

CAYMAN ISLANDS



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**A BILL FOR 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**



**THE FREEDOM OF INFORMATION (AMENDMENT) BILL, 2018**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to amend the Freedom of Information Law (2018 Revision), the “principal Law”, by clarifying and modifying the scope of access, and restricted access, to certain exempt records under the principal Law and to make provision for incidental and connected purposes.

Clause 1 of the Bill provides the short title and commencement.

Clause 2 seeks to amend section 2 of the principal Law by deleting the definition of “Minister responsible”, and substituting a definition for “Minister” to mean the “Minister or the Official Member responsible for a public authority that holds a record”.

Clause 3 seeks to amend section 3(1) of the principal Law to make provision for the Law to be applied to the Governor’s office but excludes records to which the Law does not apply under section 3(5)(d).

Clause 3 also seeks to amend section 3(5) of the principal Law by providing that the Law does not apply to the Cayman Islands Stock Exchange, or to records obtained or created by the Office of the Ombudsman in the course of carrying out its functions, with both exemptions being subject to subsection (6).

Clause 3 further seeks to amend section 3 by amending subsection (6) to further provide for the application of the Law to the records of an administrative nature held by the Cayman Islands Stock Exchange or the Office of the Ombudsman.

Clause 3 seeks to amend section 3(8) by including the entities charged with responsibility for customs and immigration matters, Her Majesty’s Cayman Islands Prison Service, the Financial Reporting Authority and the Tax Information Authority within the scope of “security or intelligence services”, to which the Law does not apply.

Clause 4 seeks to amend section 5 of the principal Law to provide that the information to be published by an authority shall include such particulars as may be prescribed.

Clause 5 seeks to amend section 6 of the principal Law to permit the extension of the exemption by the Ombudsman where it can be demonstrated that it reasonably continues to apply to the record. The provision also seeks to amend the principal Law by expanding subsection 4(b) to provide that where a record is,

among other things, available to the public in accordance with administrative procedures established for that purpose then access shall be provided in accordance with those procedures.

Clause 6 seeks to amend section 7 of the principal Law by inserting subsections (3A) and (3B). The new subsection (3A) makes provision for the applicant to consult with the public authority with a view to reformulating the application where the applicant has failed to provide sufficient details to identify the record that the applicant is seeking to access. The provision was formerly section 11(1). The new subsection (3B) provides for the thirty day timeline to be suspended during the period of consultation and reformulation of the application.

Clause 6 further seeks to amend section 7 of the principal Law to provide that where under section 7 a decision of the public authority is taken by or in consultation with a Minister, it is the chief officer or other officer superior in rank to the information manager that must be noted on the decision.

Clause 7 seeks to amend section 8 of the principal Law by shortening the period of time that a public authority has to transfer a request to another public authority, from a period of fourteen days to a period of ten days.

Clause 8 seeks to amend section 11 of the principal Law to, among other things, repeal subsection (1) which now appears in section 7 as the new subsection (3A).

Clause 8 further seeks to amend section 11(3) by clarifying that a public authority is required to inform the applicant of its decision to defer, within the timeframe provided for under section 7(4)(a).

Clause 9 seeks to amend the principal Law by repealing section 14(2). The subject matter of the provision will be more appropriately provided for under the Data Protection Law, 2017 upon its commencement.

Clause 10 seeks to amend section 17 of the principal Law to provide, among other things, that legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions is an exempt record. The clause also provides that records which are protected by legal professional privilege shall be exempt without any limitation as to time.

Clause 11 seeks to amend section 18 of the principal Law to remove the reference to “official” record.

Clause 12 seeks to amend section 19 by repealing and substituting subsection (1) to provide that records of opinions, advice, recommendations, consultations or deliberations are exempted if they are provided for or arise in the course of proceedings of Cabinet or the National Security Council, or if they are provided for the Governor or a Minister to formulate or develop government policy.

Clause 13 seeks to amend section 20 of the principal Law by deleting subsection (1)(c) which is the exemption provision which protects legal advice given by the Attorney General or the Director of Public Prosecutions. The provision is now included in the provisions set out in section 17(1).

Clause 14 seeks to amend section 23 of the principal Law by making it clear that a record is exempt if its disclosure would involve the unreasonable disclosure of personal information of any natural persons whether that person is alive or not. Additionally, the clause provides in a new subsection (5) that in determining whether the disclosure of third-party personal information would be reasonable, consideration should be given to whether the disclosure would be permitted under the Data Protection Law, 2017.

Clause 15 seeks to amend section 25 of the principal Law by requiring that where a certificate in respect of an exempt record is issued by the Governor or the Minister, the Ombudsman shall be notified, and by making minor changes as a consequence of the change in definition of “Minister responsible” to “Minister”.

Clause 16 seeks to amend section 26 of the principal Law by inserting a new subsection (3) which provides that notwithstanding that a record is exempt from disclosure, access shall be granted to personal information where disclosure would be required under the Data Protection Law, 2017.

