

CAYMAN ISLANDS



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THE FREEDOM OF INFORMATION (AMENDMENT) LAW, 2018
(LAW 31 OF 2018)

THE FREEDOM OF INFORMATION (AMENDMENT) LAW, 2018

(LAW 31 OF 2018)

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CAYMAN ISLANDS

Law 31 of 2018.

I Assent

Martyn Roper

Governor.

17th December, 2018

A LAW TO AMEND THE FREEDOM OF INFORMATION LAW (2018 REVISION) TO CLARIFY AND MODIFY THE SCOPE OF ACCESS AND RESTRICTED ACCESS TO CERTAIN EXEMPT RECORDS UNDER THE LAW; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Freedom of Information (Amendment) Law, 2018.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The Freedom of Information Law (2018 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by deleting the definition of the words “Minister responsible” and substituting the following definition -

Amendment of section 2 of the Freedom of Information Law (2018 Revision) - definitions

“ “Minister” means the Minister or the Official Member responsible for a public authority that holds a record;”.

3. The principal Law is amended in section 3 as follows -

Amendment of section 3 - application

- (a) in subsection (1) -
 - (i) in paragraph (a), by deleting the word “and”; and
 - (ii) by inserting after paragraph (a) the following paragraph-

- “(aa) subject to subsection (5), the Governor’s office; and”;
- (b) in subsection (5) -
 - (i) in paragraph (d), by deleting the word “or” where it appears at the end of the paragraph;
 - (ii) by repealing paragraph (e) and substituting the following paragraphs -
 - “(e) private holdings of the National Archive where the contract or other arrangements under which the holdings are held do not allow disclosure in the circumstances prescribed under this Law;
 - (f) the Cayman Islands Stock Exchange (subject to subsection (6)); or
 - (g) records obtained or created by the Office of the Ombudsman in the course of carrying out its functions (subject to subsection (6)).”;
- (c) in subsection (6) by deleting the word “court” and substituting the words “court, the Cayman Islands Stock Exchange, or the Office of the Ombudsman”; and
- (d) in subsection (8) -
 - (i) in paragraph (a), by inserting before the words “Cayman Islands Police Service”, the word “Royal”;
 - (ii) in paragraph (b), by deleting the word “or”;
 - (iii) by deleting the full stop at the end of paragraph (c) and substituting a semi-colon; and
 - (iv) by inserting after paragraph (c) the following paragraphs -
 - “(d) the entity charged with responsibility for customs and immigration matters;
 - (e) Her Majesty’s Cayman Islands Prison Service;
 - (f) the Financial Reporting Authority; and
 - (g) the Tax Information Authority.”.

Amendment of section 5
- publication of
information by public
authorities

4. The principal Law is amended in section 5(3) by inserting after the words “with such frequency” the words “and particulars”.

Amendment of section 6
- general right of access

5. The principal Law is amended in section 6 as follows -
- (a) in subsection (2), by inserting after the words “unless otherwise stated in this Law”, the words “or if it can be demonstrated to the satisfaction of the Ombudsman that the exemption reasonably continues to apply”; and

- (b) in subsection (4), by repealing paragraph (b) and substituting the following paragraph -
 - “(b) available to the public, or a particular individual, as the case may be, in accordance with administrative procedures established for that purpose, and irrespective of whether it is available -
 - (i) after payment of a reasonable fee; or
 - (ii) without payment of a fee.”.
6. The principal Law is amended in section 7 as follows - Amendment of section 7
- application for access
- (a) by inserting after subsection (3), the following subsections -
 - “(3A)Where the information provided by the applicant in relation to the record being requested is not reasonably sufficient to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified.

 - (3B)Where the information manager consults with the applicant in order to clarify and reformulate the application for access as provided for in subsection (3A), the timeline will be suspended until such time as the applicant submits the reformulated application for access.”.
 - (b) by inserting after subsection (5), following subsection -
 - “(6) Where the decision of the public authority is taken by, or in consultation with, a Minister, chief officer or other officer superior in rank to the information manager, such involvement shall be noted on the written decision on the application.”.
7. The principal Law is amended in section 8(2) by deleting the words “fourteen calendar days” and substituting the words “ten calendar days”. Amendment of section 8
- transfer of requests
8. The principal Law is amended in section 11 as follows - Amendment of section 11 - assistance and
deferment of access
- (a) in the marginal note, by deleting the words “Assistance and deferment of access” and substituting the words “Deferment of access”;
 - (b) by repealing subsection (1); and
 - (c) in subsection (3), by deleting the words “it shall, within fourteen calendar days of its decision, inform the applicant of that decision”

and substituting the words, “it shall inform the applicant of that decision in accordance with the time frame provided for under section 7(4)(a)”.

