 (b) where the underlying purpose of the request is judged to be not that of obtaining the information, but rather to obstruct or frustrate the work of the Government or any other public authority.

Application

3. (1) This Ordinance applies to all information held by the Government, regardless of who produced or supplied the information, but subject to subsection (2).

(2) This Ordinance does not apply to information—
 (a) not actually held by or already in the possession of the Government; or
 (b) which the Government does not consider to be reliable.

PART 2
ACCESS TO INFORMATION HELD BY THE GOVERNMENT

Right of access to information

4. (1) A person who is at least 17 years of age and—
 (a) has St Helenian status; or
 (b) is a resident of, and is physically present on, St Helena,
 has a right to apply for access to information held by the Government, subject to and in accordance with this Ordinance.

(2) A person is not entitled to access information specified—
 (a) in section 8(1); and
 (b) in section 8(2) if in all the circumstances of the case, the public interest in not disclosing the information specified in section 8(2) outweighs the public interest in disclosing the information specified in section 8(2).

Request for access to information

5. A request for access to information held by the Government must—
 (a) be in writing and submitted to the Information Officer at the address specified by the Governor for purposes of this Ordinance;
 (b) specify that the request is made under this Ordinance;
 (c) clearly identify the applicant and provide an address for correspondence in respect of the request; and
 (d) be specific and contain sufficient details in order to identify the specific information requested.

Considering request for information

6. (1) The Information Officer must acknowledge receipt of a written request under section 5 within three working days of receiving such request.

(2) The Information Officer must co-ordinate the response under this section with the appropriate department of government charged with responsibility for the information for which access is requested.

(3) Subject to section 7, the Information Officer must, no later than 20 working days after the date of receipt of the request, submit a response to the applicant containing—
 (a) the requested information; or
 (b) the reason why the information will not be made available and setting out the details of the exemption that applies.

(4) Where the Information Officer—
 (a) requires the applicant to provide further information to enable the Information Officer to identify and locate the information requested; and
 (b) has informed the applicant of that requirement,
 the Information Officer is not obliged to submit a response under subsection (3) if the applicant does not supply that further information within 20 days from being so informed.

(5) Subject to subsection (6), the information to be made available to the applicant with the response under subsection (3)(a) is the information in question held at the time when the

request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be made available under subsection (3)(a), being an amendment or deletion that would have been made regardless of the receipt of the request.

(6) Where only part of the information in a record is covered by an exemption under section 8, that part of the information will be excluded or redacted and the rest of the information will be disclosed under subsection (3)(a).

(7) The Information Officer must, in the case where an exemption applies under—
 (a) section 8(1)(a), indicate to the applicant where the information can be found; or
 (b) section 8(3)(c), submit to the applicant the response provided under the previous request.

Extension of time

7. (1) The period of 20 working days in section 6(3) commences on the date that—
 (a) the request received by the Information Officer fully complies with the requirements of section 5;
 (b) all further information requested under section 6(4) has been provided; and
 (c) all payments required under section 9(3) have been made.

(2) If compliance with the request within 20 working days is impractical having regard to the complexity and volume of information requested or the availability of resources to collate the information, the Information Officer must notify the applicant of that fact and that the period under section 6(3) will be extended.

Exemptions from duty to disclose information

8. (1) In accordance with section 4(2)(a) the following information is exempt information—

(a) information which is reasonably accessible to the applicant otherwise than under this Ordinance, including information which the Government or other person is obliged by or under any enactment to provide to members of the public on request, whether on payment or otherwise;
 (b) information directly or indirectly supplied to the Government by, or which relates to, bodies dealing with security matters and as listed from time to time in section 23(3) of the Freedom of Information Act 2000;
 (c) information held by the Government only by virtue of being contained in—
 (i) a document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter;
 (ii) a document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter;
 (iii) a document created by a court, or a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter;
 (iv) a document created by, or placed in the custody of, a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration;
 (d) information which is privileged under Standing Orders of the Legislative Council;
 (e) information if disclosure of the information under this Ordinance—
 (i) would, or would be likely to, prejudice the maintenance of the convention of the collective responsibility of the Executive Council; or

- (ii) would, or would be likely to, inhibit the free and frank provision of advice or free and frank exchange of views for the purposes of deliberation; or
- (iii) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs;
- (f) information the disclosure of which would likely allow individuals to be identified, where there is a legitimate and reasonable expectation that their identity should remain confidential;
- (g) information provided to the Government in confidence and where disclosure would constitute an actionable breach of confidence;
- (h) information if its disclosure—
 - (i) is prohibited by or under any enactment; or
 - (ii) would constitute or be punishable as a contempt of court;
- (i) information obtained in confidence from the Government of the United Kingdom and communications between the Office of the Governor and Government of the United Kingdom relating to business of the Office of the Governor;
- (j) information relating to the conferring by the Crown of any honour or dignity;
- (k) information which relates to communications with the Sovereign.

