

**LAWS OF SOUTH SUDAN**

**RIGHT OF ACCESS TO INFORMATION ACT, 2013**

Act N0.65

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**RIGHT OF ACCESS TO INFORMATION ACT, 2013**

**ARRANGEMENT OF SECTIONS**

**CHAPTER I**

**PRELIMINARY PROVISIONS**

**CLAUSES**

1. Title and Commencement.
2. Repeal and Saving.
3. Purpose.
4. Authority and Application.
5. Interpretation.

**CHAPTER II**

**RIGHT OF ACCESS TO INFORMATION**

6. Right of Access to Information.
7. Request for Information.
8. Legislation Prohibiting or Restricting Disclosure.
9. Mode of Request for Information.
10. Time Limits for Responding to Request.
11. Notice of Response.
12. Fees payable.
13. Means of Communicating Information.
14. Where Information is not available.

**CHAPTER III**

**MEASURES TO PROMOTE TRANSPARENCY**

15. Guide to use of the Act.
16. Information Officer.
17. Duty to Publish Information.
18. Regulations on Publication of Information.

19. Maintenance of Records.
20. Training of Officials.
21. Reports to the Commissioner.

#### **CHAPTER IV**

##### **EXCEPTIONS**

22. Public Interest Overrides.
23. Information Already available to the Public.
24. Severability.
25. Personal Information.
26. Legal Privilege.
27. Commercial and Confidential Information.
28. Health and Safety.
29. Law Enforcement.
30. Defence and Security.
31. Public Economic Interest.
32. Policy Making and Operations of Public Bodies.
33. Frivolous, Vexatious or Repetitive Requests.
34. Time Limit.

#### **CHAPTER V**

##### **INFORMATION COMMISSIONER**

35. Appointment of Information Commissioner.
36. Removal from Office.
37. Independence and Powers.
38. Status.
39. Support Staff.
40. Functions of the Commissioner.

#### **CHAPTER VI**

##### **ENFORCEMENT BY THE COMMISSIONER**

41. Complaints.
42. Settlement of Complaints.
43. Transparency.
44. Power to Investigate.
45. Objection to Decision and order of the Commissioner.

## **CHAPTER VII**

### **INTERNAL REVIEW OF DECISIONS**

46. Right of Internal Review.
47. Application for Internal Review.
48. Decision on internal review.
49. Non-delegable duty.
50. Deemed refusal.

## **CHAPTER VIII**

### **MISCELLANEOUS PROVISIONS**

51. Bona fide Disclosures.
52. Offences.
53. Regulations.

**FIRST SCHEDULE: Oath of the Information Commissioner**

# LAWS OF SOUTH SUDAN

## RIGHT OF ACCESS TO INFORMATION ACT, 2013

In accordance with provisions of Articles 55 (2) (3) (b), and 85(1) of the Constitution, the National Legislature, with the assent of the President hereby enacts the following:

### CHAPTER I

#### PRELIMINARY PROVISIONS

**1. Title and Commencement.**

This Act may be cited as “The Right of Access to Information Act, 2013” and shall come into force on the date of its assent by the President.

**2. Repeal and Saving.**

Any existing legislation on the subject governed by this Act is hereby repealed, provided that any orders issued or regulations made under such legislation shall continue in force and effect until expressly repealed or are otherwise inconsistent with the provisions of this Act.

**3. Purpose.**

The purpose of this Act is to:

- a) give effect to the constitutional right of access to information;
- b) promote maximum disclosure of information in the public interest;
- c) establish effective mechanisms to secure that right; and
- d) provide for incidental matters.

**4. Authority and Application.**

- (1) This Act is drafted under Article 24 (2) and Schedule (A) paragraph (45) of the Constitution which grant the National Government powers to legislate on matters of telecommunication, national information, publications and mass media and to regulate freedom of press and other media.
- (2) This Act provides for the right of access to Information as fundamental to the fulfilment of human rights and is essential in fighting corruption.
- (3) The Act provides for the Right of Access to Information held by a public body in accordance with the principles that such information shall be available to the public, that necessary exceptions to the Right of access to Information shall be limited and specific, and the decisions on the disclosure of such information under this Act shall be reviewed independently of the Government

- (4) The Right of Access to Information held by a private body where this is necessary for the exercise or protection of any right shall be subject only to limited and specific exceptions as set forth in this Act.
- (5) This Act shall apply to all matters relating to Access to Information throughout the territory of South Sudan.

