



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

5th November, 2004.

ANTIGUA AND BARBUDA

No. 19 of 2004

AN ACT to promote maximum disclosure of information in the public interest, to guarantee and facilitate the right of access to information and to provide for effective mechanisms to secure that right.

*[Published in the Official Gazette Vol. XXIV No. 93
dated 23rd December, 2004]*

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. This Act may be cited as the Freedom of Information Act, 2004 and, shall come into operation on a date appointed by the Minister by Notice published in the *Gazette*.

**Short title and
Commencement.**

2. In this Act, unless the context otherwise requires — Interpretation.

"Commissioner" means the Information Commissioner, appointed pursuant to Part V;

"information officer" means a person so designated pursuant to section 9 (1);

"Minister" means the Minister responsible for public information;

"official" means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full time;

"personal information" means information which relates to a **natural** living person who can be identified from that **information**;

"public authority" has the meaning given to it pursuant to section 3 (1);

"publish" means make available in a form generally accessible to members of the public and includes print, broadcast and electronic **forms** of dissemination; and

"record" has the ~~the~~ meaning set out in section 4.

Interpretation
of "public
authority" and
"private" body.

3. For the purposes of this Act, a public authority means —

- (a) the Government;
- (b) a Ministry of the Government and a department, division or unit, by whatever name known, of a Ministry;
- (c) the Barbuda Council established under section 123 of the Constitution and the Barbuda Local Government Act;
- (d) a body —
 - (i) established by or under the Constitution or any other law;
 - (ii) owned, controlled or substantially financed by the Government from public funds;

(iii) carrying out a function conferred by law or by executive action, or a public function conferred by the Government, only to the extent of that function;

(e) such other body carrying out a public function as the Minister may, by Order published in the *Gazette*, designate.

4. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified.

Records.

(2) A public authority holds a record if —

- (a) the public authority holds the record, other than on behalf of another person; or
- (b) another person holds the record, on behalf of the public authority.

5. This Act binds the Crown.

**Act binds the
Crown.**

6. (1) Within the broad objectives of section 12 of the Constitution, every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by public authorities (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.

**Principles and
objectives, and
construction of
Act in relation
to other laws,
etc.**

(2) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.

(3) Nothing in this Act limits or otherwise restricts the disclosure of **information** pursuant to **any** other law, policy or practice.

ANTIGUA 4
AND
BARBUDA

*The Freedom of Information
Act, 2004.*

No. 19 of 2004.

Non-application
of Act.

7. This Act does not apply to —

Cap. 91

- (a) a commission of inquiry or the proceedings and findings of such a Commission, established pursuant to the Commissions of Inquiry Act;
- (b) such public authority or function of a public authority as the Minister may, by Order subject to negative resolution of the House of Representatives, determine;
- (c) a court, or the holder of a judicial office or other office pertaining to a court in its capacity or his capacity as such; or
- (d) a **registry** or other office of a court and the staff of such a registry or other office in their capacity as members of that staff in relation to matters pertaining to the administration of the court.

PART II MEASURES TO PROMOTE OPENNESS

Guide to using
this Act.

8. (1) The Commissioner shall, as soon as practicable, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in an accessible form.

(2) The guide published under subsection (1) shall be updated on a regular basis and in any case once every five years.

Information
officers of public
authorities.

9. (1) Every public authority shall designate one of its **officers** as an **information** officer and ensure that members of the public have easy access to the information officer, including his or her name, function and contact details.

(2) The **information** officers shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities—

- (a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance

of the public authority relating to the provision of information pursuant to this Act.

- (b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and

10. (1) Every public authority shall, in the public interest, publish and disseminate in an accessible form, updated annually, basic information, clearly dated including —

**Duty to
publish basic
information.**

- (a) an accurate and sufficiently detailed description of its structure, functions, duties and finances;
- (b) relevant details concerning any services it provides directly to members of the public;
- (c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that authority, together with a summary of any requests, complaints or other direct actions by members of the public and that authority's response;
- (d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- (e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- (f) any regulations, policies, rules, guides or manuals regarding the discharge by that authority of its functions;
- (g) the content of all decisions and policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- (h) any mechanisms or procedures by which members of the public may make representations or otherwise

influence the formulation of policy or the exercise of powers by that public authority.

(2) The Minister may, by direction in writing, authorise the publication in a single document of any statements required to be published in pursuance of this Part by a public authority together with the statements required to be published by any other public authority for which the first-mentioned authority is responsible; and where a direction has been issued, that other public authority shall be treated as having complied with this Part.

