

# ACCESS TO INFORMATION BILL <sup>1</sup>

(MALAWI)

The object of this Bill is to —

- (a) provide for the right of access to information;<sup>2</sup>
- (b) define the scope of information that public has a right to access;
- (c) establish the (Independent) Public Information Commission<sup>3</sup> and define its functions;
- (d) promote transparency and accountability of public officers; and
- (e) provide for matters connected with or incidental to the foregoing.

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<sup>1</sup> The title should reflect the main aim of the Act, namely, to facilitate access.

<sup>2</sup> To emphasise that the central importance of access to information as a right, the right must be prioritised in the listing the objectives of the bill.

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## **ACCESS TO INFORMATION BILL**

### **ARRANGEMENT OF CLAUSES**

#### **PART I**

##### **PRELIMINARY**

###### *Section*

1. Short title
2. Interpretation
3. Application
4. Invalidity of laws inconsistent with this Bill

#### **PART II**

##### **RIGHT OF ACCESS TO INFORMATION<sup>4</sup>**

5. Right of access to information
6. Restriction of limitation of right of access to information<sup>5</sup>
7. Exemption from disclosure
8. Determination of exemption
9. Protection of Privacy
10. Protection of confidential security and other state interests
11. The right of employee to disclose information
12. Protection of confidential commercial information
13. Severability of information

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<sup>3</sup> The body need not be called by this name. It is however, important that the independence of the body be mentioned right at the outset.

<sup>4</sup>The right to information must be the first substantive part of the bill in order to emphasise the fact that access is a right.

<sup>5</sup> The importance of the Act must be underlined by stating explicitly that the right can be limited only if the limitations must meet the standards set by Sections 44 (1) and 44(2) of the constitution. The section can in fact be verbatim repetition of the sections in the constitution.

<sup>6</sup> Rather than referring to obligations and their generality, it helps to highlight the main purpose of the Act by referring specifically to the duty that directly correlates to the right to have access to information.

### **PART III**

#### **OBLIGATION TO PROVIDE INFORMATION<sup>6</sup>**

14. Obligation to keep records<sup>7</sup>
15. Obligation to disclose information that is requested
16. Obligation to publish certain information
17. Appointment of information officers

### **PART IV**

#### **THE INDEPENDENT PUBLIC INFORMATION COMMISSION<sup>8</sup>**

18. The Commission
19. Appointment and Composition Commission
20. Functions of Commission
21. Powers of Commission
22. Immunity of Commission and other persons<sup>9</sup>
23. Removal of member of Commission<sup>10</sup>
24. Director of Public of Commission<sup>11</sup>
25. Commission Staff
26. Funds of the Commission<sup>12</sup>

### **PART V**

#### **PROCEDURE FOR ACCESS TO INFORMATION<sup>13</sup>**

27. Request for access to Public information
28. Notice where access to records is requested
29. Means by which communication is to be made
30. Transfer of requests
31. Fees and other charges
32. Refusal of request

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<sup>7</sup> The keeping of records is a precondition for any meaningful provision of access. It should, therefore be logically be provided for before providing for disclosure and publication.

<sup>8</sup> The Commission does not appear as the first substantive part of the bill because its importance is secondary to that of the right itself.

<sup>9</sup> Since immunities relate primarily to the Commission, the relevant provisions may be better located in the Act that deals with the Commission rather than in the part: Miscellaneous Provisions.

## **PART VI**

### **REVIEW OF DECISION OF HOLDERS OF INFORMATION**

33. Right to review of decisions of holders of information
34. Commission's right of access to information
35. Evidence in other proceedings
36. Findings and recommendations of Commission
37. The right of the applicant and third parties to receive report
38. Access granted during or after review

## **PART VII**

### **MISCELLANEOUS PROVISIONS**

39. Proceedings on failure by holder of information to comply with the Act
40. Report by Commission to National Assembly
41. Offences and penalties
42. Regulations

## **FIRST SCHEDULE**

Authorities and office holders to which this Act applies

## **SECOND SCHEDULE**

Part 1: Exempt organisations

Part 2: Exemptions of particular documents

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10 In order to protect commissioners from undue pressure, their removal ought to be strictly controlled. Provisions such as those that apply to the removal of the Ombudsman or members of the Electoral Commission may be considered as applicable models.

11 The Director must have sufficient power and protection of his/her independence. Therefore, there is need to provide it separately from the rest of the staff of the commission.

