

LAWS OF PITCAIRN, HENDERSON, DUCIE  
AND OENO ISLANDS

*Revised Edition 2013*

CHAPTER XLVI

**OMBUDSMEN ORDINANCE**

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**OMBUDSMEN ORDINANCE 2012**

Ordinances:  
No.1 of 2012

An Ordinance to prescribe the functions, powers and jurisdiction of ombudsmen in Pitcairn

[17 May 2012]

**PART I—PRELIMINARY**

Title and  
commencement

**1.** This Ordinance may be cited as the Ombudsmen Ordinance 2012 and shall come into force on the day after it is published.

Definitions

**2.** In this Ordinance, unless the context otherwise requires—

“action” includes an omission;

“aggrieved person” means a member of the public who claims to have suffered injustice in consequence of maladministration in the Government of Pitcairn or in a body mentioned in Schedule 1;

“Ombudsman”, in relation to any function, power, or duty under this Ordinance, means the Ombudsman for the time being investigating the complaint in respect of which the function, power, or duty is being exercised;

Ombudsmen

**3.—**(1) There shall be appointed one or more Ombudsmen.

(2) Each Ombudsman shall be appointed by the Governor.

(3) If more than one, then one of the Ombudsmen shall be appointed as Chief Ombudsman, and shall be responsible for the administration of the office, and the co-ordination and allocation of the work between the Ombudsmen.

(4) An Ombudsman shall not, without the approval of the Governor in each particular case, hold any office of trust or profit, other than his or her office as an Ombudsman, or engage in any occupation for reward in Pitcairn outside the duties of his or her office.

(5) Except as otherwise provided in this Ordinance, every Ombudsman shall hold office for a term of 5 years.

(6) Any Ombudsman may at any time resign his or her office by writing addressed to the Governor of Pitcairn, and shall so resign his or her office on attaining the age of 72 years.

(7) Any Ombudsman may at any time be removed or suspended from his or her office by the Governor for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct.

(8) No Ombudsman shall be removed under subsection (7) except in accordance with subsection (9).

(9) If the Governor considers that the question of removal under subsection (7) arises, then—

- (a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from amongst those who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one of more Commonwealth jurisdictions or in Ireland or a court having jurisdiction in appeals from any such court; and
- (b) the tribunal shall inquire into the matter and report to the Governor and advise the Governor whether the Ombudsman should be removed from office under subsection (7).

(10) An Ombudsman is entitled to a daily attendance allowance for each day on which the Ombudsman is engaged in the performance of his or her functions, and to reimbursement of expenses for such travel as is required for the performance of his or her functions.

(11) Before entering upon the exercise of the duties of his or her office, an Ombudsman shall take an oath, administered by the Governor, that he or she will faithfully and impartially perform the duties of his or her office, and that he or she will not, except in accordance with this Ordinance, divulge any information received under this Ordinance.

## **PART II—FUNCTIONS AND LIMITS**

**4.—**(1) Subject to section 5, it shall be a function of an Ombudsman to investigate any decision, recommendation or action relating to a matter of administration and affecting any person or body of persons in his or her or its personal capacity, made in or by any of the divisions or organisations named or specified in Schedule 1 of this Ordinance, or by any officer, employee, or member of any such division or organisation in his or her capacity as such officer, employee or member.

Functions of  
Ombudsmen

(2) A matter referred to in subsection (1) includes any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension or dismissal or terms of service of an employee of the Government or of any body mentioned in Schedule 1.

(3) Subsection (1) shall apply whether the recommendation, decision or action occurred before or after the passing of this Ordinance provided that the time limit set out in section 11(1) is observed or is extended pursuant to s 11(2).

(4) The powers conferred on Ombudsmen by this Ordinance may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, or action shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, or action it is shall be challenged, reviewed, quashed, or called in question.

(5) An investigation under this section may be made at the instigation of an Ombudsman or in respect of a complaint made under s 7(1) by a person who is aggrieved.

(6) The Ombudsmen shall each have the further powers and exercise the functions set out in Part III of the Freedom of Information Ordinance 2012.