Amendment of section 14 - grant of access.

9. The principal Law is amended by repealing section 14(2).

Amendment of section 17 - records subject to legal privilege, etc.

10. The principal Law is amended in section 17 as follows -

- (a) by renumbering section 17 as section 17(1);
- (b) in the renumbered subsection (1) as follows -
 - (i) by deleting the words “An official record” and substituting the words “A record”;
 - (ii) in paragraph (a), by deleting the word “or”;
 - (iii) in paragraph (b) as follows -
 - (A) in subparagraph (ii), by deleting the word “or”; and
 - (B) in subparagraph (iii), by deleting the full stop and substituting the word “; or”; and
 - (iv) by inserting after paragraph (b), the following paragraph -
“(c) it is legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions”; and
- (c) by inserting after the renumbered section 17(1), the following subsection -
“(2) Records protected from production in legal proceedings on the ground of legal professional privilege shall be exempt without limitation as to time.”.

Amendment of section 18 - records affecting national economy

11. The principal Law is amended in section 18(1) by deleting the words “An official record” and substituting the words “A record”.

Repeal and substitution of section 19 - records revealing Government’s deliberative processes

12. The principal Law is amended by repealing section 19 and substituting the following section -

- “19. (1) Subject to subsection (2), a record is exempt from disclosure if it contains opinions, advice or recommendations, or a record of consultations or deliberations -
- (a) prepared for or arising in the course of proceedings of the Cabinet or the National Security Council or a committee of the Cabinet or the National Security Council; or

- (b) prepared for the Governor or a Minister relating to the formulation or development of Government policy.

(2) Subsection (1) does not apply to records which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.”.

13. The principal Law is amended in section 20 as follows -

Amendment of section 20 - prejudice to effective conduct of public affairs

- (a) by repealing subsection (1)(c); and
- (b) in subsection (2) by deleting the words “subsection (1)(b), (c) and (d)” and substituting the words “subsections (1)(b) and (d)”.

14. The principal Law is amended in section 23 as follows -

Amendment of section 23 - records relating to personal information

- (a) by repealing subsection (1) and substituting the following subsection -

“(1) Subject to the remaining provisions of this section, a record is exempt if its disclosure would involve the unreasonable disclosure of personal information of any natural person, whether living or dead.”; and

- (b) by inserting after subsection (4) the following subsection -

“(5) In determining whether the disclosure of third-party personal information would be reasonable, consideration shall be given as to whether the disclosure would be permitted under the Data Protection Law, 2017.”.

15. The principal Law is amended in section 25 as follows -

Amendment of section 25 - issuance of certificate re exempt record

- (a) in subsection (1)(b) -
 - (i) by deleting the words “sections 15, 16, 20(1)(b), (c) and (d)” and substituting the words “sections 15, 16, 17(1)(c), 20(1)(b) and (d)”;
 - (ii) by deleting the words “A Minister responsible” and substituting the words “A Minister”;
- (b) in the closing paragraph immediately following 1(b), by deleting the words “the Minister responsible” and substituting the words “the Minister”;
- (c) in subsection (2), by deleting the words “a Minister responsible” and substituting the words “a Minister”;

- (d) in subsection (3), by deleting the words “Where a certificate is issued under subsection (1)” and substituting the words “Where a certificate is issued under subsection (1)(a)”; and
- (e) by inserting after subsection (3), the following subsection -
“*(4) Where a certificate is issued by the Governor or a Minister, under subsection (1), the Ombudsman shall be notified of the issuance of the certificate.*”.

Amendment of section 26 - some exemptions are subject to public interest test

16. The principal Law is amended in section 26 as follows -

- (a) by deleting the words in the marginal note and substituting the words “Granting access to exempt information”;
- (b) in subsection (1), by deleting the words “20(1)(b), (c) and (d) and substituting the words “20(1)(b) and (d)”; and
- (c) by inserting after subsection (2), the following subsection -

“*(3) Notwithstanding that a record or part thereof is exempt from disclosure, access shall be granted to personal information if disclosure would be required under the Data Protection Law, 2017.*”.