12 Rather than tuck this in the miscellaneous provisions part, it is placed together with foundational provisions of the Commission to indicate the importance of funding and to highlight the need for its protection. The provisions must explicitly secure public funding of the Commission and protect the funds from arbitrary reduction which may be used to undermine the work of the Commission.

13 One of the most important aspects of the procedure must be a time limit within which requests for access must be responded to by the relevant authority body.

**An Act to provide for the right of access to information; to define the scope of public information the public has the right to access; to establish the (Independent ) Public Information Commission<sup>14</sup> and define its functions; to promote transparency and accountability of public officers; and to provide for matters connected with or incidental to the foregoing.**

ENACTED by the Parliament of Malawi

## PART I

### PRELIMINARY

- 5     **1.** (1) This Act may be cited as the Access to Information Act. Short title  
       (2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint provided that the Minister shall not appoint a day that is later than six months after the passing of the Act.
- 10    **2.** In this Act, unless the context otherwise requires— Interpretation  
       “ appointments committee ” means an appointments committee appointed under paragraph 3 of the First Schedule;  
       “ Chairperson ” means the person appointed as Chairperson under section *five*;  
       “ Commission ” means the Commission established under section *five*;     “ Director ” means the person appointed as Director under section *nine*;  
       “ head of a public authority ” in relation—  
       20        (a) to a government Ministry or department means the Permanent Secretary or any other person so designated; or

- (b) to a parastatal or other organisation means the Chief Executive Officer;
- “information” means any material which communicates facts, opinions, data or any other matter relating to the management, administration, operations or decisions of a public authority, regardless of its form, characteristics or when it was created; 5
- Cap. 281 “local authority” means a council established under the Local Government Act and any other authority declared by Act of Parliament to be a local authority; 10
- “member” means a person appointed as a member of the Commission under section six;
- “personal information” means information relating to an individual who is directly or indirectly identifiable by name, identification document or through any physical or other characteristics or attributes, but does not include information having a bearing on the public functions of an employee of a public authority or any other person performing a function of a public authority; 15
- “public authority” means any person holding an office, or any body, specified in the Second Schedule; 20
- “record” includes —
- (a) any document, manuscript or file in any form;
  - (b) any microfilm or facsimile copy of a document;
  - (c) any reproduction of an image embodied in such microfilm, whether enlarged or not; and 25
  - (d) any other material held and produced by a mechanical, electronic or other device and which is capable of being reproduced.
- Application
- 3.** (1) This Act applies to information under the control of public authorities regardless of whether that information came into existence before or after the commencement of this Act. 30
- (2) This Act shall not apply to—
- (a) information governed by confidentiality or privilege, to the extent to which the disclosure of the information is regulated, prohibited or restricted by the ethics of a profession or practice; 35
  - (b) records relating to proceedings before a court or tribunal after the commencement of those proceedings; or
  - (c) intelligence organisations specified in the Third Schedule or to any information under the control of any of those 40

organisations.

4. (1) The provisions of a written law in force immediately before the commencement of this Act prohibiting, restricting or providing for disclosure of information under the control of a public authority shall have no effect to the extent to which those provisions are inconsistent with this Act.

Invalidity of laws inconsistent with this bill

(2) In any law enacted after the commencement of this Act (other than a law amending this Act), any provision restricting the rights and obligations provided for in this Act shall have no effect.

## PART II

### RIGHT OF ACCESS TO INFORMATION

5 (1) Subject to this Act —

(a) every person shall have the right of access to information which is under the control of a public authority;

(b) every public authority shall make available to the general public or, on request, to any person information which is under its control;

(c) every public authority shall make available to the general public or, on request, to any person access to public meetings or to places where information may be obtained; and

(d) every private body shall make available, on request, information which it holds on the person requesting for the information, if reasonable evidence is shown regarding the purpose of the request.

(2) A person who requests for information in pursuance of the right in subsection (1) need not give any reason or justification for that person's interest in the information being requested for.

(3) For the purposes of this section " person " means a citizen or permanent resident of Malawi.

6. A public authority shall not be required to disclose information which is determined to be exempt from disclosure under this Act.