## 5. Interpretation.

In this Act, unless the context otherwise requires, the following words and expressions shall have the meaning assigned to each of them respectively:

<b>“Assembly”</b>	means the National Legislative Assembly;
<b>“Commissioner”</b>	means the person holding the office of Information Commissioner appointed under Chapter V of this Act;
<b>“Constitution”</b>	means the Transitional Constitution of The Republic of South Sudan, 2011;
<b>“Court”</b>	means High Court;
<b>“Government”</b>	means the Government of South Sudan.
<b>“Holds a Record”</b>	means with respect to public or private body: <ul style="list-style-type: none"> <li>(a) in possession of a record not on behalf of another person; or</li> <li>(b) another person in possession of a record on behalf of a public or private body.</li> </ul>
<b>“Information”</b>	means knowledge, facts or documents from a source, or in the possession or under the control of a public or private body, including written, visual, aural and electronic information;
<b>“Information Officer”</b>	means an officer of a public body designated with specific responsibilities pursuant to section 16(1) of this Act;
<b>“Minister”</b>	means the national Minister responsible for information and broadcasting;
<b>“Ministry”</b>	means the ministry responsible for information and broadcasting;
<b>“Official”</b>	means any person employed by a government body whether on permanent, temporary or part-time basis;

<b>“Personal Information”</b>	means information held by a natural or legal person;
<b>“President”</b>	means the President of the Republic of South Sudan;
<b>“Private Body”</b>	means a natural or legal person, excluding a public body that carries on any trade, business or profession;
<b>“Public Body”</b>	means a body: <ul style="list-style-type: none"> <li>(a) established under the Constitution;</li> <li>(b) established by law;</li> <li>(c) which forms part of any level or branch of Government in South Sudan;</li> <li>(d) which is owned, controlled or substantially financed by the National or State Government;</li> <li>(e) carrying out a statutory or public function, provided that such body is a body only to the extent of its statutory or public functions; and</li> <li>(f) that carries out a public function.</li> </ul>
<b>“Publish”</b>	means to make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination; and
<b>“Record”</b>	means any recorded information; regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it.

## CHAPTER II

### RIGHT OF ACCESS TO INFORMATION

#### 6. Right of Access to Information

Every citizen shall have the right of access to information, including electronic records held by any Public or Private Body, subject only to the provisions of this Act.

**7. Request for Information**

- (1) Any person making a request for information to a public body shall be entitled, subject to the provisions of Chapters II and IV of this Act:
  - a) to be informed whether or not the Public Body holds a Record containing that information or shown where that information may be derived; and
  - b) if the Public Body holds such Record, to have that information availed to the person making the request.
- (2) Any person making a request for information to a private body holding information necessary for the exercise or protection of any right shall, subject to the relevant provisions of Chapters II and IV of this Act, be entitled to have that information availed to him or her.

**8. Legislation Prohibiting or Restricting Disclosure**

- (1) The provisions of this Act shall apply without prejudice to the provisions of any other legislation that prohibits or restricts the disclosure of information by a public or private body unless such legislation is an exemption in accordance with the constitution.
- (2) Nothing in this Act shall limit or otherwise restrict the disclosure of information pursuant to any other legislation, policy or practice.

**9. Mode of Request for Information**

- (1) For purposes of section 7 of this Act, a request for information shall be made in writing to an official of a public or private body.
- (2) The request made under subsection (1) of this section shall have sufficient detail to identify with reasonable accuracy, whether or not the body holds a record with that information.
- (3) Where a request for information pursuant to section 7 of this Act does not comply with the provisions of subsection (2) of this section, the official who receives such a request shall, subject to the provisions of subsection (5) of this section and without charge, render such assistance as may be necessary to enable the request to comply with the provisions of subsection (1) of this section.
- (4) A person who is unable to speak or write in the official language may make an oral request for information pursuant to the provisions of section 7 of this Act.
- (5) The official to whom the request is made under sub section (4) shall, subject to sub section (7) of this section, reduce the request into writing, and include his or her name and his or her position in the body, and shall give a copy of the request to the person making the request.



- (6) A request for information under section 7(2) of this Act shall identify the right which the person making the request seeks to exercise or protect and the reasons why the information requested will aid the exercise or protection of that right.
- (7) The official receiving a request for information may convey that request through the Information Officer for purposes of complying with the provisions of subsections (2) or (3) of this section.
- (8) A public or private body shall make available a form for request of information, and such form shall not contain unreasonable conditions that may delay the requests or place an undue burden upon the person making the request.
- (9) A public or private body receiving a request for information shall issue to the person making the request a receipt documenting the request.

#### **10. Time Limits for Responding to Request**

- (1) Subject to the provisions of subsection (3) of this section, a public or private body shall respond to the request made pursuant to section 7 of this Act within seven working days from the date of receipt of the request.
- (2) Where the request relates to information sought to be used to secure the life or liberty of a person, the response shall be provided promptly and in any case not later than forty-eight hours from receipt of the request, without regard for working days.
- (3) Where a public or private body can't meet the 7 days period as provided under sub-section 1 of this section for any reason or where the request is for a large number of records and compliance with the statutory period unreasonably interferes with the activities of the body, such body may extend the period to not more than twenty days.
- (4) Failure by public or private body to comply with the provisions of this section shall be deemed to be a rejection of the request.

