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## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

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

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

## 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;

**“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)** Subsection (1) does not apply to exempt information under this Ordinance—

- (a) in respect of which absolute exemption has been conferred by section 8(1); or
- (b) where, in all the circumstances of the case, the public interest in maintaining the exemption under section 8(2) outweighs the public interest in disclosing the information.

#### **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.

#### **Dealing with 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 Government Directorate responsible 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)** The following information is exempt information and this subsection confers absolute exemption from the requirement to provide access to the information under section 4:

- (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)** 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.

if—

(3) Section 4 does not oblige the Government to comply with a request for information

- (a) handling the request or multiple related requests will cumulatively take more than eight 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 may deem 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 subsections (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 dealt with 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)** An applicant who is dissatisfied with the outcome of a review under section 10 may, within 14 working days after receipt of the response under that section, or such longer period as the Chief Magistrate, in exceptional circumstances, allows, by written notice appeal to the Chief Magistrate for a decision whether the request for information made by the applicant has been dealt with in accordance with the requirements of the Ordinance, and must serve a copy of that notice of appeal on the Information Officer.

**(2)** The Chief Magistrate may refuse to consider the appeal if it appears to the Chief Magistrate that—

- (a)* there has been undue delay in lodging the appeal;
- (b)* the appeal is frivolous or vexatious; or
- (c)* the appeal has been withdrawn or abandoned,

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

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

- (a) requiring the Information Officer to furnish to the Chief Magistrate, 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.

(4) The Information Officer is not required by virtue of subsection (3) to furnish the Chief Magistrate 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.

(5) If the Chief Magistrate concludes that the request for information made by the applicant has been dealt with in accordance with the requirements of the Ordinance, the Chief Magistrate must dismiss the appeal and serve notice of his or her decision on the appellant and the Information Officer.

(6) If the Chief Magistrate is satisfied that the Information Officer has failed to comply with any of the requirements of the Ordinance, the Chief Magistrate may serve notice (“an enforcement notice”) on the Information Officer requiring the Information Officer to take, within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.

(7) An enforcement notice under subsection (6) must contain a statement of the requirement or requirements of the Ordinance which the Chief Magistrate is satisfied the Information Officer has failed to comply with and set out the reasons for reaching that conclusion.

(8) The Chief Magistrate may withdraw an enforcement notice by written notice to the Information Officer.

(9) An enforcement notice will cease to have effect if, within 20 working days after receipt by the Information Officer of the notice under subsection (6), the Information Officer submits to the Chief Magistrate a certificate signed by the Governor in Council stating that the Governor in Council has on reasonable grounds formed the opinion that the information which is the subject of the request concerned, is exempt information as referred to in section 4(2).

(10) The Chief Secretary must, as soon as practicable after a certificate is submitted to the Chief Magistrate under subsection (9), lay a copy of the certificate before the Legislative Council.

(11) If the Information Officer fails to comply with an information notice or enforcement notice, the Chief Magistrate may deal with the matter as if the Information Officer had committed contempt of court.



(12) If the Information Officer, in purported compliance with an information notice or enforcement notice—

(a) makes a statement which he or she knows to be false in a material respect; or

(b) recklessly makes a statement which is false in a material respect,

the Information Officer is deemed to have failed to comply with the information notice or enforcement notice.

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

(14) Subsection (13) does not prevent an application to the Supreme Court for judicial review of a decision of the Chief Magistrate, and any such application must be made within a period of three months from the date of the decision.

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

### **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).

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#### **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Bill provides for the disclosure of information held by the St Helena Government.

Clause 1 of the Bill contains the citation for the Ordinance and makes provision for the Governor to fix the commencement date by notice in the gazette.

Clause 2 defines certain words and terms used in the Ordinance.

Clause 3 provides that the Ordinance applies to all information held by the Government and also excludes certain information from the application of the Ordinance.

Clause 4 makes provision for a person's right to access information.

Clause 5 prescribes the requirements with respect to requests for access to information.

Clause 6 prescribes the procedures that the Information Officer must follow in dealing with the request for information.

Clause 7 makes provision for the extension of the period within which the Information Officer must send a response to the applicant.

Clause 8 contains the exemptions from the duty to disclose information. If the Government holds the requested information, it must be provided unless it falls within one of the exemptions under the Ordinance. Sub-clause (1) confers absolute exemption from the requirement to provide access to the information. Sub-clause (2) contains exempt information which does not need to be disclosed where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Sub-clause (3) prescribes the circumstances in which the Government is not obliged to comply with a request for information.

Clause 9 provides that the Information Officer must provide the information in electronic form. Where the applicant requests the information to be in any other particular form, the Information Officer must, where reasonably practical, provide the information in that other form and may impose a charge having regard to the volume of information and costs incurred for photocopying or the time and resources spent to collate the information.

Clause 10 makes provision that if an applicant is not satisfied with the response provided by the Information Officer, the applicant may request an internal review by the Chief Secretary.

Clause 11 makes provision for appeal to the Chief Magistrate.

Clause 12 requires the Information Officer to keep records and publish certain information with respect to requests for information.

Clause 13 enables the Governor in Council to make regulations for carrying into effect the provisions of this Ordinance.