**Guidance on
duty to publish.**

11. The Commissioner shall —

- (a) publish a guide on minimum standards and best practices regarding the duty of public authorities to publish information pursuant to section 10; and
- (b) upon request, provide advice to public authorities regarding the duty to publish information pursuant to section 10.

**Maintenance of
records.**

12. (1) Every public authority shall maintain its records in a manner which facilitates the right of access to information, as provided for in this Act, and in accordance with the Code of Practice issued pursuant to subsection (3).

(2) Every public authority shall establish and maintain adequate procedures for the correction of personal information held by it.

Cap. 35.

(3) The Commissioner shall, after appropriate consultation with interested parties, issue and, from time to time, update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the Archives and Records Office established under the Archives and Records Act.

**Training of
officials.**

13. Every public authority shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

**Reports to
Commissioner.**

14. The information officer of a public authority shall, in each financial year, submit to the Commissioner a report on the activities

of the public authority pursuant to, or promoting compliance with, this Act, which shall include information about —

- (a) the number of requests for information received, granted in full or in part, or refused;
- (b) how often and which provisions of this Act were relied upon to refuse, in part or in full, requests for information;
- (c) appeals from refusals to communicate information;
- (d) fees charged for requests for information; and
- (e) its activities pursuant to sections 10 and 12.

PART III RIGHT OF ACCESS TO INFORMATION

15. (1) Notwithstanding any law to the contrary and subject to the provisions of this Act, every person has the right to obtain, on request, access to information. **Right of access.**

(2) Nothing in this Act shall prevent a public authority from giving access to documents or information other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a court.

16. (1) A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to — **Access procedure not to apply to certain documents.**

- (a) a document which contains information that is open to public access, as part of a public register or other document, in accordance with any other written law, where that access is subject to a fee or any other charge;
- (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;
- (c) a document that is available for public inspection in a registry maintained by the Registrar or other public authority;

- (d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.

(2) A person making a request for information to a public authority shall be entitled, subject only to the provisions of this Part and Part IV of this Act —

- (a) to be informed whether or not the public authority holds a record containing that information or a record from which that information may be derived; and
- (b) if the public authority does hold such a record, to have that information communicated to him.

Requests for
information.

17. (1) For the purposes of section 15, a request for information shall be made by the applicant in writing addressed to a senior official or the information officer of a public authority or private body and in sufficient detail to facilitate a determination, with reasonable effort, whether or not the authority holds a record containing that information.

(2) Where a request for information does not comply with the provisions of subsection (1), the official who receives the request shall, subject to subsection (5), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with subsection (1).

(3) A person who is unable, because of illiteracy or disability, to make a written request for information may make an oral request, and the official who receives the oral request shall, subject to subsection (5), reduce it to writing, and include his name and position within the public authority, and give a copy thereof to the person who made the request.

(4) The reason for a request for information made to a public authority is irrelevant for the purpose of deciding whether the information should be provided.

(5) An official who receives a request for information may transfer that request to the relevant information officer for purposes of complying with subsection (2) or (3).

(6) Without prejudice to the power of the Minister to make regulations, a public authority may prescribe a form for requests for information, in a format that does not unreasonably delay the processing of requests or place an undue burden upon those making requests.

(7) An official of a public authority which receives a request for information shall provide the person making the request with a receipt documenting the request.

18. (1) Subject to subsections (2) and (3), an official of a public authority must respond to a request for information as soon as practicable and in any event within twenty working days of receipt of the request if the request has been approved and the applicant has paid the fees required to be paid under section 20.

**Time limits for
responding to
requests.**

(2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the official shall provide a response within 48 hours.

(3) The official of a public authority may, by notice in writing within the initial period of twenty days extend the period in subsection (1) to the extent strictly necessary, and in any case to not more than forty working days, where the request is for a large number of records or requires a search through a large number of records and where compliance within twenty working days would unreasonably interfere with the operations of the public authority.

(4) Failure to comply with the time-limits prescribed or permitted under this section is deemed to be a refusal of the request.

19. (1) The response pursuant to section 18 to a request for information shall be made in writing and state —

**Notice of
response.**

- (a) the applicable fee, if any, pursuant to section 20, in relation to any part of the request which is granted, and the form in which the information will be communicated;
- (b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part IV;

- (c) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and
- (d) the right of appeal to the Commissioner or to a judicial review available to the applicant.