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Limits of jurisdiction

**5.—**(1) An Ombudsman does not have jurisdiction to inquire into the following matters:

- (a) the conduct of the Governor;
- (b) a matter that is mentioned in Schedule 2;
- (c) any decision, recommendation, or action of the Attorney General, or any person acting as legal adviser to the Governor, or acting as counsel for the Governor in relation to any proceedings;
- (d) any decision, recommendation, or action of any member of the Police, other than any matter relating to the terms and conditions of service of any person as a member of the Police;

(2) An Ombudsman may in his or her discretion refuse to inquire into any decision, recommendation, or action in respect of which there is, under the provisions of any Ordinance, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

Personal interest

**6.—**(1) If the Ombudsman has a personal interest in a complaint, or considers that he or she may have or may reasonably be perceived as having such an interest, the Ombudsman is to inform the Governor.

(2) The Ombudsman may recuse himself or herself from considering a complaint in which he or she has, or may reasonably be perceived as having, a personal interest.

### PART III—MAKING AND INVESTIGATING COMPLAINTS

**7.**—(1) A complaint can only be made by or on behalf of a person who is aggrieved. Who may complain

(2) A complaint may be made only if the aggrieved person is resident in Pitcairn (or, if dead, was resident in Pitcairn at the time of death).

**8.**—(1) If an internal procedure is available, an aggrieved person or the person acting on his or her behalf must take reasonable steps to obtain a remedy under the procedure before making a complaint under this Ordinance. Internal remedies

(2) An internal procedure is available for the purposes of this section if—

- (a) the body against which the complaint has been made has an internal complaints procedure for complaints;
- (b) the body has taken reasonable steps to make the availability of the procedure known to the public; and
- (c) the complainant has access to that procedure.

(3) An Ombudsman may refuse or defer an investigation of a matter while an internal review of the same matter is being carried out.

**9.**—(1) A complaint must be in writing.

(2) A complaint must be lodged with the Office of the Ombudsmen. How a complaint is made

(3) The Governor shall ensure that the address and mode of contacting the Office of the Ombudsmen is published in Pitcairn.

(4) If a complainant is an individual that individual must make the complaint personally. If the aggrieved individual has died or is unable to act, the complaint may be taken by a personal representative, guardian, attorney, family member, or other suitable individual.

**10.** The Governor may refer to the Ombudsmen any question of maladministration in the government of Pitcairn. Governor may refer matter to Ombudsmen

**11.**—(1) A complaint is only to be dealt with if it is offered within twelve months from the date that— Time limit for complaint

- (a) the aggrieved person has notice of the matters alleged in it; or
  - (b) any court proceeding or internal procedure regarding the matter is concluded;
- whichever is the later.

(2) Subsection (1) does not apply if the Chief Ombudsman considers there are special circumstances that make it proper that the complaint should be entertained.

Ombudsman to  
consider complaint

**12.**—(1) Subject to section 13, the Ombudsman who is to investigate a complaint must proceed to consider it.

(2) The Ombudsman may conduct such preliminary inquiries as he or she considers appropriate.

(3) The investigation of a complaint is to be conducted in private.

Ombudsman may  
refuse to investigate  
complaint

**13.**—(1) The Ombudsman may in his or her discretion decide not to investigate any complaint if in his or her opinion—

- (a) the subject-matter of the complaint is trivial; or
- (b) the complaint is vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(2) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he or she shall inform the complainant of that decision, and shall state his or her reasons therefor.

Procedure

**14.**—(1) Before investigation, an Ombudsman shall—

- (a) inform the body or person against which a complaint has been made of the complaint and details of the complaint; and
- (b) inform the body or person against which a complaint has been made of the Ombudsman's intention to conduct the investigation; and
- (c) offer principal officers and the people against whom the complaint is made an opportunity to comment on the allegations.

(2) The Ombudsman may establish his or her own procedure in conducting an investigation.

(3) The Ombudsman need not hold a hearing, and may gather information as he or she thinks fit.

(4) If there are any comments that adversely affect a division of the Government of Pitcairn or other body or person, the Ombudsman is to give that division or body or person an opportunity to be heard.