#### **11. Notice of Response**

The response to a request for information made pursuant to the provisions of section 7 shall be in writing and shall state:

- (1) the applicable fee, if any, pursuant to section 12 of this Act, in relation to any part of the request which is granted and the form of communication of the information;
- (2) sufficient reasons for refusal in relation to all or any part of the request not granted, subject only to the provisions of Chapter IV of this Act;

- (3) where there is refusal, indicate whether or not the public body holds a record containing the relevant information;
- (4) any right of appeal the person making the request may have.

**12. Fees payable.**

- (1) The communication of information by a public or private body, pursuant to a request under section 7 of this Act may, subject to the provisions of subsections (3) and (4) of this section, be made upon payment of reasonable reproduction costs by the person making the request,
- (2) The fee amount required in subsection (1) shall exclude costs of searching for the information requested, the time spent examining and redrafting the relevant information, or those related to transcribing the information.
- (3) No payment of fees shall be required for requests made for Personal Information about the person making the request and requests made in the public interest.
- (4) No payment of fees shall be required where the public or private body has failed to comply with the requirements of timeliness and communication under Section 10; or where a person suffering financial hardship has made the request for information
- (5) The Commissioner, shall after consultation with the Minister and the Minister of Finance and Economic Planning, issue regulations on:
  - (a) How fees are to be calculated and the mode of collection of fees
  - (b) cases of exemption from payment of fees.
  - (c) Maximum amount of fees to be paid at a level not to deter individuals from making information requests
- (6) Where the cost of collecting fee exceeds the amount of that fee, payment shall be made in accordance with the law or applicable regulation

**13. Means of Communicating Information.**

- (1) A public or private body communicating information pursuant to a request made under section 7 of this Act, shall subject to the provisions of subsection (3) of this section, communicate that information in the form indicated in the request.
- (2) A request made under subsection (1) of this section may 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 inspection report of the record, where necessary, using equipment normally available to the public or private body;

- (c) a copy of the record obtained using the equipment of the public or private body to which the request is made;
  - (d) a written transcript of the words contained in a sound or visual form;
  - (e) a transcript of the content of the record in print, sound or visual form, where such transcript can be produced using equipment normally available to the public or private body;
  - (f) a transcript of record from shorthand or other codified form; or
  - (g) An electronic copy of the record or transmission of the information requested for electronically.
- (3) A public or private body shall not be required to communicate information in the form indicated by the person making the request where to do so.
- (a) It will unreasonably interfere with effective operation of that body or
  - (b) It will be detrimental to the preservation of the record.
- (4) Where a record exists in more than one language, communication of such record shall be provided in the language preferred by the person making the request.

**14. Where Information is not available.**

- (1) Where an officer receiving a request pursuant to section 7 of this Act knows or finds that the requested information is not contained in any record held by the public body, he or she may refer the request to the Information Officer for purpose of compliance with the provisions of this section.
- (2) Where the Information Officer receives a request pursuant to subsection (1) of this section, he or she shall confirm whether or not the public body holds that information.
- (3) Where the Information Officer knows that the relevant information is held by another public body the Information Officer shall, as soon as practicable either:
- (a) refer the request to that public body and inform the person making the request of such referral; or,
  - (b) communicate to the person making the request the public body holding the relevant record.
- (4) Where a request is referred to another public body pursuant to subsection (3) (a) of this section, the time limit for responding to the request under section 10 of this Act shall begin to run from the date of its receipt by that public body.
- (5) A private body receiving a request pursuant to Section 7(2), relating to information that is not contained in any record held by it shall notify the requester of that fact.

## CHAPTER III

### MEASURES TO PROMOTE TRANSPARENCY

#### 15. Guide to use of the Act.

- (1) The Commissioner shall, as soon as practicable, compile a guide containing practical information to facilitate the effective exercise of rights under this Act and circulate the guide widely in an accessible form.
- (2) The guide in subsection (1) of this section shall be updated as regularly as possible.

#### 16. Information Officer.

- (1) Every public body shall establish an information office, designate an Information Officer and ensure that members of the public have easy access to information concerning the Information Officer, including his or her name, duty and contact details pursuant to provisions of this Act.
- (2) The Information Officer designated under subsection (1) of this section, shall in addition to any obligations specifically provided for in this Act, have the following responsibilities:
  - (a) Serve as a central contact for receiving requests from persons seeking to obtain information and receiving individual complaints regarding the performance of the public body in relation to information disclosure.
  - (b) promote best practices in relation to record maintenance, archiving and disposal of information within the public body.