Clause 17 seeks to amend the principal Law by repealing Part IV which deals with the amendment and annotation of records and is inclusive of sections 28 through 32. This will remove references to amendment and annotation of personal data which will be dealt with under the Data Protection Law, 2017 when it comes into force

Clause 18 seeks to amend the principal Law by repealing and substituting section 33 in order to amend the provisions governing the application for internal review by removing reference to personal records which will be dealt with under the Data Protection Law, 2017 when it comes into force.

Clause 19 seeks to amend section 34(1)(a) of the principal Law by providing that the chief officer, in consultation with the Minister, may conduct an internal review. This is an alternative to the Minister conducting the internal review in

relation to records exempt on the basis of national security, law enforcement and the national economy.

Clause 20 seeks to amend section 40 of the principal Law by repealing subsection (2)(c) as it relates to matters that pertain to applications for personal records which will be dealt with under the Data Protection Law, 2017 when it comes into force.

Clause 21 seeks to amend section 42 of the principal Law by giving the Ombudsman the discretion to refuse to consider appeals which in the opinion of the Ombudsman are frivolous or vexatious. The provision also requires the Ombudsman to give reasons for the decision.

Clause 22 seeks to amend section 43 of the principal Law by, among other things, inserting a new subsection (5) setting out that the Ombudsman, on an appeal, may also make any decision which could have been made on the initial application.

Clause 23 seeks to amend section 44 of the principal Law by replacing the words “national archives” with the words “National Archive”.

Clause 24 seeks to amend section 45 of the principal Law to provide that where the Ombudsman requests to examine records exempted under section 19 of the Law, the examination of the records shall take place in the Cabinet Office and to clarify that the production of a legally privileged record to the Ombudsman does not constitute a waiver of that privilege.

Clause 25 seeks to amend section 47 of the principal Law to clarify that a complainant may within forty-five calendar days apply to the Grand Court for leave to seek judicial review of a decision of the Ombudsman.

Clause 26 seeks to amend section 48 of the principal Law to clarify that the provision’s reference to “day” is to “calendar day”. It also amends the section by deleting the reference to “appeals” and replacing it with reference to “an application to seek judicial review”.

Clause 27 seeks to amend section 50 of the principal Law to provide immunity to persons discharging their functions under the Law. It provides that no person shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions or duties under this Law unless it is shown that the act or the omission was carried out in bad faith.

Clause 28 seeks to amend section 52 of the principal Law by repealing subsection (2) which provides for adequate procedures for the correction of personal information by public bodies. These are matters which are within the purview of the Data Protection Law, 2017.

Clause 29 seeks to amend section 54 of the principal Law by deleting the word “official” before the word “record”.

Clause 30 seeks to amend the Schedule of the principal Law in paragraph 2(b) by removing the reference to publication in the Gazette. The effect of this is that a public authority is required, within twelve months of the publication of their statements, to cause the statement to be published on the government’s or the authority’s website or to publish the statements in such other manner as may be prescribed.

**THE FREEDOM OF INFORMATION (AMENDMENT) BILL, 2018**

**ARRANGEMENT OF CLAUSES**

1. Short title and commencement
2. Amendment of section 2 of the Freedom of Information Law (2018 revision) - definitions
3. Amendment of section 3 - application
4. Amendment of section 5 - publication of information by public authorities
5. Amendment of section 6 - general right of access
6. Amendment of section 7 - application for access
7. Amendment of section 8 - transfer of requests
8. Amendment of section 11 - assistance and deferment of access
9. Amendment of section 14 - grant of access
10. Amendment of section 17 - records subject to legal privilege, etc.
11. Amendment of section 18 - records affecting national economy
12. Repeal and substitution of section 19 - records revealing Government's deliberative processes
13. Amendment of section 20 - prejudice to effective conduct of public affairs
14. Amendment of section 23 - records relating to personal information
15. Amendment of section 25 - issuance of certificate re exempt record
16. Amendment of section 26 - some exemptions are subject to public interest test
17. Repeal of Part IV - amendment and annotation of records
18. Repeal and substitution of section 33 - application for internal review
19. Amendment of section 34 - procedure for internal review
20. Amendment of section 40 - reports
21. Amendment of section 42 - appeal to Ombudsman
22. Amendment of section 43 - decision on appeal
23. Amendment of section 44 - implementation of decision
24. Amendment of section 45 - Ombudsman's powers generally to investigate
25. Amendment of section 47 - appeal from Ombudsman's decisions and orders
26. Amendment of section 48 - decisions and orders of Ombudsman binding
27. Repeal and substitution of section 50 - whistleblowers
28. Amendment of section 52 - maintenance of records
29. Amendment of section 54 - protection from liability re defamation, breach of confidence and intellectual property rights
30. Amendment of the Schedule - information to be published by public authorities



CAYMAN ISLANDS

**A BILL FOR 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.  
Amendment of section 17 - records subject to legal privilege, etc.

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

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

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



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        day of        , 2018.

Speaker.

Clerk of the Legislative Assembly.