Determining a  
complaint

**15.**—(1) On completing investigation of a complaint, the Ombudsman is to prepare a report setting out—

- (a) the Ombudsman's findings of fact;

- (b) his or her opinion as to whether the aggrieved person has suffered injustice in consequence of maladministration; and
  - (c) the Ombudsman's reasons for that opinion.
- (2) A report under this section shall not include material for which a public interest certificate has been issued under section 23, but shall include a summary of the general nature of any such material.
- (3) For the purposes of section 15(1), injustice has been suffered where the decision, recommendation or action that is the subject matter of the investigation—
- (a) appears to have been contrary to law; or
  - (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
  - (c) was based wholly or partly on a mistake of law or fact; or
  - (d) was plainly wrong.
- (4) If the aggrieved person has in the opinion of the Ombudsman suffered an injustice—
- (a) the report is to set out the Ombudsman's recommendations for the prevention of a recurrence of the injustice; and
  - (b) it may include a recommendation that a payment be made for any financial loss or inconvenience that the aggrieved person has suffered due to the injustice.
- (5) A recommendation does not bind any body.

**16.**—(1) The Ombudsman is to send copies of the report to the following persons—

Disclosure of report

- (a) the complainant;
  - (b) the Governor;
  - (c) the principal officer of the division or other body concerned;
  - (d) each person against whom the complaint was made; and
  - (e) each person who is criticized in the report, or may be adversely affected by it.
- (2) The Ombudsman may publish the report or an adequate summary of it.

Response to report

**17.—**(1) If a report contains recommendations that a body to which the report relates should or should not take a course of action, a written response must be submitted to the reporting Ombudsman within three months after the report is received by the body.

(2) The response must state—

- (a) which recommendations are accepted; and
- (b) which recommendations are not accepted; and
- (c) if a recommendation to take a course of action is accepted, how it is intended to take that course of action.

#### **PART IV—MISCELLANEOUS**

Summons and evidence

**18.—**(1) An Ombudsman may summon a person to appear before the Ombudsman and to provide information. The summons is to be in writing in the form prescribed in Schedule 3.

(2) When summoning a person under subsection (1), an Ombudsman may at his or her discretion, require that person to appear before the Ombudsman in person, by telephone conference, or by video-link or in any other manner.

(3) Subject to subsection (4), any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to or answer any question put by an Ombudsman in relation to that matter, or to produce to an Ombudsman any document or paper or thing relating to it, notwithstanding that compliance with that requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.

(4) An Ombudsman shall not require the provision of any information for which a public interest certificate has been issued under s 23(1).

(5) Every person shall have the same privileges in relation to the giving of information and the answering of questions as witnesses have in any court.

Duty of non-disclosure

**19.—**(1) Information obtained by an Ombudsman in the course of an investigation is not to be disclosed except for the purposes of investigation and any report made.

(2) An Ombudsman or member of the staff of the Ombudsmen cannot be called to give evidence in any court of matters coming to his or her knowledge in the course of an investigation under this Ordinance.

**20.**—(1) For the purposes of any civil or criminal proceedings, publication in any of the following circumstances is absolutely privileged—

- (a) the publication by an Ombudsman of a report under this Ordinance, or of any other matter by the Ombudsmen in making a report under this Ordinance;
- (b) the publication for the purposes of this Ordinance of any matter by the Governor or his or her officials in communication with the Ombudsmen or any member of staff of the Ombudsmen;
- (c) the publication for the purposes of this Ordinance of any matter by an Ombudsman or any member of the staff of the Ombudsmen, in communicating with the Governor or his or her officials.

(2) Except on the trial of any person for perjury in respect of his sworn testimony, or in any proceedings in respect of an offence under section 21 of this Ordinance, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before an Ombudsman shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before an Ombudsman shall be given against any person.

**21.**—(1) If a person, in giving evidence to an Ombudsman (whether or not on oath) knowingly or recklessly makes a statement that is false in a material particular, he or she commits an offence.

(2) If a person without lawful excuse obstructs an Ombudsman or a member of the Ombudsmen's staff in the performance of his or her functions under this Ordinance, he or she commits an offence.

(3) If without reasonable excuse a person on whom a summons is served under this Ordinance fails to appear before the Ombudsman at the time and place specified on the summons, or fails to produce a document or publication that the summons requires, that person commits an offence.

(4) If a person, without reasonable excuse, on being required by an Ombudsman to take an oath or to make an affirmation, refuses to take an oath or make an affirmation, or refuses to answer any lawful and relevant question put by an Ombudsman, that person commits an offence.

Penalties

**22.**—(1) Any person who commits an offence under section 21 is liable to a fine not exceeding \$500.

Public interest certificates

**23.**—(1) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the production of a specified document or publication to the Ombudsmen, or the provision of any specified information to the Ombudsmen might:

- (a) prejudice the security, defence or international relations of Pitcairn or the United Kingdom or the investigation and detection of offences; or
- (b) involve the disclosure of the deliberations of a Minister of the Crown in the United Kingdom.

