



Tuvalu

PUBLIC RECORDS ACT

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PUBLIC RECORDS ACT

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Tuvalu

PUBLIC RECORDS ACT

AN ACT TO PROVIDE FOR THE PRESERVATION OF THE PUBLIC RECORDS OF TUVALU¹

Commencement [20th August 1979]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Public Records Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Archives Office**” means the Tuvalu National Archive established under this Act;

“**Archivist**” means the person for the time being appointed Government Archivist under this Act;

“**Government office**” means any ministry, division, department, office or agency of the Government of Tuvalu, and includes the Parliament of Tuvalu and all courts of law in Tuvalu; and may include any office or body declared by the Minister to be a Government office for the purposes of this Act;

“**public records**” means all documentary materials of any kind, nature or description which have been drawn up, made, received, acquired or used in the course of legislative, administrative or executive transactions or in proceedings in any court, together with all exhibits and other material evidences which form part of or are annexed to or are otherwise related to specific documents, which are or are required to be in the custody of any

public officer or Government office or which may at the commencement of this Act or thereafter be transferred to or acquired by the Archives Office.

3 Application

- (1) Nothing in this Act or in any regulations made under it shall apply with respect to any public record which has been drawn up, received, acquired or used by any Government office if such record discloses any information which is required to be kept secret pursuant to the provisions of any Act.
- (2) Except as provided in sections 4, 5 and 20, nothing in this Act or in any regulations made under it shall apply to the public records of any other government or administration which may from time to time be deposited in the Archives Office under the provisions of section 4(2).

PART II - ADMINISTRATION

4 Archives Office

- (1) There shall be established an Archives Office to be known as “the Tuvalu National Archive”, wherein shall be stored for preservation such of the public records of Tuvalu as are transferred thereto or acquired by the Archivist under the provisions of this Act.
- (2) In addition to the public records of Tuvalu there may be deposited in the Archives Office the public records of such other governments and administrations with whom agreements as to such deposit have been reached with the Government of Tuvalu either before or after the commencement of this Act.
- (3) Subject to any general or special directions which may be given to him by the Minister, the Archivist may by contract or bequest or in any like manner acquire for the Archives Office all such original records, manuscripts and other documentary materials, or copies or replicas thereof, other than public records, as he may deem necessary or desirable to secure and all such materials shall be deemed to be public records of Tuvalu for the purposes of this Act.

5 Archivist

The Minister shall appoint an Archivist who shall, subject to any directions given to him by —

- (a) the Minister, in respect of the public records of Tuvalu; or
- (b) the appropriate government or administration, in respect of the public records of such government or administration other than of Tuvalu as

may deposit its records in the Archives Office pursuant to the provisions of section 4(2),

be charged with the care, custody, control and administration of the public records in the Archives Office and the public access thereto and with the performance of any other duties prescribed by this Act.

6 Delegation of the Archivist's powers

- (1) The Archivist may from time to time delegate in writing any of his powers under this Act, except the power of authorising the destruction or disposal of public records, to any person or class of persons.
- (2) Subject to any general or special directions given or conditions attached by the Archivist, the person to whom any powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation:

Provided that no such delegation shall prevent the exercise of any such power by the Archivist.

- (3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Archivist by whom it was made may have ceased to hold office, and shall continue to have effect as if made by his successor in office.

PART III - CUSTODY AND PRESERVATION OF ARCHIVES

7 Deposit of public records in the Archives Office

- (1) All public records of the age of 5 years or over (other than those which under any Act are required to be held in the custody of a specified person or Government office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as —
 - (a) evidence of the organisation, functions and transactions of the Government office in which they were originally made or received; or
 - (b) evidence of public or private personal or property rights or civic rights; or
 - (c) containing historical or general information,

shall be transferred to the custody of the Archivist and be deposited in the Archives Office.

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- (2) Notwithstanding anything in subsection (1) —
- (a) where the Archivist is satisfied that the deposit in the Archives Office of any particular public record of the age of 5 years or over would unduly prejudice the effective administration of any Government office, he shall defer the deposit of that public record for such period as may be agreed upon between the Archivist and the administrative head of the Government office affected;
 - (b) where the administrative head of the Government office having the possession or control of any public record satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that record in the Archives Office, the Archivist shall from time to time defer the deposit of that public record for such period as may be agreed upon between that administrative head and the Archivist;
 - (c) where the Minister in charge of any Government office certifies that in his opinion any specified public record or specified class of public records in the custody or control of the Government office contains information the release of which may adversely affect the security of Tuvalu or relations between the Government of Tuvalu and the government of any other country, the deposit in the Archives Office of that public record or of public records of that class shall be deferred for such period or shall be made subject to such conditions as to access or otherwise as that Minister may from time to time direct;
 - (d) where the deposit of any public record in the Archives Office is deferred as aforesaid, the Archivist may prescribe any conditions he thinks fit to ensure the safe preservation of any such record during the time it is kept in a Government office.
- (3) Any public record deposited under the provisions of the last preceding subsection may be deposited unconditionally or, if the administrative head of the Government office making the deposit so requires, shall be deposited subject to such conditions as to access and otherwise as may be agreed upon from time to time by the Archivist and the administrative head of that office.
- (4) Where the administrative head of any Government office and the Archivist are unable to agree as to whether or not the deposit of any public record in the Archives Office should be deferred or as to the period for which that deposit should be deferred or as to the conditions as to access and otherwise on which any public record should be so deposited, that question shall be determined by the joint decision of the Minister and the Minister in charge of that Government office, and their decision shall be final.