(2) The response pursuant to section 18 to a request for information shall be made in writing and state —

- (a) in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 20, and the form in which the information will be communicated; and
- (b) in relation to any part of the request which is not granted, adequate reasons for the refusal.

(3) In relation to a request or any part of a request that is granted, communication of the information must take place forthwith, subject only to section 20.

Fees.

20. (1) The communication of information pursuant to a request may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.

(2) Payment of a fee shall not be required for requests for personal information, and requests in the public interest.

(3) The Minister may, after consultation with the Commissioner, make Regulations providing —

- (a) for the fees to be paid;
- (b) for the manner in which fees are to be calculated;
- (c) that no fee is to be charged in cases specified in the Regulations; and
- (d) for any other matter relating to fees.

(4) A public body shall not require payment of a fee pursuant to subsection (1) where the cost of collecting that fee would exceed the **amount** of the fee.

21. (1) Where a request indicates a preference as to the form of **communication** of information provided in subsection (2), a public authority **communicating** information pursuant to a request for information shall, subject, to subsection (3), do so in accordance with the preference indicated by the applicant.

Means of
communicating
information.

(2) An applicant may, in a request for information, indicate the following preferences as to the form of communication of information —

- (a) a true copy of the record in permanent or other form;
 - (b) an opportunity to inspect the record, where necessary using equipment normally available to the public authority;
 - (c) an opportunity to copy the record;
 - (d) a transcript of the record in print, electronic, sound or visual form;
 - (e) a transcript of the content of a record, in print, electronic, sound or visual form, where such transcript is capable of being produced using equipment normally available to the authority; or
- a transcript of the record from shorthand or other codified form.

(3) A public authority shall not be required to communicate information in the form indicated by the person making the request where to do so would —

- (a) unreasonably interfere with the operations of the public authority; or
- (b) adversely affect the preservation of the record.

(4) Where a record exists in more than one language, communication of the record shall, from among those languages,

be given in accordance with the language preference of the person making the request.

If a record is
not held.

22. (1) Where an **official** who receives a request for information believes, on reasonable grounds, that the request relates to information that is not contained in any record held by the public authority, the official may transfer the request to the information officer for purposes of compliance with this section.

(2) Where an information officer receives a request pursuant to subsection (1), he shall confirm whether or not the public authority holds a record containing the information and, if it does not, he shall, if he knows of another public authority which holds the relevant record, as soon as practicable —

- (a) transfer the request to that public authority and inform the applicant of such transfer; or
- (b) indicate to the applicant **which** public authority holds the relevant record;

whichever would be **likely** to ensure more expeditious access to the information.

(3) Where a request is transferred pursuant to subsection (2) **((a))**, the time limit for responding to requests under section 18 shall begin to run from the date of the transfer.

Vexatious,
repetitive or
unreasonable
requests.

23. (1) A public authority is not required to comply with a request for information which is vexatious or unreasonable or where it has recently complied with a substantially similar request from the same person.

(2) A **public** authority is not required to comply with a request for information where to do so would unreasonably affect its **financial** or other resources.

PART IV EXCEPTIONS TO GENERAL RIGHT OF ACCESS

Public interest
to overrule
all other
considerations.

24. Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to **communicate** information, unless the harm that would result **from** the refusal outweighs the public interest in the disclosure of that information.

25. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception specified in this Part, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be **communicated** to the person making the request.

Severability of information.

26. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a third party who is a natural person.

Personal information.

(2) Subsection (1) does not apply if —

- (a) the third party has effectively consented to the disclosure of the information;
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;
- (c) the third party has been deceased for more **than** 20 years; or
- (d) the third party is or was an official of a public authority and the **information** relates to his function in that capacity.

27. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

Legal privilege.

28. A public authority may refuse to communicate information **if** —

Commercial and confidential information.

- (a) the information was obtained **from** a third party and to communicate it would constitute an actionable breach of **confidence**;
- (b) the information was obtained in confidence **from** a third party and —
 - (i) **it** contains a trade secret; or

ANTIGUA
AND
BARBUDA

14

*The Freedom of Information
Act, 2004.*

No. 19 of 2004.

- (ii) to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or
- (c) the information was obtained in confidence from another State or an international organization, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organization.

**Health and
safety.**

29. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any person.