#### 17. Duty to Publish Information.

- (1) Every public body shall annually publish and disseminate key information about the public body, in an accessible form.
- (2) Notwithstanding subsection (1) of this section, the Commissioner may order a public body to publish any information at anytime in the course of the year and such public body shall comply with the order.
- (3) The information published under subsections (1) and (2) of this section shall include, but not be limited to:
  - (a) a description of the structure, functions and duties of the public body;
  - (b) relevant details concerning any services provided by the public body directly to members of the public;
  - (c) any direct requests or complaints mechanism available to members of the public regarding acts or failure to act by that body, along with a summary

- of any requests, complaints or other direct actions by members of the public and the response of the body;
- (d) a simple but adequate guide containing information about its record-keeping systems, the types of information it holds or publishes and the procedure to be followed in making requests 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 body of its functions;
  - (g) the content of all decisions or policies it has adopted which affect the public, along with the reasons for such decisions or policies, their authoritative interpretations, and any important background material; and
  - (h) any mechanism or procedures by which members of the public may make representation or otherwise influence the formulation of policy or the exercise of powers by that body.
  - (i) Any contracts entered into with other parties for service delivery, budget and expenditure plans for the public body for the current and previous years

**18. Regulations on Publication of Information.**

The Commissioner shall:

- (a) issue regulations on minimum standards and best practices regarding the duty of public bodies to publish, information pursuant to section 17 of this Act and
- (b) ensure that the minimum standards and best practices issued pursuant to paragraph (a) of this section are adhered to by the public body.

**19. Maintenance of Records.**

- (1) Every public body shall maintain its records in a manner which facilitates the right to access information as provided for in this Act and in accordance with the Code of Practice stipulated in subsection (3) of this section.
- (2) Every Public Body shall ensure that adequate procedures are in place for the correction of Personal Information.
- (3) The Commissioner shall, after consultation with interested parties, issue and from time to time update the Code of Practice on the keeping, management and disposal of records and, where appropriate, the transfer of records to the responsible public archives.

**20. Training of Officials.**

Every public body shall provide appropriate training for its officials on the right to information and the effective implementation of the provisions of this Act.

**21. Reports to the Commissioner.**

- (1) The Information Officer of every public body shall submit to the Commissioner reports on the activities of the public body showing compliance with or, actions taken to promote compliance with the provisions of this Act.
- (2) The reports of the public body submitted under subsection (1) of this section shall include information about:
  - (a) the number of requests for information received, granted in full or in part or rejected by the public body;
  - (b) how often the Act was relied upon to reject either in part or in full a request for information;
  - (c) which sections of the Act were relied upon to reject either in part or in full the requests for information;
  - (d) appeals from refusal to communicate information;
  - (e) fees charged for requests for information;
  - (f) its activities pursuant to sections 18 and 19 of this Act and
  - (g) the training activities pursuant to section 20 of this Act

**CHAPTER IV**

**EXCEPTIONS**

**22. Public Interest Override.**

- (1) Notwithstanding any provisions in this Chapter, a public or private body may not refuse to indicate whether or not it holds a record or to communicate information, unless in disclosure, the harm to the protected interest outweighs the public interest.
- (2) The burden of proof under subsection (1) shall be on the public or private body holding a record of information, to prove that the potential harm caused to the protected interest by release of the information, outweighs the public interest in disclosure of information.
- (3) Information is not exempt from access under this Act merely on the basis of its classification status.

**23. Information Already available to the Public.**

Notwithstanding any provision in this chapter, a Public or Private Body may not refuse to communicate information where the said information is already available to the public.

**24. Severability.**

If a request for information relates to a record containing information which, subject to this Chapter, falls within the scope of an exception, 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.

**25. Personal Information.**

- (1) A Public or private body may refuse to indicate whether or not it holds a record, or to communicate information, where to do so involves unreasonable disclosure of personal information about a third party, including a deceased person.
- (2) The provisions of subsection (1) of this section shall 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 executor of the will of a deceased;
  - (c) the third party died more than 20 years prior to the request for information;
  - (d) the third party is or was an official of a public body and the information relates to his function as a public official;
  - (e) a court upon an application with notice to the Commissioner issues an order for the release of such information; and
  - (f) Information relates to the physical or mental health of a person under the care of the requester and who is under the age of 18 years; or incapable of understanding the nature of the request and giving access would be in the person's best interests.
- (3) Request to a private body to release a record of personal information, may without prejudice to any other provision in this Act, be permitted upon an order of court if the court determines that the disclosure of such personal information or Record is in the public interest.

**26. Legal Privilege.**

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

## **27. Commercial and Confidential Information.**

- (1) A public or private body may refuse to communicate information if:
- (a) the information was obtained from a third party and communicating 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,
    - ii) to communicate it is likely to prejudice the commercial or financial interests of that third party or;
  - (c) the information was obtained in confidence from another State or International Organisation and to communicate it is likely to prejudice relations with that State or International Organisation.
- (2) A request must not be refused in terms of subsection (1) where:
- (a) The disclosure of the information would facilitate accountability and transparency of decisions made by the public or private body;
  - (b) The information relates to expenditure of public funds; or
  - (c) The disclosure of the information would reveal misconduct or deception.