(2) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is likely to damage or cause prejudice to the security of Pitcairn.

**SCHEDULE 1****BODIES IN RESPECT OF WHICH COMPLAINTS MAY BE  
INVESTIGATED**

1. The Office of the Governor.
2. The Island Council.
3. Any division of the Government of Pitcairn Islands.

**SCHEDULE 2****MATTERS OVER WHICH THE OMBUDSMEN DO NOT HAVE  
JURISDICTION**

1. Any complaint in respect of which the Governor, acting in his or her discretion, certifies under s 23 that it is not in the public interest that an Ombudsman investigate the matter.
2. The content of legislation.
3. The conduct of a member of the judiciary.
4. The investigation of crime.
5. Action relating to extradition or to fugitive offenders.
6. The conduct of an employee of the Foreign and Commonwealth Office who is a member of the Governor's staff.
7. Rights of persons or bodies arising under contracts made between such persons or bodies, on the one hand, and persons or bodies in Schedule 1, on the other.

**SCHEDULE 3**

**SUMMONS TO APPEAR AND PROVIDE INFORMATION IN  
THE MATTER OF THE OMBUDSMEN ORDINANCE 2012**

Pursuant to s18(1) of the Ombudsmen Ordinance 2012

To:

Address:

You are hereby summoned to appear before the Ombudsman  
on            day the            day of            20\_\_

You must appear at.....

.....

.....

(describe place)

and you must provide the following information: .....

.....

.....

.....

.....

.....

.....

Signed ..... Dated .....

[Ombudsman]

LAWS OF PITCAIRN, HENDERSON, DUCIE  
AND OENO ISLANDS

*Revised Edition 2013*

CHAPTER XLVII

**FREEDOM OF INFORMATION ORDINANCE 2012**

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**FREEDOM OF INFORMATION ORDINANCE 2012**

An Ordinance to give to members of the public rights of access to information held by public authorities

Ordinances:  
No.3 of 2012

[03 August 2012]

**PART I—PRELIMINARY**

**1.**—(1) This Ordinance may be cited as the Freedom of Information Ordinance 2012.

Short title and  
commencement

(2) This Ordinance shall come into operation on the day after it is published.

**2.** In this Ordinance—

Definitions

“information”

- (a) means any information held by a public authority; and
- (b) includes any information held outside Pitcairn by any branch or post of any public authority; and
- (c) does not include evidence given or submissions made to—
  - (i) a Royal Commission; or
  - (ii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to or by any provision of any Ordinance, to inquire into a specified matter; and
- (d) does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsman and any public authority and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsmen Ordinance, other than information that came into existence before the commencement of that investigation;

cap.46

“Ombudsman” means the Ombudsman holding office under the Ombudsmen Ordinance.

cap.46

“personal information” means any information held about an identifiable person.

“public authority” means—

- (a) the Governor of Pitcairn;
- (b) the Government of Pitcairn and its divisions;
- (c) a body or authority created by an Ordinance, whether incorporated or not, including the Island Council.

Application

- 3.**—(1) This Ordinance applies to public authorities.  
 (2) This Ordinance does not apply to—
- (a) the judicial functions of:
    - (i) a court including the Lands Court;
    - (ii) the holder of a judicial office or other office connected with a court;
  - (b) the security or intelligence services in relation to their strategic or operational intelligence-gathering activities;
  - (c) the Office of the Ombudsman;
  - (d) the Office of the Attorney-General.

Purposes

- 4.** The purposes of this Ordinance are—
- (a) to improve access to information, in order to strengthen governmental accountability and encourage public participation in decision-making in Pitcairn;
  - (b) to protect information consistently with public interest and personal privacy.

## **PART II—PRINCIPLES TO GOVERN REQUESTS FOR INFORMATION**

Persons eligible to apply for access to information

- 5.** Any person may request that a public authority make available to him or her any specified information.

Form of application for information

- 6.**—(1) A person who wishes to obtain access to information shall make an application to the public authority that holds that information.

- (2) An application under subsection (1) –
- (a) may be made in writing or transmitted by email;
  - (b) shall provide such information concerning the information as is sufficient to enable the public authority to identify it.