8 Deposit of public records of less than 5 years of age

- (1) The Archivist may allow the deposit in the Archives Office of public record of less than 5 years of age if he considers that they are of sufficient value for deposit.
- (2) Any deposit of public records under the provisions of subsection (1) may be subject to any special conditions imposed by the administrative head of the Government office making the deposit.

9 Public records not in the Archives Office

- (1) The Archivist shall be entitled from time to time to inspect any public records that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary.
- (2) Nothing in this section shall be deemed to authorise the Archivist to inspect the contents of any public records —
 - (a) which by any written law are forbidden to be communicated to him; or
 - (b) which are secret or confidential, except with the consent of the administrative head of the Government office having the custody thereof.

10 Return of public records in Government office

Where the administrative head of the Government office by which any public record was deposited in the Archives, or the administrative head of the successor of that Government office, satisfies the Archivist that such record is required for use in that Government office, the Archivist shall return such record to the custody of that Government office for such period as may be agreed upon between the Archivist and the administrative head, and subject to such conditions as the Archivist may prescribe to ensure the safe custody and preservation of that public record during the time it is kept in that Government office.

11 Public records to be surrendered on demand

Where any public record is in the custody or possession of any person other than a public officer or other person authorised to have such custody or possession in his official capacity, that person shall, on demand in writing by the Archivist, deposit such records in the Archives Office or in such other Government office as the Archivist may direct.

12 Public records not to be destroyed or disposed of without the authority of the Archivist

- (1) No person shall destroy or otherwise dispose of, or authorise the destruction or other disposal of, any public record of any kind whatsoever that is in his possession or under his control, except with the consent of the Archivist given in accordance with the provisions of this Act.
- (2) Before authorising the destruction of any public record or any class of public records, the Archivist may, if he thinks fit, consult with any person whom he considers qualified to advise him as to the value thereof for permanent preservation.

13 Routine destruction of public records

The Archivist may authorise the immediate destruction, or the destruction after the expiration of such time as may be agreed upon between the Archivist and the administrative head of the Government office concerned, of any specified public record or classes of public records that —

- (a) by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation in the Archives Office; and
- (b) are not required for reference purposes in any Government office after action on them is completed, or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Archivist and the administrative head of the Government office concerned.

14 Access to public records in the Archives Office

- (1) Except as may be otherwise provided in any written law, and subject to the conditions under which any records are deposited, all records deposited in the Archives Office shall be available for public reference subject to the provisions of any regulations made under this Act:

Provided that —

- (a) the Archivist may, for good cause, withhold access to any specified public record or class of public records in his custody subject to the right of the person so denied access to appeal to the Minister, whose decision thereon shall be final;
 - (b) any public record deposited in the Archives Office by any court and containing any information relating to the trial or punishment of any person may be inspected only by a person authorised in writing by the Chief Justice in that behalf.
- (2) Nothing contained in this section shall limit the powers of any competent court to order the production of any public record of Tuvalu.

- (3) Notwithstanding the other provisions of this section and subject to the provisions of proviso (b) of subsection (1) of this section, the Minister may at any time, by order in writing addressed to the Archivist, withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records in the custody of the Archivist.
- (4) Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extracts from any public records which are available for public reference under this section.

15 Publication of public records

On the recommendation of the Archivist, the Minister may authorise the publication of any public record deposited in the Archives Office and available for public reference which he considers to be of sufficient interest to warrant its publication.

16 Copyright

- (1) Nothing in this Act shall derogate from any provision of the law relating to copyright in relation to anything contained in any public record deposited in the Archives Office under the provisions of this Act.
- (2) Where any person publishes any work containing any passage from any public record deposited in the Archives Office, he shall in that publication acknowledge the source from which that passage is taken.

PART IV - MISCELLANEOUS PROVISIONS

17 Archives Office seal

The Archivist shall cause to be made a seal for the Archives Office, with which all certified copies issuing out of the office shall be sealed.

18 Use of documents in evidence

Any copy of any public record of Tuvalu in the custody of the Archivist which is certified by the Archivist to be a true copy of such public record shall be received as evidence of the contents of such record in all courts of law in Tuvalu.

19 Regulations

- (1) Subject to the provisions of the next succeeding subsection, the Minister may, from time to time, make regulations for any purpose for giving effect to the

provisions of this Act and for the due administration thereof and in particular may make regulations —

- (a) regulating the transfer of public records from any Government office to the Archives Office or any record centre or other repository which may be established for the purposes of this Act;
 - (b) regulating the manner of destruction or other disposal of valueless public records;
 - (c) prescribing the age at which public records shall be available for public inspection;
 - (d) prescribing conditions for the admission of the public to the Archives Office and the use by the public of public records of Tuvalu deposited in the Archives Office;
 - (e) providing for the custody and preservation of records deposited in the Archives Office under the provisions of section 4(3) and prescribing the fees (if any) to be charged for such custody and preservation.
- (2) The Chief Justice may make rules of court with regard to the matters referred to in paragraph (a), (b) or (c) of the last preceding subsection in cases where the public records concerned relate to proceedings in any court.

20 Offences and penalties

- (1) Any person who —
- (a) wilfully or negligently damages any public record; or
 - (b) wilfully or negligently disposes of or destroys any public record otherwise than in accordance with the provisions of this Act; or
 - (c) does any act in contravention of or fails to comply with any provision of this Act,

shall be guilty of an offence and shall be liable on conviction to a fine of \$200.

- (2) The court by which any person is convicted of an offence against paragraph (a) or paragraph (b) of subsection (1) of this section, may, in addition to any penalty imposed for the offence, direct that that person shall not be entitled to have access to the Archives Office for such period as the court thinks fit.

ENDNOTES

¹ 1990 Revised Edition, Cap. 99 – Act 10 of 1979