(2) In accordance with section 4(2)(b) the following information is exempt information—

- (a) information already scheduled for publication at some future date (whether determined or not), and it is reasonable in all the circumstances that the information should be withheld from disclosure until such date;
- (b) information obtained in the course of, or derived from, a programme of research if—
 - (i) the programme is continuing with a view to the publication, by the Government or any other person, of a report of the research; and
 - (ii) disclosure of the information before the date of publication would, or would be likely to, prejudice the programme or the interests of any person participating in the programme or holding the information;
- (c) information which is required to be exempt from section 4 for the purpose of safeguarding national security and where disclosure could likely harm the public safety or public order or otherwise jeopardise St Helena's security either from internal or external threats;
- (d) information which constitutes official written advice to Government confidentially given between parties and where disclosure would likely harm the frankness and candour of internal discussions, including any opinion, advice, recommendation and deliberation which is not part of an open Executive Council agenda item;
- (e) information the disclosure of which would likely prejudice the effective formulation or development of Government policy or, by premature disclosure of developing policy, undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views;
- (f) information obtained in confidence from another State or from an international organisation the disclosure of which would likely prejudice relations with the other State or international organisation;
- (g) information the disclosure of which under this Ordinance would, or would be likely to, prejudice the economic or financial interests of the Government;
- (h) information the disclosure of which would, or would be likely to, prejudice—
 - (i) the administration of justice;
 - (ii) the prevention or detection of crime;
 - (iii) the apprehension or prosecution of offenders;
 - (iv) the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified;

- (v) the assessment or collection of any tax or duty; or
- (vi) the operation of immigration controls;
- (i) information the disclosure of which would, or would be likely to, undermine the effectiveness of an auditing or testing procedure used by a public body, or breach the duty of trust and confidentiality between the auditor and the body subject to audit;
- (j) information the disclosure of which would, or would be likely to, put the physical or mental health or safety of an individual or group of individuals at risk or at greater risk, even where that information has been redacted;
- (k) information in respect of which a claim to legal professional privilege or confidentiality of communications could be maintained in legal proceedings;
- (l) the information could likely prejudice someone's legitimate commercial interests or could lead to improper gain or advantage or prejudice the competitive position of a public or private body;
- (m) information for which there is another valid and stated public interest reason for refusing disclosure.

(3) Notwithstanding section 4, no obligation to comply with a request for information pursuant to this Ordinance obtains if—

- (a) handling the request or multiple related requests will cumulatively take more than 12 hours of total staff time;
- (b) the request is vexatious; or
- (c) the request repeats a previous identical or substantially similar request from the same or another applicant, in which case section 6(7)(b) applies.

(4) The Information Officer may consider multiple requests for information to be related for the purposes of subsection (3), if the Information Officer is of the opinion that the requests were submitted separately, whether by the same or different applicants, for the purpose of avoiding the application of subsection (3)(a).

Form of information and charge

9. **(1)** Subject to subsection (2) and (3), the information made available to an applicant under section 6 must be provided electronically.

(2) If an applicant requests information in a form other than electronically, the information must be provided in that other form if it is reasonably practicable, having regard to the cost and resource implications of providing the information in that form.

(3) The Information Officer may impose a charge at the prescribed rate for complying with the request for information, having regard to the volume of information to be provided and the costs for photocopying or the time and resources required to collate the information, and the applicant must be informed of this charge in advance.

PART 3

REVIEW, APPEAL, RECORDS AND REGULATIONS

Review

10. **(1)** An applicant who is dissatisfied with the response or information received from the Information Officer, may submit a written request to the Chief Secretary for an internal review within 20 working days after the date of receipt of the response.

(2) An internal review must be carried out by the Chief Secretary, or a person delegated by the Chief Secretary, who must consider whether or not the request was considered in accordance with this Ordinance.

(3) Upon completion of the review, the Chief Secretary, or delegated person, may—
 (a) confirm the response of the Information Officer; or
 (b) issue a notice to the Information Officer specifying the steps which must be taken by the Information Officer for complying with the request for information and the period within which these steps must be taken.

(4) The Chief Secretary or person carrying out the internal review must submit a response to the applicant on the outcome of the review within 20 working days after receipt of the request for internal review under subsection (1).

Appeal provisions

11. (1) There is established for the purpose of dispensing with an application for appeal as prescribed, an Appellate Authority which is the person appointed for the time being as the Chief Magistrate pursuant to the Magistrate’s Court Ordinance, 2011, who has the authority conferred by and who shall perform the duties required in accordance with, this Ordinance.

(2) A person who is dissatisfied with the outcome of a review under section 10 may, by written notice appeal to the Appellate Authority for a decision as to whether the request for information made by the person has been considered in accordance with the requirements of this Ordinance.

(3) An appeal pursuant to subsection (2) must be made within 14 working days after receipt of the response pursuant to section 10(4), or within such longer period as the Appellate Authority, in exceptional circumstances, allows.

(4) A person making an application for an appeal pursuant to subsection (2) must serve a copy of notice of the appeal on the Information Officer.