Restriction of limitation of right of access to information

7. Information requested under this Act shall be deemed to be exempt from disclosure only if the public authority which has control of the information -

Exemption from disclosure

(a) claims an exemption under section *eight, nine, ten, eleven, or twelve* for all, or for any part of, the information; and

	(b) determines, in accordance with section <i>sixteen</i> , that the disclosure is not justified in the public interest.	
Determination of exemption	<b>8.</b> A public authority shall claim an exemption where it reasonably determines that the information requested, including personal information, involves the privacy interests of a third party.	5
Protection of privacy	<b>9.</b> A public authority may claim an exemption where disclosure of information under this Act —	
	(a) would, or could, reasonably be expected to cause damage to the security of Malawi , the defence of Malawi or would divulge any information or matter which relates to the defence or security of a foreign government and which is communicated in confidence by or on behalf of such foreign government; or	10
	(b) would or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law or endanger the life or physical safety of any person;	15
	(c) would or could reasonably be expected to cause substantial harm to the legitimate interests of Malawi in crime prevention and any preliminary investigation of crime or other unlawful acts; and	20
	(d) would or could reasonably be expected to cause substantial harm to the legitimate interests of Malawi in the protection of the deliberative process of a public authority insofar as it involves the expressing of an opinion, advice or recommendation by a public authority, an employee thereof, or any person acting for or on behalf of the public authority but not in respect of factual, statistical, scientific, or technical information.	25 30
Protection of confidential security and other state interests	<b>10.</b> (1) A public authority shall disclose the information requested notwithstanding that it has claimed an exemption under section <i>eight</i> , <i>nine</i> and <i>twelve</i> where to do so would be justified in the public interest having regard to both any benefit and harm that may accrue from doing so.	35
	(2) In determining whether disclosure is justified in the public interest, the public authority shall have regard to considerations such as obligations to comply with legal requirements, the prevention of the commission of offences or other unlawful acts, miscarriage of justice, abuse of authority or neglect in the performance of an official duty, unauthorised use of public funds, the avoidance of	40

wasteful expenditure of public funds or danger to the health or safety of an individual or the public, or the need to prepare and protect the environment, and the need to improve public participation in, and understanding of, public policy making.

5 (3) If disclosure of the information in respect of which a public authority has claimed an exemption under section *nine* or *ten* is determined to be in the public interest, the public authority shall notify the third party in writing that the information shall be disclosed upon the expiry of fifteen days from receipt of the notice, and  
10 inform the third party of that party's right to a review, the authority with which an application for review should be lodged, the period within which the application may be lodged and the cost of filing an application.

Right of employees  
to disclose  
information

15 **11.** (1) Notwithstanding the provisions of this Act or of any other written law an employee of a public authority may disclose to the Commission, or any other authority which has power to act upon the information disclosed, or any other authorised person the contents of a document, communication or information which exposes the wrongdoing of another employee or officer of the public authority,  
20 whether or not that employee came across the information in the course of that employee's duties.

(2) No action, disciplinary or otherwise, shall lie and no proceedings may be brought against any employee who discloses information under subsection (1) for damages resulting from —

25 (a) the disclosure in good faith of all or part of a record; or  
(b) consequences arising from such disclosure.

(3) For purposes of subsection (1) "wrongdoing" means fraudulent, dishonest or criminal conduct or maladministration.

Protection of  
confidential  
commercial  
information

30 **12.** Where a public authority reasonably determines that a request for access to information involves the confidential commercial interests of a third party, the authority shall forthwith notify the third party in writing of the specifics of the request and that the disclosure of the information is imminent unless the third party, within fifteen days of receipt of the notice, responds in writing that it considers the information to be confidential and gives reasons as  
35 to why harm would result from disclosure; and upon receipt of such response the authority shall claim an exemption.

Severability of information	<b>13.</b> If a public authority determines that part of the information requested is exempt from disclosure, the authority shall disclose the remainder of the information which is not exempt from disclosure and shall, accordingly, inform the person who made the request for the information.	5
<b>PART III</b>		
<b>OBLIGATION TO PROVIDE INFORMATION</b>		
Obligation to keep record	<b>14.(1)</b> Every public authority shall maintain complete records of all records and documents, to which this Act applies, that are under the control of the public authority. <b>(2)</b> The public authority shall maintain every such record for a period of ten years after the date on which the document is generated by the public authority or on which the document or record comes under the control of the public authority. <b>(3)</b> The Commission may at all reasonable times examine any record maintained in accordance with subsection (1).	10  15
Obligation to disclose information that is requested	<b>15.</b> Obligation to disclose information that is requested.  Subject to this Act, every public authority shall grant any person who so requests access to any information that the public authority holds.	20  25
Obligation to publish certain information	<b>16.(1)</b> Subject to the other provisions of this Act, every public authority shall cause to be published, as soon as practicable after the commencement of this Act but not later than <i>twelve</i> months after that commencement, by <i>Gazette</i> notice and in a newspaper of general circulation in Malawi, a publication that includes — <b>(a)</b> a description of its structure, functions, and responsibilities including those of any of its statutory officers or advisory committees; <b>(b)</b> a general description of the categories of documents held by it; <b>(c)</b> a description of all manuals, and similar types of documents in or under this Act. <b>(d)</b> a statement of any information that needs to be made available to members of the public who wish to obtain official information from the public authority which statement shall include particulars of the officer or officers to whom requests for official information or particular classes of information should be sent.	30  35  40

