

(Draft no. 03)

RIGHT TO INFORMATION ACT 2012

PREAMBLE

Whereas, it is expedient to ensure an informed citizenry, to secure access to information held by relevant offices, and to promote transparency and accountability in governance,

The Parliament of Bhutan at its _____ Session, on the _____ Day of the _____ Month of the _____ Year of the Bhutanese Calendar, corresponding to the _____ Day of _____ 200__, hereby enacts the Right to Information Act, as follows:

**CHAPTER 1
PRELIMINARY**

Short title and commencement

1. This Act shall:
 - (a) Be called the “Right to Information Act”; and
 - (b) Come into force on the _____ Day of the _____ Month of the _____ Year of the Bhutanese Calendar, corresponding to the _____ Day of _____ 200__.

**CHAPTER 2
RIGHT TO INFORMATION**

Right to information

2. Except as provided in section 3 of this Act, there is an enforceable public right to information in the possession, custody or control of any office of Bhutan.
3. Except when involved in corruption and treason, Citizens and employees who assist in exposing corruption shall be protected by the State notwithstanding all other laws.

Limited conditions for denial of request for information

4. Notwithstanding section 2 of this Act, an office may deny a request for information under this Act,
 - (a) if the information is exempt information, under chapter 3 of this Act;
 - (b) if the information has direct bearing to National Security.

CHAPTER 3 EXEMPT INFORMATION

Exempt information described

5. These information shall be exempt from the public right to information requirements of this Act:

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of Bhutan, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information, the disclosure of which would cause a breach of privilege of Parliament;
- (c) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (d) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (e) information received in confidence from foreign Government
- (f) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (g) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (h) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (i) Disclosure of the information is prohibited by order of a Court;

- (j) The information is of a personal nature, with no relationship to any public activity or interest, or is of a personal nature and its disclosure would cause an unwarranted invasion of privacy;

Provided that the information which cannot be denied to the Parliament shall not be denied to any person.

- (k) Disclosure of the information would infringe a patent, copyright, trademark or other protected intellectual property right; or

- (l) The information is in the possession, custody or control of an office on the condition, whether by explicit agreement or because of the intrinsic nature of the information, that the information will not be disclosed without the consent of a person who is not a party to the request for information.

However, information being older than 20 years and/or information related to corruption can be obtained.

CHAPTER 4 ORGANIZATIONAL RESPONSIBILITY

Responsibility

- 6. Bhutan Information, Communication and Media Authority (BICMA) shall function as the central information authority and be responsible for implementation of this Act.
- 7. BICMA shall be the appellate authority for appeals. Appeals from the authority shall be made to the High Court.
- 8. Every office shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
- 9. The general superintendence and ultimate responsibility for the functions of an office under this Act shall vest in the head of the office, who shall act through the Information Officer, as described in section 5 of this Act.

Information Cell and Information Officer

- 10. To administer its functions under this Act, each office shall establish a unit to be known as the Information Cell. The Information Cell shall be:

- (a) Headed by an Information Officer; and
- (b) Staffed with other personnel according to need.

CHAPTER 5 GENERAL OBLIGATIONS OF AN OFFICE

Manner and form of maintenance of information

11. Regardless of format, each office shall maintain its information in an organized fashion, duly catalogued and indexed, in a manner that promotes the right to information under this Act. To the greatest extent practicable, each office shall:
- (a) Maintain its information in a variety of easily reproducible formats; and;
 - (b) Ensure that information furnished in response to a request under this Act is furnished in the form requested.

Form of information furnished in response to request

12. Taking into consideration the requirement of subsection (b) of section 7 of this Act, the Information Officer may furnish information in response to a request under this Act in any form, including a:
- (a) Printed copy of a record or document;
 - (b) Transcript of a hearing or other proceeding;
 - (c) Computer disk or other electronic medium;
 - (d) Reasonable opportunity to inspect information and to take notes during such inspection;
 - (e) Reasonable opportunity to hear or view information, in the case of a sound recording or visual image; and
 - (f) Decoded recordation of information in written form or other appropriate form, in the case of short hand recordation or other code.

Cost-effectiveness requirement

13. In carrying out its obligations under this Act, each office shall provide for the greatest possible public access to information.

Organizational and operational statement

14. To facilitate public access to information, each office shall make available to the public a detailed organizational and operational statement that describes:
- (a) Its structural organization and functions;
 - (b) The procedures followed in its decision making;
 - (c) The powers, duties, and responsibilities of its officials and employees;
 - (d) The norms for the discharge of its functions;

- (e) The laws, rules, regulations, instructions, manuals and records used in discharging its functions;
- (f) The categories of information held by it or under its control, including details as to formats in which information is maintained;
- (g) Any arrangement that exists for consultation with or representation by, members of the public in relation to the formulation or implementation of its policy;
- (h) The boards, councils, committees and other bodies consisting of two or more persons constituted for the purpose of advice to the office, together with a statement for each such body, as to whether meetings are open to the public and whether minutes of meetings are accessible to the public;
- (i) A directory of its officials and employees, including specific contact information for its Information Officer and other employees in the Information Cell;
- (j) The budget of each of its component entities, indicating the particulars of all plans, proposed expenditures, and reports on disbursements made;
- (k) The manner of execution of its subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (l) Particulars of recipients of concessions, permits and authorizations granted by it;
- (m) Facilities and resources for obtaining information with respect to the office, including the working hours of any library or reading room maintained for public use; and
- (n) Matters relating to important policies of the office that affect the public.

Updating of organizational and operational statement

15. Each office shall update its organizational and operational statement, as described in section 11 of this Act, at least annually, but more frequently, if greater frequency is determined to be necessary by the head of the office.