Reformulating application for information

- 7.** Where the information provided by the applicant in relation to the information is not sufficient to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult the authority with a view to reformulating the application so that the information can be identified.

Duties of assistance on public authorities and transfer of requests

- 8.** It is the duty of every public authority to give reasonable assistance to a person to make a request or to direct his or her request to the appropriate person or public authority.

**9.** Subject to the provisions of this Ordinance, every person shall have a right to obtain access to information unless:

- (a) it is exempt information under section 10; or
- (b) there is a good reason for withholding it in terms of section 11; or
- (c) one or more of the reasons in section 12 apply.

Presumption in favour of disclosure of information: general right of access

**10.—**(1) Information is exempt information if either of subsections (2) or (3) apply.

Exempt information

(2) Information is exempt information if the making available of that information would be likely—

- (a) to prejudice the security or defence of Pitcairn or the international relations of the Government of Pitcairn or the Government of the United Kingdom; or
- (b) to prejudice the entrusting of information to the Government of Pitcairn or the Government of the United Kingdom on a basis of confidence by—
  - (i) the Government of any other country or any agency of such a Government; or
  - (ii) any international organisation; or
- (c) to prejudice the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.

(3) Information is exempt information if it is information that, were it requested under the Freedom of Information Act 2000 (UK) (c. 36), would be exempt information by reason of Part II of that Act.

**11.—**(1) Where this section applies, good reason for withholding information exists unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

Good reason for withholding information

(2) This section applies if, and only if, the withholding of the information is necessary to—

- (a) protect the privacy of natural persons, including that of deceased natural persons; or
- (b) protect information where the making available of the information—
  - (i) would disclose a trade secret; or
  - (ii) would be likely to prejudice unreasonably the commercial position of the person who supplied or who is the subject of the information; or
- (c) protect information that is subject to an obligation of confidence or that any person has been or could be compelled to provide under the authority of

any enactment, where the making available of the information—

- (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
- (ii) would be likely otherwise to damage the public interest; or
- (d) avoid prejudice to measures protecting the health or safety of members of the public; or
- (e) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
- (f) maintain the constitutional conventions for the time being that protect—
  - (i) the confidentiality of communications by or with the Sovereign or his or her representative;
  - (ii) collective and individual ministerial responsibility;
  - (iii) the political neutrality of officials;
  - (iv) the confidentiality of advice tendered to the Governor, and the Governor's officials and employees; or
- (g) maintain the effective conduct of Pitcairn affairs through—
  - (i) the free and frank expression of opinions by or between or to the Governor, the Governor's officials and employees in the course of their duties; or
  - (ii) the protection of such officers and employees from improper pressure or harassment; or
- (h) maintain legal professional privilege; or
- (i) enable any public authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or
- (j) enable any public authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (k) prevent the disclosure or use of information for improper gain or improper advantage.

- 12.—(1)** A public authority may refuse to grant a request if—
- (a) the information requested does not exist or cannot be found after all reasonable steps have been taken to find it;

- (b) the request does not contain sufficient information to enable the authority to identify the record by taking reasonable steps;
- (c) granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority;
- (d) publication of the information is required by law and is intended to be effected not later than three months after the receipt of the request by the authority;
- (e) the request is frivolous or vexatious;
- (f) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or
- (g) the fee payable under section 18 has not been paid.

(2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

**13.** Where a request is refused, the public authority shall give to the applicant—

Reasons for refusal to be given

- (a) the reason for its refusal; and
- (b) if the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 10 or section 11 and there is no countervailing public interest; and
- (c) information concerning the applicant's right, by way of complaint under section 23 to an Ombudsman, to seek an investigation and review of the refusal.

**14.**—(1) A public authority shall respond to an application as soon as practicable but not later than:

Decisions on information requests

- (a) thirty calendar days after the date of receipt of the application; or
- (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority;

(2) The public authority to whom a request is made in accordance with section 6 or is transferred shall—

- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what

charge, subject to section 18; and

- (b) give, post, or send by electronic means notice of the decision to the person who made the request.

Extension of time  
limits

**15.** The public authority may extend the period of thirty calendar days for a further period, not exceeding thirty calendar days, in any case where there is reasonable cause for such extension.