(2) In complying with subsection (1) the public authority shall have regard, among other things, to the need to assist members of the public to obtain official information and to effectively exercise their rights under this Act.

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(3) Where there is good reason under section *nine* of this Act for withholding official information, nothing in this section requires the publication of that official information.

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(4) The Commission may, from time to time, give directions to public authorities regarding the form in which the information referred to in subsection (1) shall be published and prescribe model publication schemes in relation to public authorities falling within particular classes.

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(5) The failure of a public authority to publish information under subsection (1) shall not prejudicially affect the right of access to information under the control of a public authority as provided for in or under this Act.

(6) A public authority —

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(a) shall, from time to time, publish any substantial changes to the information required to be published under subsection (1); and

(b) may, at any time, publish any other information, in addition to the information required to be published under subsection (1), relating to its functions as it considers appropriate.

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(7) A person entitled to the right of access to information under this Act has the right to institute proceedings in a court to compel the head of a public authority to comply with the provisions of this section.

Appointment  
of information  
officers

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**17.** (1) Every public authority shall, for purposes of this Act -  
(a) appoint one or more officers as information officers; and  
(b) establish procedures to deal efficiently with requests for information.

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(2) An information officer appointed under subsection (1) shall deal with requests made under section *twenty-seven* and render assistance to any persons seeking such information.

(3) An information officer may seek the assistance of any

other officer to assist that information officer in the discharge of the information officer's duties under this Act.

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#### PART IV

##### THE INDEPENDENT PUBLIC INFORMATION COMMISSION

**18.** (1) There is hereby established the Public Information Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of the Act, to do all such things as a body corporate may by law perform.

The  
Commission

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(2) The provisions of the First Schedule shall apply to the Commission.

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**19.** (1) The Commission shall consist of the following part-time members:

Appointment  
and  
Composition  
of  
Commission

(a) a judge of the High Court nominated in that capacity by the Judicial Service Commission;

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(b) a public officer nominated by Public service commission

(c) a representative of non-governmental nominated by the Council the council of Non-governmental Organisational;

(d) a media practitioners nominated by media organisations two members who shall be reputable persons.

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(2) Members of the Commission shall be appointed only if their nominations are approved by the Public Appointments Committee of the national Assembly.

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(3) The Chairperson and the Vice-Chairperson shall be elected by the members from among their number.

(4) A person shall not be appointed as a member of the Commission if that person —

- (a) is not a citizen of Malawi  
(b) is not permanently resident in Malawi;  
(c) is a public servant or a holder of any remunerated position under the state;  
(d) is a member of Parliament or of a district, municipal or city council; or  
(e) is an office-bearer in or an employee of a political party.

**20** (1) The functions of the Commission shall be —

Functions of  
Commission

(a) to ensure that the purposes of this Act are effectively carried out;

(b) on request —

- (i) act as a conduit for requests for access to information from members of the public;  
(ii) identify the relevant public authority; and  
(iii) collect the requested information;

(c) assist in realising the right to amend or comment on personal information held by a public authority;

(d) to receive, and consider applications for review of decisions of public authorities relating to access to information by persons requesting for information under this Act and applications for review by those persons or by third parties;

(e) to make recommendations to the relevant public authorities resulting from the review of applications referred to in paragraph (b); and

(f) to perform such other functions as are conferred upon the Commission by or under this Act.

(2) The Commission shall publish, every year, in a form accessible to the general public, a guide which shall include —

- (a) the objectives of this Act;  
(b) the contact details of the Commission;  
(c) the methods of applying for information; and  
(d) the assistance which is available to the public from the Commission.

(3) The Commission shall be independent in the performance of its functions and shall not be subject to any direction, or political interference, by any person.