## **28. Health and Safety.**

A public or private body may refuse to indicate whether or not it holds a record or refuse to communicate information where to do so is likely to endanger the life, health or safety of any individual.

## **29. Law Enforcement.**

A public or private body may refuse to indicate whether or not it holds a record or to communicate information where to do so is likely to be detrimental to:

- (a) prevention or detection of crime;
- (b) apprehension or prosecution of an offender;
- (c) administration of justice;
- (d) assessment or collection of any tax or duty;
- (e) operation of immigration controls; or,
- (f) Assessment by a public body of whether civil or criminal proceedings or regulatory action pursuant to any law is justified.

## **30. Defence and Security.**

- (1) A public body may refuse to indicate whether or not it holds a record or refuse to communicate information, where to do so is likely to jeopardise national defence, security or both.
- (2) For the purpose of this section, security or defence of South Sudan means:



- (a) Military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities;
  - (b) Intelligence relating to the defence of the country, the detection, prevention, suppression or curtailment of subversive or hostile activities;
  - (c) Methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in subsection (2) (b) of this section
  - (d) The identity of a confidential source and any other source of information referred to in subsection (2) (b) of this section; or
  - (e) The quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, or produced for use as weapons or such other equipment.
- (3) For the purpose of this section, subversive or hostile action means:
- (a) An attack against the country by a foreign element;
  - (b) Acts of sabotage or terrorism aimed at the people of South Sudan or strategic asset of the country, whether inside or outside the country; or
  - (c) A foreign or hostile intelligence operation.

**31. Public Economic Interest.**

- (1) A public body may refuse to indicate whether or not it holds a record or to communicate information where to do so would likely prejudice the ability of Government to manage its economy or harm its economic interests.
- (2) A public body may refuse to indicate whether or not it holds a record or to communicate information where to do so it is likely to prejudice a legitimate commercial or financial interest of the public or private body.
- (3) The provisions of subsections (1) and (2) of this section shall not apply where the request relates to the results of any product or environmental testing and the information concerned reveals a risk to public safety or environment.

**32. Policy Making and Operations of Public Bodies**

- (1) A public body may refuse to indicate whether or not it holds a record or to communicate information in its possession, where to do so it is likely to:
  - (a) prejudice effective formulation or development of government policy;
  - (b) frustrate the success of a policy by premature disclosure of that policy;

- (c) undermine the deliberative process in a public body by inhibiting free and frank provision of advice or exchange of views or
  - (d) undermine the effectiveness of a testing or auditing procedure used by a public body.
- (2) The provisions of subsection (1) of this section shall not apply to facts, analyses of facts, technical data or statistical information.

**33. Frivolous, Vexatious or Repetitive Requests.**

- (1) A public or private body shall not be required to comply with a request for information which is frivolous or manifestly vexatious or repetitive where it has recently complied with a substantially similar request from the same person.
- (2) A public or private body shall not be required to comply with a request for information where to do so it would be likely to result in diversion of its resources.

**34. Time Limit.**

- (1) The provisions of sections 26 and 31 of this Act shall apply to the extent of the harm envisaged where it is more likely to occur at or after the time at which the request is considered.
- (2) The provisions of sections 27(c), 29, 30 and 31 of this Act shall not apply to a record which has been held for more than 30 years.

## CHAPTER V

### INFORMATION COMMISSIONER

**35. Appointment of Information Commissioner.**

- (1) The Minister shall in consultation with media associations and the civil society submit to the President a list of four candidates from which the President shall nominate the Information Commissioner and his or her Deputy to the National Legislative Assembly for vetting and approval.
- (2) The procedure for the appointment under subsection (1) of this section shall be transparent, allowing opportunity for the public, media and civil society to make presentations to the select Committee of the National Legislative Assembly hearings concerning the candidates for appointment, and shall commence within three months from the date of enactment of this Act into law.
- (3) The Members nominated for appointment under subsection (1) and subsection (2), shall be vetted by relevant committees of the National Legislative

Assembly with due consideration for qualifications, merit, integrity, competence and moral standing of the person to be appointed as the Information Commissioner.

- (4) To be eligible for appointment as a Commissioner a person shall:
- (a) be a South Sudanese of more than 18 years with relevant qualifications
  - (b) not be an official or employee of a political party;
  - (c) not be a holder of an elected position at any level of Government;
  - (d) not be an un-discharged bankrupt or insolvent; or
  - (e) not have been convicted of a crime involving violence, dishonesty or moral turpitude within five years preceding the appointment.
- (5) The Commissioner shall hold office for a term of three (3) years and may be eligible for re-appointment for one additional term.

**36. Removal from Office.**

- (1) The President may remove the Commissioner from office on the recommendation of the Minister if the commissioner:
- (a) Is guilty of gross misconduct or becomes incompetent or is incapacitated;
  - (b) becomes by virtue of Section 35(5) ineligible for the position;
  - (c) Violates his or her duties under this Act, including but not limited to, failing to uphold the right of access to information, or engaging in corrupt practices.