Manner of access to  
records

**16.—(1)** A public authority shall give access to a record under this Act by providing the requester with the information in the record in any of the following forms or manners that it considers appropriate—

- (a) a reasonable opportunity to inspect the record;
- (b) a copy of the record;
- (c) a transcript of the information;
- (d) an electronic machine-readable device or other electronic device that contains the information;
- (e) a reasonable opportunity to hear or view the record, where the record is of sound or visual images;
- (f) a decoded copy of the information, where the information is in shorthand or another code;
- (g) such other means as may be determined by the public authority.

(2) Where a public authority decides to grant a request and the request is for access to a record in a particular form or manner, access shall be given in that form or manner unless the authority is satisfied that—

- (a) access in another form or manner specified in subsection (1) would be significantly more efficient; or
- (b) the giving of access in the form or manner requested would—
  - (i) be physically detrimental to the record,
  - (ii) involve an infringement of copyright (other than copyright owned by the Crown, the Government or the public authority concerned),
  - (iii) conflict with a legal duty or obligation of the public authority concerned, or
  - (iv) affect the protection of an exempt record from disclosure.

(3) Where a public authority decides to grant a request but, for reasons set out in subsection (2), does not give access to the record requested in the form or manner specified in the request, the authority shall give access in such form or manner as the authority considers appropriate.

**17.**—(1) Where an application is made to a public authority for access to information which contains matter to which this Ordinance does not apply by reason of section 3(2), the authority shall grant access to a copy of the information with the exempt matter deleted.

Partial access

(2) A public authority that grants access to a copy of the information in accordance with this section shall inform the applicant—

- (a) that it is such a copy; and
- (b) of the legal provision by virtue of which such deleted matter is exempt matter.

**18.** The communication of information may be made conditional upon the payment by the person making the request of a reasonable fee which shall not exceed the actual cost of searching for, reproducing, preparing and communicating the information.

Reasonable fees to be charged

### PART III—REVIEW OF DECISIONS

**19.**—(1) It shall be a function of the Ombudsman to investigate and review any decision in which a public authority—

Functions of Ombudsman

- (a) refuses to make information available to any person in response to a request made by that person in accordance with section 6; or
- (b) decides, in accordance with this Ordinance, in what manner or, in accordance with section 18, for what charge a request made in accordance with section 6 is to be granted; or
- (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 6.

(2) An investigation and review under subsection (1) may be made by an Ombudsman only on complaint being made to an Ombudsman in writing.

(3) If, in relation to any request made in accordance with section 6, any public authority fails to comply with section 14 within the time limit fixed by that section (or, where that time limit has been extended under this Ordinance, within that time limit as so extended), that failure shall be deemed, for the purposes of subsection (1), to be a refusal to make available the information to which the request relates.

(4) Undue delay in making information available in response to a request for that information, shall be deemed, for the purposes of subsection (1), to be a refusal to make that information available.

Mediation

**20.**—(1) The Ombudsman may at any time attempt to have the matter that is the subject of an application for review resolved by negotiation, conciliation, mediation or otherwise.

(2) Participation in the mediation is voluntary and any party to it may withdraw at any time.

(3) The mediator appointed by the Ombudsman may decide to terminate the mediation at any time, in which case the mediator shall provide reasons for so deciding.

(4) Anything said or admitted during the mediation and any document prepared for the purposes of the mediation shall not be admissible in evidence against any person in any subsequent proceedings concerning a matter that is the subject of the mediation and no evidence in respect of the mediation may be given.

Application of  
Ombudsmen  
Ordinance  
cap.46

**21.** Except as otherwise provided by this Act, the provisions of the Ombudsmen Ordinance shall apply in respect of investigations and other proceedings carried out under this Part in respect of decisions under Part II as if they were investigations carried out under the Ombudsmen Ordinance.

Requirements of  
Ombudsman to be  
complied with within  
certain period

cap.46

**22.**—(1) Where, during the course of an investigation of any public authority under section 19, an Ombudsman, pursuant to any power conferred on that Ombudsman by the Ombudsmen Ordinance, requires that public authority to furnish or produce to that Ombudsman any information or document or paper or thing which relates to that investigation, that public authority shall, as soon as reasonably practicable, and in no case later than 20 working days after the day on which that requirement is received by that public authority, comply with that requirement.