Repeal of Part IV - amendment and annotation of records

17. The principal Law is amended by repealing Part IV.

Repeal and substitution of section 33 - application for internal review

18. The principal Law is amended by repealing section 33 and substituting the following section -

“*33. (1) An applicant for access to a record may, subject to subsection (3), apply for an internal review of a decision by a public authority to -*

- (a) refuse to grant access to the record;
- (b) grant access only to some of the records specified in an application;
- (c) defer the grant of access to the record; or
- (d) charge a fee for action taken or as to the amount of the fee.

(2) For the purposes of subsection (1), a failure to give a decision on any of the matters referred to in subsection (1)(a) to (c) within the time required by this Law shall be regarded as a refusal to do so.

(3) An application under subsection (1) may only be made where the decision to which the application relates was taken by a person other than the Minister, a chief officer or the principal officer of the public authority concerned.”.

19. The principal Law is amended in section 34(1)(a) by inserting after the words “by the responsible Minister”, the words “or the chief officer in consultation with the Minister”.
- Amendment of section 34 - procedure for internal review
20. The principal Law is amended in section 40(2) as follows -
- Amendment of section 40 - reports
- (a) in paragraph (b), by inserting after the semi-colon, the word “or”; and
- (b) by repealing paragraph (c).
21. The principal Law is amended in section 42 by repealing subsection (4) and substituting the following subsections -
- Amendment of section 42 - appeal to Ombudsman
- “(4) The Ombudsman may, at any time after receiving an appeal, decide not to consider the appeal, or to stop considering the appeal, because it is frivolous or vexatious.
- (5) If the Ombudsman decides not to consider the appeal, or to stop considering the appeal, the Ombudsman shall inform the appellant, in writing, of the decision and the reasons for the decision.”.
22. The principal Law is amended in section 43 as follows -
- Amendment of section 43 - decision on appeal
- (a) in subsection (3)(a), by deleting the word “reject” and substituting the word “dismiss”; and
- (b) by inserting after subsection (4), the following subsection -
- “(5) On the consideration of an appeal, the Ombudsman -
- (a) may, subject to paragraph (b), make any decision which could have been made on the original application; and
- (b) shall not nullify a certificate issued under section 25.”.
23. The principal Law is amended in section 44(2)(b) by deleting the words “the national archives” and substituting the words “the National Archive”.
- Amendment of section 44 - implementation of decision
24. The principal Law is amended in section 45 as follows -
- Amendment of section 45 - Ombudsman’s powers generally to investigate
- (a) by inserting after subsection (2), the following subsection -

“(2A) Notwithstanding subsections (1) and (2), where the Ombudsman requests to examine a record that has been exempted under section 19 of the Law pertaining to Cabinet opinions, advice, recommendations, consultations or deliberations, examination of that record shall take place at the Cabinet’s Office.”; and

(b) by inserting after subsection (3), the following subsection -

“(4) The production to the Ombudsman, pursuant to subsection (1), of a record privileged on the ground of legal professional privilege, shall not constitute a waiver of that privilege.”.

Amendment of section 47 - appeal from Ombudsman’s decisions and orders

25. The principal Law is amended in section 47(1) by deleting the words “45 days, appeal to the Grand Court by way of” and substituting the words “forty-five calendar days, apply to the Grand Court for leave to seek”.

Amendment of section 48 - decisions and orders of Ombudsman binding

26. The principal Law is amended in section 48 as follows -

- (a) by inserting after the words “forty-five” the words “calendar”; and
- (b) by deleting the word “appeals” and substituting the words “an application for judicial review”.

Repeal and substitution of section 50 - whistleblowers

27. The principal Law is amended by repealing section 50 and substituting the following section -

“Protection of persons in the discharge of functions

50. A person shall not be liable in damages for anything done or omitted in the discharge or purported discharge of the person’s functions or duties under this Law unless it is shown that the act or the omission was carried out in bad faith.”.

Amendment of section 52 - maintenance of records

28. The principal Law is amended in section 52 as follows -

- (a) by repealing subsection (2); and
- (b) in subsection (3), by deleting the words “National Archives” wherever they appear and substituting the words “National Archive”.

29. The principal Law is amended in section 54(1) by deleting the words “any official record” and substituting the words “any record”.

Amendment of section 54 - protection from liability re defamation, breach of confidence and intellectual property rights

30. The principal Law is amended in paragraph 2(b) of the Schedule, by deleting the words “cause to be published in the Gazette” and inserting the words “cause to be published on the Government’s or the authority’s website or in such manner and with such frequency as may be prescribed”.

Amendment of Schedule - information to be published by public authorities

Passed by the Legislative Assembly the 16th day of November, 2018.

Dr. Hon. W. McKeeva Bush

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.