**37. Independence and Powers.**

- (1) The office of the Information Commissioner shall enjoy operational and administrative autonomy and shall be free from control or direction of any person or entity.
- (2) The office of the Commissioner shall have such powers, as are necessary for the discharge of its functions and duties as provided for in this Act.

**38. Status.**

The Information Commissioner appointed pursuant to Section (35), shall be accorded the rights and privileges enjoyed by the chairpersons of other independent Commissions as provided in the Constitution.

**39. Support Staff.**

- (1) The Commissioner shall recruit such administrative and technical staff as may be necessary, to enable him or her perform the functions and duties of that office.

- (2) All recruitment procedures and employment of the staff under subsection(1) of this section shall be in accordance with the Civil Service laws and regulations.

**40. Functions of the Commissioner.**

- (1) In addition to any other powers, functions and duties provided for in this Act, the Commissioner shall:
- (a) monitor and report on the compliance by public or private bodies with their obligations under this Act;
  - (b) make recommendations for reform of both general nature and directed at specific public bodies;
  - (c) co-operate with or undertake the training of public officials on the right to information and the effective implementation of this Act;
  - (d) refer cases which reasonably disclose evidence of criminal offences under this Act to the appropriate authorities and
  - (e) publicise the requirements of this Act and the rights of individuals under it.
- (2) The Commissioner shall, within three months after the end of each financial year, submit to the National Legislative Assembly an annual report on compliance of public bodies with their obligations under this Act, the activities of his or her office and audited accounts of the office for that financial year.
- (3) The Commissioner may from time to time submit to the National Legislative Assembly such other reports as may be appropriate or as may be required from time to time.

**CHAPTER VI**

**ENFORCEMENT BY THE COMMISSIONER**

**41. Complaints.**

- (1) A person who makes a request for information under this Act may apply to the Commissioner for a decision that a public or private body has failed to comply with an obligation under this Act, including:
- (a) refusing to indicate whether or not it holds a record, or to communicate information, in violation of section 7 of this Act;
  - (b) failing to respond to a request for information within the time limits provided under this Act;

- (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 11 of this Act;
  - (d) failing to communicate information, in violation of section 11(2) of this Act;
  - (e) charging an excessive fee, in violation of section 12 of this Act;
  - (f) failing to communicate information in the form requested, in violation of section 13 of this Act; or
  - (g) wrongfully relying on the exceptions in Chapter IV of this Act;
  - (h) refusing access to information after an internal appeal;
  - (i) providing insufficient or inaccurate or inadequate information;
- (2) A person may make application to the Commissioner without exhausting internal appeal mechanisms of the public or private body for review of the decision refusing access in the following cases where:
- (a) Information requested is the personal information of the requester and the initial request to the public or private body has been refused;
  - (b) Information requested was previously in the public domain; or
  - (c) The person is employed by a public or private body and wishes to report wrong doing relating to access to information;
  - (d) Information reasonably believed to be necessary to safeguard life or liberty of a person has been refused access within 48 hours of its request; or the requester received no notice of the decision of the information officer within 48 hours of the request being lodged

#### **42. Settlement of Complaints.**

- (1) The Commissioner shall, subject to the provisions of subsection (2) of this section, decide on an application under section 41 of this Act, as soon as possible and in any case not later than thirty days, after giving both the complainant and the relevant body an opportunity to respond in writing.
- (2) The Commissioner may summarily refuse any application:
  - (a) which is frivolous, vexatious or clearly unwarranted; or,
  - (b) where the applicant has failed to use any effective internal appeal mechanism provided by the relevant public or private body.
- (3) In any application under Section 41 of this Act, the burden of proof lies on the public or private body to prove that it acted in accordance with its obligations under this Act.

- (4) In his or her decision pursuant to subsection (1) of this section, the Commissioner may:
- (a) reject the application;
  - (b) require the public or private body to take such steps as necessary to comply with its obligations under this Act;
  - (c) require the public or private body to compensate the complainant for any loss suffered or
  - (d) in case of gross negligence by the public or private body to comply with obligations under this Act, refer the matter to a competent court.
  - (e) bring actions before a competent court or join proceedings as deemed necessary
  - (f) affirm the decision of the public or private body;
  - (g) vary the type of access originally granted or requested;
  - (h) set aside the decision of the public or private body and make a ruling;
  - (i) issue contempt orders;
  - (j) issue cost orders;
  - (k) make rulings on any matter relating to the execution of warrants and search and seizure; or
  - (l) issue any other orders deemed to be just and equitable
- (5) The Commissioner shall serve notice of his or her decision, including any right of appeal, on both the complainant and the public or private body.