Annual Report

16. The head of each office shall submit to the Parliament an annual report on the compliance of the office with its obligations under this Act. The report shall be submitted in time for the summer sitting of Parliament each year, with respect to the preceding calendar year.

CHAPTER 6
PROCEDURES FOR REQUESTING INFORMATION

No request required under this Act for certain information

17. No request for information shall be required under this Act, if the information:
- (a) Is required by law to be made available to the public without restriction;
 - (b) Serves a governmental purpose that, by its intrinsic nature, requires that it be made available to the public without restriction; or
 - (c) Consists of library materials exclusively for public use or consists of museum materials preserved solely for public reference or exhibition.

Request for information

18. A request for information shall be submitted in writing to the Information Cell of the appropriate office. The written request shall:
- (a) Be submitted in such form and manner as the Information Cell may prescribe; and
 - (b) Describe the information with sufficient particularity to permit its identification.

Special assistance in certain cases

19. If a request cannot be made in writing or otherwise does not comply with section 15 of this Act, the Information Officer shall render all reasonable assistance to the person making the request in order that the request may be honoured.

Transfer of request

20. If the Information Officer determines that requested information is held by, or is more closely connected with the functions of, another office, the Information Officer shall transfer the request as appropriate and, in writing, shall so notify the person making request. A transfer under this section shall be made as soon as practicable, but not later than 7 days after the date of receipt of the request.

Time period for furnishing of information or notice of denial of request

21. Except as provided by section 20 or 21 of this Act, not later than thirty days after the date of receipt of a request for information, the Information Officer shall:
- (a) Furnish the information as requested; or
 - (b) Provide written notice of denial of the request.

Extension of time period or notice of denial of request

22. By written notice to the person making the request, the Information Officer may extend the time period under section 19 of this Act, to a total of not more than 45 days from the date of receipt of the request (except that the total shall be not more than 32 days from the date of receipt in the case of a request concerning the life or liberty of a person) if:
- (a) The request is for a large volume of records or necessitates a search through a large volume of records and complying with the request within the time allotted would unreasonably interfere with the operations of the office;
 - (b) Consultations are necessary to process the request and the consultations cannot reasonably be completed within the time allotted; or
 - (c) The extension is necessary to protect an essential State interest or to protect the rights of any person.

Extraordinary additional extension or notice of denial of request

23. After the Information Officer extends the time period under section 20, the head of the office involved may further extend the time period for any of the reasons specified in subsection (a), (b) or (c) of that section. An extension under this section shall:
- (a) Be by written notice to the person making the request;
 - (b) Be granted only in extraordinary circumstances, as verified and recorded by the head of the office; and
 - (c) Not extend the total time period beyond 3 months after the date of receipt of the request.

Permissible reasons for denial of request for information

24. A request for information under this Act may be denied only if one of the conditions set forth in section 3 of this Act exists.

Partial denial of request for information

25. If a condition set forth in section 3 of this Act exists with respect to part of requested information, the Information Officer shall, if:
- (a) Possible, sever that part, deny the request for that part, and grant the request with respect to the part for which the condition does not exist; and
 - (b) Severance is not possible, deny the entire request.

Notice of denial of request for information

26. If a request for information is denied, the Information Officer shall, in writing, so notify the person making the request containing:

- (a) The reasons for the denial, including any findings on questions of material fact;
- (b) The name and designation each official or employee of the Government who participated in the denial decision; and
- (c) A statement of the right to appeal, under chapter 7 of this Act.

Failure to furnish information within applicable time limit deemed a denial

27. If the Information Officer does not furnish information within the time period under section 19, 20 or 21 of this Act, as applicable, the request shall be deemed to have been denied. In the circumstance described in the preceding sentence, the person requesting the information may appeal under chapter 7 of this Act.

**CHAPTER 7
APPEAL OF DENIAL OF REQUEST**

Denial of request for information as administrative adjudication

28. A denial of a request for information under this Act is an administrative adjudication. The person requesting the information may file an appeal in the High Court, under section 23(a) of the Civil and Criminal Procedure Code of Bhutan.

High Court access to exempt information

29. Notwithstanding that information at issue in an appeal under this chapter may be exempt information under chapter 6 of this Act, the High Court may order production of any or all of the information involved.

***In camera* proceedings and production of information**

30. On its own motion or on the request of any party to an appeal under this chapter, the High Court may conduct any or all proceedings *in camera* and may require production *in camera* of any or all information at issue in the appeal.

Damages and costs for unreasonable denial of request

31. In addition to any other judgment permitted by law, if the High Court holds that denial of a request for information was without reasonable grounds, the High Court may hold the office liable for damages and costs.

**CHAPTER 8
ROLE OF THE GOVERNMENT**

- 32. The Royal Government shall ensure compliance.
- 33. The Government shall educate and sensitize the public on the Right to Information law.

CHAPTER 10
DEFINITIONS, EFFECTIVE DATES AND AUTHORITATIVE TEXT

Definitions

34. In this Act:

- (a) “Exempt information” means information that, under chapter 6 of this Act, is exempt from the public right to information requirements of this Act;
- (b) “Information” means information in the possession, custody or control of an office, including information to which an office has access in connection with its functions; and which includes but not limited to information in documentary or other recorded form, whether stored, maintained or utilized as writing, drawing, electronic media, photographic image, film image, video image, sound transcription, physical object, or otherwise, including administrative decision records, documents, memoranda, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, and models;
- (c) “Office” includes the Executive, the Legislature, the Judiciary, a ministry, a department, a commission, a council, an executive agency, a nationalized industry, a public corporation or other entity established by law, including a corporate body or agency owned, controlled or substantially financed by the Government, a non-government organization financed, directly or indirectly, by the Government and corporations with public money.

Authoritative text

35. The Dzongkha text shall be the authoritative text, if there exist any difference in meaning between the Dzongkha and the English text.