**21.** (1) The Commission may, for the purpose of performing

Powers of Commission	<p>its functions under this Act —</p> <p>(a) give directions of a general nature to public authorities in connection with the performance of their functions under this Act;</p> <p>(b) carry out investigations relating to applications for review made under section <i>twenty-nine</i>; 5</p> <p>(c) administer oaths, and hear and receive evidence;</p> <p>(d) enter and inspect premises to which an application for review relates;</p> <p>(e) question any person, whether or not that person is employed by the public authority to which the application for review relates; or 10</p> <p>(f) inspect, make copies of, and take extracts from any book, record or document relevant to the review.</p> <p>(2) A person summoned to appear before the Commission who, without sufficient cause — 15</p> <p>(a) refuses or fails to attend at the time and place specified in the summons or, having attended, is absent from the proceedings without the permission of the Commission;</p> <p>(b) having attended, refuses to be sworn or to affirm;</p> <p>(c) refuses, without lawful excuse, to answer to the best of that person's knowledge any question lawfully put; or 20</p> <p>(d) refuses to produce any book, record or document which that person has been required by summons to produce; commits an offence and is liable, on conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a period not exceeding three months or to both. 25</p> <p>(3) A person summoned before the Commission shall not be compelled to answer any question or to produce any book, record, document or thing which that person would not be compelled to answer or produce in proceedings before a court.</p>	30
Immunity of Commission and other members persons	<p><b>22.</b>Notwithstanding any other law, no civil or criminal proceedings shall lie against any member or member of staff of the Commission, a public authority or a person acting on their behalf, for the disclosure of any information or for any other act done in good faith pursuant to this Act.</p>	35

- 5 **23 (1)** A person appointed to the Commission shall serve a term not more than five years, provided that the Public appointments Committee may appoint that person for such further terms of five years as it considers appropriate unless that committee sooner terminates that appointment in accordance with this section. Removal of members of commission
- (2) A person appointed to the Commission shall not be removed by the Public Appointments Committee, except—
- 10 (a) in such circumstances that person would have been disqualified from being appointed;
- (b) for gross misconduct;
- (c) on reaching the age of sixty-five years.
- 15 **24. (1)** The Commission shall appoint a Director on such terms and conditions as the Commission may determine. Director of Public Commission
- (2) The Director shall be the Chief Executive Officer of the Commission and shall, under the direction of the Commission, be responsible for the —
- 20 (a) management and administration of the Commission; and
- (b) implementation of the decisions of the Commission.
- (3) The Director shall be the Secretary to the Commission.
- (4) The Director shall be appointed for a period of four years and may be eligible for re-appointment.
- 25 **25.** The Commission may appoint, on such terms and conditions as the Commission may determine, such other staff of the Commission as it considers necessary for the performance of its functions under this Act. Commission Staff
- 30 **26. (1)** The funds of the Commission shall consist of such moneys as may — Funds of Commission
- (a) be appropriated by Parliament for the purposes of the Commission;
- (b) be paid to the Commission by way of grants or donations; and
- (c) vest in or accrue to the Commission.
- 35 (2) The Commission may—
- (a) subject to the approval of the National Assembly, accept moneys by way of grants or donation from any source; and
- 40 (b) subject to the approval of the National Assembly, raise, by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

- (3) There shall be paid from the funds of the Commission —
- (a) the salaries, allowances and loans of the staff of the Commission;
  - (b) such reasonable travelling, transport and subsistence allowance for the members and members of any committee of the Commission when engaged in the business of the Commission, and at such rates as the Commission may determine; and
  - (c) any other expenses incurred by the Commission in the performance of its functions.
- (4) The Commission may invest in such manner as it thinks fit

such of its funds as it does not immediately require for the performance of its functions.

#### PART V

##### PROCEDURE FOR ACCESS TO INFORMATION

- Request for Access to Public information
- 27.** (1) A request for access to information may be made orally or in writing and shall be addressed to the head of the public authority or any other authorised person:  
Provided that a person may request the Commission to obtain the information from a public authority on that person's behalf.
- (2) The request for information shall provide sufficient details to enable the public authority to identify the information and shall include the name and address of the person requesting for the information:  
Provided that where the applicant is unable to write the request for information shall bear the thumb print of the applicant.
- (3) For purposes of subsection (1) a request shall be treated as made in writing where the text of the request —
- (a) is transmitted by electronic means;
  - (b) is received in legible form; and
  - (c) is capable of being used for subsequent reference.
- Notice where access to information is requested
- 28.** (1) Where access to a record is requested, the head of the public authority or any other authorised person to which the request is made shall, subject to section *twelve* and the other provisions of this Act, within fourteen (14) days after the request is received -
- (a) give written notice to the person who made the request as to whether the record exists and, if it does, whether access to the record or a part thereof will be given; and