#### 43. Transparency.

- (1) Where a complaint is made and after giving a public or private body an opportunity to respond in writing, the Commissioner may decide that the public or private body has failed to comply with the obligations under Chapter III of this Act.
- (2) The Commissioner may pursuant to subsection (1) of this section, order that the public or private body takes such steps as may be necessary to comply with its obligations under Chapter III of this Act, including:
- (a) appointing an Information Officer;
  - (b) publishing certain information or categories of information;
  - (c) making certain changes to its practices in relation to the keeping, management and destruction of records or the transfer of records to the government archives;
  - (d) enhancing the provision of training on the right to information for its officials;
  - (e) providing him or her with an annual report, in compliance with section 21 of this Act and,
  - (f) in cases of egregious or wilful failure to comply with an obligation under Chapter III herein, paying a fine;

- (3) The Commissioner shall serve notice of his or her decision, including any right of appeal, on the public or private body.

**44. Power to Investigate.**

- (1) In making a decision pursuant to the provisions of sections 42 and 43 of this Act the Commissioner shall have the power to conduct full investigation, including issuing orders for production of evidence and compelling witnesses to appear and testify.
- (2) The Commissioner may, in conducting investigation under subsection (1) of this section, examine any record to which this Act applies and no such record may be withheld from the Commissioner on any grounds.
- (3) No criminal or civil liability shall lie against the Commissioner, or any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Act.
- (4) For purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act is privileged unless that information is shown to have been said or supplied with malice.

**45. Objection to Decision and order of the Commissioner.**

- (1) A complainant or the relevant public or private body may, within forty-five days after receiving the decision or order of the Commissioner made pursuant to sections (42), (43) or 44(1) of this Act, file an appeal to the Appeals Board of the Media Authority against the decision of the Commissioner.
- (2) The complainant or the relevant public or private body may thereafter if not satisfied, appeal to the Court for review of the Commissioner's decision pursuant to Section (42) or (43) or an order pursuant to Section 44(1).
- (3) In any appeal of a decision pursuant to Section (42), the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Chapter II.
- (4) Upon expiry of 45 days for appeals pursuant to sub-section (1) above, the Commissioner may certify in writing to the court any failure to comply with a decision pursuant to Section (42) or (43), or an order pursuant to Section 44(1), and the court shall consider such failure under the rules relating to contempt of court.
- (5) The Court, pursuant to subsection (2) for the purpose of deciding whether information is exempt information, may require the relevant public or private body to produce the information for inspection by members of the Court.

- (6) In any proceeding before the Court, the onus of proving that a refusal to grant access to information was justifiable under this Act shall be on the public or private body
- (7) The Court hearing an application may grant any order that is just and equitable, including orders:
  - (a) Confirming, amending or setting aside the decision which is the subject of the application; or
  - (b) Requiring a public or private body to take such action or to refrain from taking such action as the Court considers necessary within a period provided in the order;
  - (c) Granting an interdict, interim or specific relief, a declaratory order or compensation; or
  - (d) as to costs

## Chapter VII

### INTERNAL REVIEW OF DECISIONS

#### 46. Right of Internal Review.

- (1) A person may apply for an internal review of a decision of an information officer:
  - (a) Refusing to grant access to information in accordance with a request;
  - (b) To extend the period of time to respond to a request;
  - (c) If information cannot be found or does not exist;
  - (d) As regards the amount of a reproduction fee, whether or not the reproduction fee has already been paid by the requester; or
  - (e) Not to grant access to information in the form requested, whether or not access in another form has already been provided to the requester
- (2) A third party may apply for an internal review of a decision of an information officer to grant access to information containing third party information

#### 47. Application for Internal Review.

- (1) A requester of information may make an internal review request in writing or orally to the information officer of the relevant body within 60 days of the receipt of a decision of an information officer referred to in Section 46(1).



- (2) A third party may make an internal review request in writing or orally to the information officer of the relevant body within 10 days of the receipt of a decision of an information officer referred to in Section 46(2).
- (3) If a requester or third party makes an internal review request orally the information officer shall reduce that oral request to writing and provide a copy thereof to the relevant party.
- (4) An internal review request shall identify the request and decision of the information officer which is the subject of the internal review.
- (5) If an internal review request referred to in subsection(1) is lodged after the expiry of the 60 days, the information officer shall upon good cause shown, allow the late lodging of the request;
- (6) As soon as possible, but in any event within 5 days after receipt of an internal review request, the information officer shall submit to the head of the public or private body the:
  - (a) Internal review request;
  - (b) Information officer's reasons for the decision;
  - (c) Information that is the subject of review and notify the requester in writing that the documents have been so submitted.