**Law
enforcement.**

30. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to —

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice;
- (d) the assessment or collection of any tax or duty;
- (e) the operation of immigration controls; or
- (f) the assessment by a public authority of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

**Defence and
security.**

31. A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of Antigua and Barbuda.

**Public economic
interests.**

32. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the Government to manage the economy of Antigua and Barbuda.

(2) A public authority may refuse to **indicate** whether or not it holds a record, or refuse to communicate information, where to do so would, or would be **likely** to, cause serious prejudice to the legitimate commercial or financial interests of the public authority or another public authority.

(3) Subsections (1) and (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

33. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to —

**Policy making
and operations
of public
authorities.**

- (a) cause serious prejudice to the effective formulation or development of Government policy;
- (b) seriously frustrate the success of a policy, by premature disclosure of that policy;
- (c) significantly undermine the deliberative process in a public authority by inhibiting the free and frank provision of advice or exchange of views; or
- (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public authority.

(2) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, which is —

- (a) the official record of any deliberation or decision of Cabinet;
- (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by the Cabinet and which is related to issues that are or have been before Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;

- (d) a document that is a copy or **draft** of, or contains extracts from, a document referred to in paragraph *(a)*, *(b)* or *(c)*; or
- (e) a document the **disclosure** of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

(3) Subsections (1) and (2) do not apply to facts, analyses of facts, technical or scientific data or statistical information unless the disclosure would involve the disclosure of any deliberation or decision of Cabinet.

Time limits.

34. (1) The provisions of sections 27 to 32 apply only to the extent that the harm they seek to protect against would, or would be likely to, occur at or after the time at which the request is considered.

(2) Sections 28(c), 30, 31, and 32 do not apply to a record which is more than **thirty** years old or such other longer or shorter period as the Minister may, by Order published in the Gazette, prescribe either generally or in respect of any particular class of records.

PART V INFORMATION COMMISSIONER AND EMPLOYEES, ETC.

Appointment of
Information
Commissioner.

35. (1) The Governor-General, acting on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution, shall appoint an Information Commissioner for the purposes of this Act, on such terms and conditions as may be specified in the instrument of his appointment.

(2) A person shall not be qualified to hold office as Commissioner if that person —

- (a) is a member of the House of Representatives or a member of the Senate;
- (b) holds or is acting in a public office;
- (c) is an undischarged bankrupt, having been declared bankrupt under any law;

- (d) has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or
- (e) holds office in, or is an employee of, a political party or is a political activist.

(3) The Commissioner shall hold office for a term of three years and may be re-appointed for a further **term** of three years, but shall not hold office for more than two consecutive **terms**.

(4) The Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.

36. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.

**Appointment of
staff.**

37. In addition to any other functions under this Act, the functions of the Commissioner shall be —

**Functions of
Commissioner.**

- (a) to monitor and report on the compliance by public authorities with their obligations;
- (b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;
- (c) to undertake or promote the training of officials of public authorities and other persons on the right to **information** and the effective implementation of this Act;
- (d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences; and
- (e) to publicize the requirements of this Act and the rights and obligations under the Act.

Independence
of Commissioner
and employees of
Commissioner's
Office.

38. (1) In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority.

(2) All officers and employees of the Office of the Commissioner and any other persons **authorised** to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.

Annual reports.

39. (1) The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the **Office** of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.

(2) The Minister shall cause a copy of each annual report submitted pursuant to subsection **(1)** to be laid before the House of Representatives as soon as practicable after he has received the report.

Exemption from
personal liability.

40. (1) The Commissioner, any officer or **employee** of his Office or any other person acting on behalf of or under the direction of the Commissioner shall not be personally liable in criminal or civil proceedings for any act done in good faith pursuant to this Act.

(2) For the purposes of proceedings for defamation, any information provided, whether orally or in writing, pursuant to an investigation by or on behalf of the Commissioner under this Act shall be treated as privileged information unless it is shown that that information was not provided in good faith.

PART VI ENFORCEMENT BY COMMISSIONER

Complaints to
Commissioner.

41. A person who has made a request for information may apply in writing to the Commissioner for a decision that a public

authority has failed to comply with an obligation under Part III, including the following:

- (a) refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 16;
- (b) failing to respond to a request for information within the time limits established in section 18;
- (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 19;
- (d) failing to communicate information forthwith, contrary to section 19 (3);
- (e) **charging** an excessive fee, contrary to section 20; or

failing to communicate information in the form requested, contrary to section 21.