(b) if access is to be given, promptly give the person who made the request access to the record or a part thereof in the form of a copy or an opportunity to examine the record. Means by which communication is made

5 (2) If a public authority requires further information in order to identify and locate the information requested, it shall notify the applicant of the need for such further information within seven days of receiving the request for information and, in that case, the period of fourteen days referred to in subsection (1) shall be reckoned from the date on  
10 which such further information is received.

29. (1) A public authority may provide information requested for by an applicant by any one of the following means, having regard to all the circumstances, including the cost of providing the information, namely: Means by which communication is to be made

- (a) the provision of a copy of the information in permanent form or in another form acceptable to the applicant;
- (b) the provision of a reasonable opportunity to inspect a record containing the information;
- 20 (c) the provision of a digest or summary of the information; or
- (d) in the case of an applicant with a sensory disability, by the provision of a record in a format that allows the person to read or listen to the record of the information.

(2) Notwithstanding subsection (1), a public authority may provide information orally where the applicant on making the request for information requests that the information be so provided.

30. (1) Where a public authority to which a request for information is made considers that another public authority has a greater interest in the information requested for, the head of the public authority to which the request is initially made may, within seven days after the request is received, transfer the request to the other public authority and give written notice of the transfer to the person who made the request. Transfer of requests

- (2) For the purposes of subsection (1) —
- 35 (a) the periods specified in section *twenty-eight* shall apply to the public authority to which the request is transferred with effect from the date on which the transferred request is received; and
- (b) a public authority has a greater interest in information

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	requested if —	
	(i) the record containing the information was originally produced in or for the public authority; or	
	(ii) in the case of a record not originally produced in or for the public authority, the public authority was the first recipient of the record or a copy thereof.	5
Fees and other charges	<b>31.</b> (1) A person who makes a request for information may be required to pay such fees and charges for the cost of examination or reproduction of the information as the Commission may, by regulations, prescribe.	10
	(2) Regulations made under subsection (1) may provide —	
	(a) that no fee shall be payable in prescribed cases; and	15
	(b) that any fee shall not exceed such maximum fee as may be specified in, or determined in accordance with, the regulations.	
Refusal of request	<b>32.</b> (1) Where a public authority refuses to give access to information requested, either in whole or in part, the public authority shall, in writing, notify the person requesting for the information of the refusal and shall, in the notification —	20
	(a) set out the grounds for the refusal and all material issues relating to the decision, including the specific provisions of this Act and the factors taken into consideration in relation to the public interest;	25
	(b) inform the applicant of the availability of a review, the authority with which an application for review may be lodged and the period within which an application for review may be made; or	30
	(c) if the record of the information requested does not exist, inform the applicant to that effect.	
	(2) Where a public authority fails to give access to information requested within the time limits set out in this Act, the public authority shall be deemed to have refused to give access to the information.	35
<b>PART VI</b>		
REVIEW OF DECISIONS OF PUBLIC AUTHORITIES		
Review of decisions	<b>33.</b> (1) A person who, having made a request for the disclosure of information under this Act, is aggrieved by the decision of a public authority in relation to the request may apply to the Commission for a review of that decision in respect of any of the	40

following:

- (a) the refusal of access by the public authority to the information requested;
- 5 (b) the payment of fees or charges levied under section *twenty-eight* which the person considers unreasonable;
- (c) the failure of the public authority to comply with the time limits set out in section *twenty-eight*;
- (d) any other matter relating to a request for or access to information under this Act.
- 10 (2) A third party that is of the opinion that the party's interests referred to in section *eight* or *twelve* are, or are likely to be, adversely affected by the decision of a public authority in relation to information requested under this Act may apply to the Commission for a review of that decision and shall be given an opportunity to make representations during the review.
- 15 (3) The Commission shall, within thirty days of receiving an application under subsection (1) or (2), consider such application and may within that period inquire into or investigate such application as the Commission may consider necessary.
- (4) A review under subsection (2) shall be conducted in accordance with such regulations as the Commission may, by statutory instrument, prescribe.
- 20 (5) An application for review under this Part shall be made in writing unless the Commission authorises that it may be made orally and may be made not later than one year from the date on which the request for information was received by the public authority concerned.
- 25 (6) Subject to subsection (7), the review of a decision of a public authority under this Act shall not be construed as precluding a person who makes a request for the review (including a third party) from making a complaint or allegation to the Human Rights Commission under the Human Rights Commission Act, 1996 or from making an application for redress to the High Court against a public authority or the Commission, or both, in relation to that person's right of access to information or the right not to have the information disclosed.
- 30 (7) A complaint or allegation to the Human Rights Commission or an application to the High Court shall not be made by a person unless proceedings for review under this Part have been concluded.
- 35 (8) For the purpose of subsection (7) proceedings for review are concluded -
- (a) when an individual who made an application for those