**48. Decision on internal review.**

- (1) The head of the public or private body to whom an internal review request is submitted in accordance with Section 47 shall, as soon as reasonably possible, but in any event within 15 days after the internal review request is received by the information officer:
  - (a) Make a fresh decision on behalf of the body; and
  - (b) Notify the requester, and where relevant, the third party of that decision in writing.
- (2) If the head of the relevant body holding information determines to grant access to the information, the notice of the requester referred to in subsection (1) shall state:
  - (a) the reproduction fee (if any) payable;
  - (b) the form in which access will be given; and
  - (c) that the requester may apply to the oversight mechanism for a review of the decision in respect of the reproduction fee payable or the form of access and the process for lodging that appeal
- (3) Where a requester has been given a notice that access to the information has been granted, that requester shall be given access to the information:

- (a) if a reproduction fee is payable, upon payment of that fee; or
  - (b) if no reproduction fee is payable, immediately
- (4) Where the head of the relevant body in possession of information has determined to release information containing third party information, the requester may not be granted access to that information until such time as any right of the third party to appeal the release of the information has expired or any appeal lodged by the third party has been finally determined.
- (5) If the head of the relevant body determines not to grant access to the information, the notice to the requester referred to in subsection (1) shall state:
- (a) adequate reasons for the refusal, including the provisions of this Act relied on; and
  - (b) that the requester may apply to the Commissioner for review of the decision and the process for lodging that appeal.
- (6) Where a third party has lodged an internal review request the notice referred to in subsection (1) shall state:
- (a) adequate reasons for the decision; and
  - (b) that the third party may apply to the Commissioner for a review of the decision and the process for lodging that appeal.

**49. Non-delegable duty.**

- (1) The decision referred to in Section 48 shall be made by the head of the public or private body personally and may not be delegated to any other person

**50. Deemed refusal.**

- (1) If the head of the public or private body in possession of the information fails to give a decision on an internal review request within the time specified in subsection (1) of Section 48, the head of the body shall be deemed to have affirmed the original decision of the information officer.
- (2) Where the head of the public or private body is the information officer of that body, a requester shall be entitled to apply directly to the Commissioner for a review of any such decision made by the information officer.

## Chapter VIII

### MISCELLANEOUS PROVISIONS

**51. Bona fide Disclosures.**

- (1) A person shall not be subjected to any legal, administrative or employment-related proceedings, for breach of a legal or employment obligation where the person acted in good faith and;

- (a) Releases substantially true information which discloses evidence of wrong doing or corruption,
  - (b) releases substantially true information which discloses a serious threat to health, safety or the environment,
- (2) For purpose of subsection (1) of this section, wrong doing includes the commission of an offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public or private body.
- (3) For purpose of subsection (1) of this section, a person shall be protected against civil or criminal proceedings or any employment detriment for anything done in the exercise of a power or performance of a duty conferred under this Act as long as the person acted reasonably and in good faith.

**52. Offences.**

- (1) A person who obstructs access to any record, performance by a public or private body of its duty under Chapter III of this Act, or destroys records without lawful authority or interferes with the work of the Commissioner or of a person acting on behalf of or under the direction of the Commissioner, or conceals or falsifies information, commits an offence punishable under the Penal Code, and is liable to imprisonment for a term not exceeding two years, or to a fine as determined by the Court.
- (2) Where a person without reasonable cause:
- (a) Refuses to receive a request;
  - (b) Has not responded to a request within the time specified in the relevant provisions of this Act, or where the time period has been extended in accordance with the provisions of this Act, as applicable, within any extended period of time;
  - (c) Has vexatiously denied the request;
  - (d) Has given incorrect, incomplete or misleading information; or
  - (e) Obstructed in any manner the access to information

The Commissioner or the appropriate Court may impose a minimum penalty, each day until the request is received or determined as provided for by regulation.

**53. Regulations.**

The Commissioner may make regulations for the effective and efficient implementation of the provisions of this Act, specifically, regarding:

- (a) additional forms of communication of information under section 13(2) of this Act;
- (b) training of officials under section 20 of this Act;
- (c) reports to the Commissioner under section 21 of this Act;
- (d) any notice required by this Act; or
- (e) any administrative or procedural matter necessary to give effect to this Act.

## SCHEDULE

### OATH OF THE COMMISSIONER

*"I ----- do hereby swear by the Almighty God/solemnly affirm that as the Commissioner for the Government of South Sudan, shall be faithful to the People of South Sudan, defend and protect the Constitution, uphold the Right of Access to Information as provided in the Constitution, the Right of Access to Information Act, and the Laws of South Sudan and that I shall faithfully discharge my functions and duties to the best of my ability, so help me God".*

### ASSENT OF THE PRESIDENT OF THE REPUBLIC OF SOUTH SUDAN

In accordance with the provision of Article 85(1) of the Transitional Constitution of the Republic of South Sudan, 2011, I Salva Kiir Mayardit, President of the Republic of South Sudan, hereby Assent to the Right of Access to Information Act, 2013 and sign it into law.

Signed under my hand in Juba, this 9<sup>th</sup> day of the Month of DEC. in the Year 2013.



**Salva Kiir Mayardit,  
President,  
Republic of South Sudan,  
Juba.**