(2) Where any requirement to which subsection (1) applies is made to any public authority, the chief executive (by whatever name) of that department or an officer or employee of that department authorised by that chief executive or that public authority may extend the time limit set out in subsection (1) in respect of that requirement if—

- (a) the requirement relates to, or necessitates a search through, a large quantity of information or a large number of documents or papers or things, and meeting the original time limit would unreasonably interfere with the operations of the department or the public authority; or
- (b) consultations necessary before the requirement can be complied with are such that the requirement cannot reasonably be complied with within the original time limit; or

- (c) the complexity of the issues raised by the requirement are such that that requirement cannot reasonably be complied with within the original time limit.
- (3) Any extension under subsection (2) shall be for a reasonable period of time having regard to the circumstances.
- (4) The extension shall be effected by giving or posting notice of the extension to the Ombudsman within 20 working days after the day on which the requirement is received.
- (5) The notice effecting the extension shall—
  - (a) specify the period of the extension; and
  - (b) give the reasons for the extension; and
  - (c) contain such other information as is necessary.
- (6) If any public authority fails to comply with any requirement to which subsection (1) applies within the time limit fixed by that subsection (or, where that time limit has been extended under subsection (2), within that time limit as so extended), the Ombudsman may report such failure to the Governor, and may thereafter make such report to the Island Council on the matter as the Ombudsman thinks fit.
- (7) Notwithstanding anything in this section, an Ombudsman shall not, in any report made under subsection (6), make any comment that is adverse to any person unless the person has first been given an opportunity to be heard.

**23.** Where, after making an investigation of a complaint made under section 19, an Ombudsman is of the opinion—

Recommendations  
made by the  
Ombudsman

- (a) that the request made in accordance with section 6 should not have been refused; or
- (b) that the decision complained of is unreasonable or wrong—

the Ombudsman shall—

- (c) report his opinion and his reasons to the appropriate public authority; and
- (d) make such recommendations as he or she thinks fit; and
- (e) give to the complainant—
  - (i) a copy of his or her recommendations (if any); and
  - (ii) such other information as he or she thinks proper.

**24.**—(1) Where a recommendation is made under section 23, the public authority in relation to which it is made shall be under a public duty to observe that recommendation as from the commencement of the 21st working day after the day on which that recommendation is made to it unless, before that day, the Governor by Order otherwise directs.

Recommendations  
made to public  
authority

(2) An Order under this section may be made for all or any of the reasons that were before the Ombudsman by whom the recommendation was made but for no other reasons.

(3) As soon as practicable after an Order is made under this section, a copy of that Order must be given to the Ombudsman who made the recommendation and to the person who requested the information.

Right of review

**25.**—(1) Where—

- (a) a recommendation is made under section 23 in respect of a request made under section 6; and
- (b) an Order is made under section 24 in respect of that recommendation;

the person who made that request may apply to the Supreme Court for a review of the making of that Order.

(2) An application under subsection (1) may be made on the ground that the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(3) On an application under subsection (1), the Supreme Court may—

- (a) make an order confirming that the Order was validly made; or
- (b) make an order declaring that the making of the Order was beyond the powers conferred by section 24 or was otherwise wrong in law.

(4) Unless the Supreme Court is satisfied that an application brought under subsection (1) has not been reasonably or properly brought, it shall, in determining the application and irrespective of the result of the application, order that the costs of the applicant on a solicitor and client basis shall be paid by the Governor, and such costs shall be paid out of money appropriated by the Governor for the purpose.

#### **PART IV—MISCELLANEOUS**

Protections against certain actions

**26.**—(1) Nothing in this Ordinance shall be construed as authorising the disclosure of any information containing any defamatory matter or certain actions disclosure of which would be in breach of confidence or intellectual property rights.

(2) Where access to information referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Ordinance, no action for defamation or breach of confidence or breach of intellectual property rights shall lie against—

- (a) the public authority or any person involved in the grant of such access, by reason of the grant of access or of any re-publication of that information; or

- (b) the author of the information or any other person who supplied the information to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the information.
- (3) The grant of access to information in accordance with this Ordinance shall not be construed as authorisation or approval—
  - (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the information or its contents by the person to whom access is granted;
  - (b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the information.

**27.**—(1) A person commits an offence if, in relation to information to which a right of access is conferred under this Ordinance, he or she—

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the information with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one thousand dollars.

**28.** The Governor may make regulations—

- (a) generally for giving effect to the provisions and purposes of this Ordinance;
- (b) prescribing the period of time for the doing of any act under this Ordinance;
- (c) for anything that is required or permitted to be prescribed under this Ordinance.

Offences

Power to make regulations