Report to applicant and third parties

Access granted during or after review

	proceedings dies;	
	(b) in the case of a person other than an individual, when that person ceases to exist;	
	(c) when the period specified by the Commission under paragraph (b) of section <i>twenty-seven</i> lapses;	5
	(d) in the case of a third party, on the date on which that party receives a copy of the Commission's report made under section <i>twenty-seven</i> ; or	
	(e) when an application is withdrawn by the applicant or is dismissed by the Commission.	10
Commission,s right of access to information	<b>34.</b> Notwithstanding any other law or any privilege under the law of evidence, the Commission may, during investigations relating to any application for a review under this Part, examine any record to which this Act applies that is under the control of a public authority, and no such record may be withheld from the Commission on any grounds.	15
Evidence in in other proceedings	<b>35.</b> Except in a prosecution of a person for an offence of perjury [or contempt] in respect of a statement made under this Act evidence given by a person in proceedings under this Act is inadmissible against that person in a court or in any other proceedings.	20
Findings and recommendations of the Commission	<b>36.</b> (1) If after the consideration of an application for review the Commission finds—	
	(a) that the applicant is entitled to the disclosure of the information requested, the Commission shall provide the head of the public authority concerned a report containing—	25
	(i) the findings of the review and the recommendations of the Commission; and	
	(ii) a request that, within a time specified in the report, notice is to be given to the Commission of any action taken or proposed to be taken to implement the recommendations in the report or reasons why no such action has been or is proposed to be taken.	
	(b) that the applicant is not entitled to the disclosure of the information requested, the Commission shall, within seven days of making the decision, so inform the applicant in writing stating the reasons for the finding and also inform the applicant of the right to appeal to the High Court.	30 35

(2) The Commission shall give a copy of the decision made under paragraph (b) of subsection (1) to the head of the public authority concerned.

5       **37.** (1) The Commission shall, after conducting a review, provide a copy of the report made under section *thirty -six* to the applicant, and to any third party, that made representations to the Commission after the expiration of the period specified by the Commission under paragraph (b) of section *thirty - six*. Right of applicant and third parties to receive report

10       (2) The Commission shall also inform the applicant whether the public authority concerned has taken action or proposes to take action to comply with the Commission's recommendations and may make such comments on the subject matter of the review as the Commission thinks fit.

15       **38.** Where, during or after the consideration of an application for review, the head of a public authority notifies the Commission that access to information requested will be given to an applicant, the head of the public authority shall give the applicant access to the information — Access granted during or after review

20       (a) within seven (7) days of the notification, if no notice has been given to a third party under section *twelve*; or  
       (b) within fourteen (14) days after the notification, if notice has been given to a third party under section *twelve* .

## PART VII

### MISCELLANEOUS PROVISIONS

25       **39.** (1) If at any time it appears to the Commission that a public authority has failed to comply with the provisions of this Act (or with a decision of the Commission), the Commission may, by notice in writing, require the public authority to make good the default within a specified time. Proceedings on failure by public authority to comply with Act

30       (2) If the public authority fails to comply with the notice referred to in subsection (1), the Commission shall apply to the High Court for an order compelling the public authority to remedy the default and the Court may make such order on the application as it thinks fit.