(5) The Appellate Authority may refuse to consider the appeal if it appears to the Appellate Authority that—

(a) the appeal is vexatious; or
 (b) the appeal has been withdrawn or abandoned,

in which case the Appellate Authority must notify the applicant and the Information Officer of that refusal and of the grounds for refusal.

(6) If, upon receipt of an appeal under subsection (1), the Appellate Authority reasonably requires information for the purpose of determining whether the Information Officer has complied with the requirements of the Ordinance, the Appellate Authority may serve on the Information Officer a notice (“information notice”)—

(a) requiring the Information Officer to furnish to the Appellate Authority, within such time and in such form as is specified in the notice, such information relating to the applicant’s request for information or relating to the Information Officer’s compliance with the Ordinance; and
 (b) setting out the reasons for regarding that specified information to be relevant for that purpose.

(7) The Information Officer is not required by virtue of subsection (6) to furnish the

Appellate Authority with information in respect of any communication between a professional legal adviser and a representative of the St Helena Government—

- (a) in connection with the giving of legal advice with respect to the obligations, liabilities or rights under this Ordinance; or
- (b) in connection with, or in contemplation of, proceedings under or arising out of this Ordinance.

(8) If the Appellate Authority concludes that the request for information made by the applicant has been considered in accordance with the requirements of the Ordinance, the Appellate Authority must dismiss the appeal and serve notice of Appellate Authority's decision on the appellant and the Information Officer and may, in the discretion of the Appellate Authority and for such sum as the Appellate Authority considers appropriate, make an order as to costs in respect of the appeal against the appellant.

(9) If the Appellate Authority is satisfied that the Information Officer has failed to comply with any of the requirements of the Ordinance, the Appellate Authority may serve notice ("an enforcement notice") on the Information Officer requiring the Information Officer to take, within such period as may be specified in the notice which may not exceed a period of 20 days, such steps as may be specified for complying with those requirements.

(10) An enforcement notice under subsection (9) must contain a statement of the requirement or requirements of the Ordinance which the Appellate Authority is satisfied the Information Officer has failed to comply with and set out the reasons for reaching that conclusion.

(11) The Appellate Authority may withdraw an enforcement notice by written notice of such withdrawal to the Information Officer.

(12) The Governor in Council may, if the Governor in Council has on reasonable grounds formed the opinion that information requested, is exempt in accordance with section 8(1) or (2), issue a certificate signed by the Governor in Council that such information requested is exempt.

(13) An enforcement notice will cease to have effect if, within 20 working days after such notice is served on the Information Officer under subsection (9), the Information Officer submits to the Appellate Authority a certificate issued pursuant to subsection (12).

(14) The Chief Secretary must, as soon as practicable after a certificate is submitted to the Appellate Authority under subsection (13), lay a copy of the certificate before the Legislative Council.

(15) The Information Officer is considered to have failed to comply with an information notice or enforcement notice if the Information Officer, in purported compliance with an information notice or enforcement notice—

- (a) makes a statement which the Information Officer knows to be false in a material respect; or
- (b) recklessly makes a statement which is false in a material respect.

(16) Where the Information Officer fails to comply with an information notice or enforcement notice, the Appellate Authority may, in writing, certify that the Information Authority has failed to comply with an information notice or enforcement notice and may make such certification to the Supreme Court.

(17) Where the Appellate Authority has made a certification to the Supreme Court in accordance with subsection (16) the Supreme Court, convened as such court, may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the Information Officer and hearing any statement that may be offered in defence, treat the Information Officer as if the Information Officer had committed a contempt of the court.

(18) Except as expressly provided in this section, no appeal lies to any court against a decision of the Information Officer, Chief Secretary or Appellate Authority under this Ordinance.

(19) Subsection (18) does not prevent an application to the Supreme Court for judicial review of a decision of the Appellate Authority or of the issue of a certificate under subsection (9) and any such application must be made within a period of three months from the date of the decision or of the issue of the certificate.

(20) No information requested under Part 2 is required to be made available under this Ordinance pending the outcome of any judicial review proceedings.

(21) The Governor shall appoint a person to perform the functions under this section if—
 (a) due to absence, illness or other reason the Appellate Authority is unable to perform the functions under this section; or
 (b) the office of the Chief Magistrate is vacant.

(22) An appointment made pursuant to subsection (21)—
 (a) must specify that the appointment is for the period until the Appellate Authority is able to resume performance of the functions under this section; and
 (b) must be in respect of a person who possesses qualifications required for the practice of the legal profession that are the same as or that are significantly similar to those required for the appointment of a person as a Chief Magistrate under the Magistrate's Court Ordinance, 2011.

Records and publication

12. (1) The Information Officer must keep a record of the number and types of requests made under the Ordinance and at least once every 12 months publish for public information the details of the number and types of requests so made.

(2) The Information Officer may publish details of requests made and responses provided under this Ordinance which may, where the applicant so requests, contain the identity of the applicant.

Regulations

13. (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations may prescribe—
 (a) details with respect to the office where requests for access to information must be submitted;
 (b) the rates of charges to be imposed under section 9(3).