42. (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 41 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public authority or private body an opportunity to provide their views in writing.

Decision on
complaints.

(2) The Commissioner may summarily reject an application—

- (a) which is frivolous, vexatious or unreasonable; or
- (b) if the applicant has failed to seek or use any other remedies established by the relevant public which are available to him.

(3) In an application pursuant to section 41, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under Part III.

(4) In a decision pursuant to subsection (1), the Commissioner may —

- (a) dismiss the application; or

- (b) require the public authority or private body to take such steps as may be necessary to bring it into compliance with its obligations pursuant to Part II.

(5) The Commissioner shall provide a copy of the decision to the complainant and the public authority together with information regarding the right of the parties to a review of the Commissioner's decision.

**Direct
implementation
of decision.**

43. (1) Where Commissioner decides that a public authority has failed to comply with an obligation pursuant to Part II, the Commissioner may require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under Part II, including the following —

- (a) appointing an information officer;
- (b) publishing the relevant information and categories of information;
- (c) making relevant changes to its practices in relation to the keeping, management and destruction of records, and the transfer of records to the Archives and Records Office;
- (d) enhancing the provision of training on the right to information for its officials;
- (e) providing the Commissioner with an annual report, in compliance with section 14.

(2) The Commissioner shall serve notice of the decision, to the public authority together with information regarding the right of the public authority to a review of the Commissioner's decision.

**Commissioner's
powers to
investigate.**

44. (1) In coming to a decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.

(2) The Commissioner may, **during** an investigation pursuant to subsection (1), examine any record to which this Act applies,

and no such record may be withheld **from** the Commissioner on any grounds.

45. (1) The complainant, or the relevant public authority may, within 28 days, apply to the High Court for a review of a decision of the Commissioner pursuant to section 42 or 43, or an order pursuant to section 44 (1).

**Review of
Commissioner's
decisions and
orders.**

(2) In any review of a decision pursuant to subsection (1), the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Part III.

46. On the expiry **of the** period of 28 days referred to in section 45 or such longer period as the Commissioner may, pursuant to a decision or order under section 42 or 43 determine, the decision of the Commissioner shall become binding.

**Commissioner's
decisions and
orders binding.**

PART VII BONA FIDE DISCLOSURE OF WRONGDOING

47. (1) A person may disclose information to the Commissioner or to **any** other authority on the wrong-doing by a public authority concerning —

Whistle-blowers.

- (a) a serious threat to the health or safety of an individual or a serious threat to the public or the environment;
- (b) the commission of a criminal offence;
- (c) failure to comply with a legal obligation;
- (d) a miscarriage of justice;
- (e) corruption, dishonesty or serious maladministration;

abuse of authority or neglect in the performance of official duty;
- (g) injustice to an individual;

(h) unauthorised use of public funds,

and that person shall not be liable in any legal proceedings or to any sanction relating to his employment if the information was disclosed in good faith and in the reasonable belief that it was true.

(2) A person who, pursuant to subsection (1), discloses information maliciously or without reasonable belief of the truthfulness of that information, commits an offence and is liable on summary conviction to a **fine** not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

PART VIII MISCELLANEOUS

Offences.

48. (1) A person shall not wilfully —

- (a) obstruct access to any record contrary to Part III of this Act;
- (b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act;
- (c) interfere with the work of the Commissioner;
- (d) destroy, mutilate, remove or in any way alter a record with intent to prevent the disclosure of information contained therein; or
- (e) fail to comply with a decision or an order of the Commissioner made pursuant to section 42 or 43.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both.

Regulations.

49. (1) The Minister may, after consultation with the Commissioner, make Regulations for the purpose of giving effect to the provisions of this Act.

No. 19 of 2004.

***The Freedom of Information
Act, 2004.***

23 ANTIGUA
AND
BARBUDA

(2) Regulations made pursuant to this section shall be subject to negative resolution of the House of Representatives.

Passed the House of Representatives this
27th day of October, 2004.

Passed the Senate this 28th
day of October, 2004.

D. Giselle Isaac-Arrindell,
Speaker.

Dr. Edmond A. Mansoor,
President.

Y. Henry,
Acting Clerk to the House of Representatives.

Y. Henry,
Acting Clerk to the Senate.

Printed at the Government Printing Office, Antigua and Barbuda
by Walter A. Massiah, Government Printer
—By Authority, 2004.

800—12.04

[Price \$9.25]