35       **40.** (1) The Commission shall as soon as possible after the end of each financial year make a full report to the National Assembly on the exercise and performance by it of its functions during that year. Report by Commission to National Assembly

(2) The Commission may, at any time, require a public authority

	to make a report to the Commission regarding the general compliance by such public authority with this Act.	
Offences and penalties	<b>41.</b> Any person who wilfully conceals, destroys, mutilates, falsifies or otherwise alters a record containing information which has been requested with intent to prevent disclosure of the information commits an offence and is liable, on conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding five years.	5
	<b>FIRST SCHEDULE</b> <i>(Section 6)</i>	10
	<b>PART I</b> ADMINISTRATION	
Seal of Commission	<b>1.</b> (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary. (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Commission. (3) Any document purporting to be a document under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be executed or issued, as the case may be without further proof, unless the contrary is proved.	15 20
Tenure of office	<b>2.</b> (1) A member referred to in subsection (1) of section <i>six</i> shall be appointed for a term not exceeding three years, on the recommendation of the selection committee:  Provided that the first members shall be appointed for periods ranging from two to three years in order to facilitate retirement by rotation. (2) A member referred to in subsection (1) may resign upon giving one month's notice, in writing, to the National Assembly. (3) The appointments committee of the National Assembly may remove a member if —  (a) the member is insane or otherwise declared to be of unsound mind; or (b) the member is declared bankrupt.	25 30
Appointments committee	<b>3.</b> (1) There shall be an appointments committee comprising members of the committee of the National Assembly responsible for	35

public appointments, appointed by the Speaker for purposes of subsection (1) of paragraph 2.

(2) The chairperson of an appointments committee shall be appointed by the Speaker.

5 (3) The members of an appointments committee shall be appointed on such terms and conditions as the Speaker may determine.

(4) The functions and powers of an appointments committee shall be—

10 (a) to invite applications from persons with such qualifications as may be specified for appointment to the Commission:

Provided that the appointments committee may invite nominations from civic organisations of persons with the specified qualifications;

15 (b) to prepare a short list of candidates from applicants and persons nominated under paragraph (a); and

(c) to interview persons short listed under paragraph (b).

(5) The interviews for the selection of candidates for appointment to the Commission shall be conducted in sessions open to the public:

20 Provided that prior to conducting the interviews referred to in this subsection the appointments committee shall publish a notice, in a daily newspaper of general circulation in Malawi, stating the date and time of, and place for the interviews.

25 (6) The appointments committee shall make a recommendation to the National Assembly on the persons to be appointed to the Commission following the interviews referred to in subsection (5).

30 **4.** Whenever the office of a member becomes vacant before the expiry of the term of office the National Assembly may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

Filling of casual vacancy

35 **5.** A member shall be paid such allowances as the Commission may, with the approval of the National Assembly, determine.

Allowances of members

**6.** (1) Subject to the other provisions of this Act, the Commission

Proceedings of Commission

may regulate its own procedure.

(2) Three members shall form a quorum at any meeting of the Commission.

(3) There shall preside at any meeting of the Commission —

(a) the Chairperson; or

(b) in the absence of the Chairperson, such member as the members present may elect for the purposes of that meeting

(4) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(5) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(6) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason, that any person not entitled to do so took part in the proceedings.

Committees

7. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

(2) The Commission may appoint as members of a committee, persons who are, or are not, members, except that at least one member of a committee shall be a member.

(3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

Declaration of Interest

8. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as

soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

5 (2) A declaration of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

Prohibition of disclosure of information

10 **9.** (1) A person shall not without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of the person's duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(3) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, that person shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years or to both.

## PART II

### FINANCIAL AND OTHER PROVISIONS

Financial Year

**10.** The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

Accounts

**11.** (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditor's appointed by the Commission.

(3) The auditors, fees shall be paid by the Commission.

Annual report

**12.** (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the National Assembly a report concerning its activities during the financial year.

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- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report -
- (a) an audited balance sheet;
  - (b) an audited statement of income and expenditure; and
  - (c) such other information as the National Assembly may require.

SECOND SCHEDULE

(Section 2)

PUBLIC AUTHORITIES AND OFFICE HOLDERS TO WHICH THE ACT APPLIES

1. Government Ministries and departments and persons in the public service.
2. Local authorities and persons in the service of the local authorities.
3. Institutions and organisations whether established by or under an Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control and persons in the service of those institutions and organisations.
4. Commissions established by or under the Constitution or any Act of Parliament, except the Commission, and persons in the service of the Commissions.
5. Quasi-governmental organisations and persons in the service of the quasi-governmental organisations.
6. Public corporations and persons in their service.
7. Courts in relation to administrative matters and persons in their service.
8. Tribunal in relation to administrative matters and persons in their service.
9. Private bodies carrying out public functions and persons in their service.
10. Religious and sporting organisations in receipt of public funds and persons in the service of those religious and sporting organisations.
11. Organisations contracted by Government to do work for government and persons in the service of those organisations.