ACCESS TO INFORMATION BILL
KEY ISSUES OF CONCERN

23 June 2020

1. Blanket confidentiality of Cabinet proceedings and decisions |clause 2)

1.1 Clause 2(2)(a)(i) completely excludes information relating to "proceedings and decisions of Cabinet and its committees" from the coverage of the law.

1.2 There are some arguments for affording a degree of confidentiality to for Cabinet deliberations and decisions – for example:

> **Convention of collective ministerial responsibility:** This convention requires that each Cabinet member be accountable for government policy. Thus, at the Cabinet table, each minister should be free to exchange frank and vigorous views with his or her colleagues and to have those views protected.
>
> **Need for candid advice from officials:** A corollary of the first justification is the need for ministers to receive candid advice from their officials. That is more likely to occur, it is believed, if advice to ministers is provided in confidence.
>
> **Confidentiality of Cabinet's agenda:** Finally, it is felt that Cabinet's agenda should be confidential. This will allow Cabinet to set its own agenda and carry on discussion without undue political pressures being brought to bear. This type of confidentiality helps ensure that Cabinet decision-making processes are conducted in as expeditious a manner as possible.[1]

The Supreme Court of Canada has stated: "The process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly."[2] It elaborated:

> The British democratic tradition which informs the Canadian tradition has long affirmed the confidentiality of what is said in the Cabinet room, and documents and papers prepared for Cabinet discussions. The reasons are obvious. Those charged with the heavy responsibility of

[1] "The Access to Information Act and Cabinet Confidences A Discussion of New Approaches", RPG Information Services Inc. for the Information Commissioner of Canada, 1996, page 5.
[2] *Babcock v Canada (Attorney General)* [2002] 3 S.C.R. 3, 2002 SCC 57, para 18.

> making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny…. If Cabinet members' statements were subject to disclosure, Cabinet members might censor their words, consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect.[3]

1.3 There are also strong counterarguments to excluding Cabinet completely from a law on access to information.

One commentator has criticised the confidentiality of Cabinet records in South Africa under the Promotion of Access to Information Act 2 of 2000:

> Section 12(a) states that, 'this Act does not apply to a record of the Cabinet and its committees'. The exemption of Cabinet records effectively renders the right of access to major policy decisions and processes of government inaccessible to the public (for example, state policy on reparations). This is completely inconsistent with the constitutional right of access to 'any information' held by a public body.[4] Human rights in general cannot be exercised fully when access to the key decisions and processes that provide the foundation for both legislation and administrative action by government is denied.[5]

A 1999 decision of the Constitutional Court of South Africa, which considered whether a sitting President can be compelled to give evidence in court, emphasised the need to balance concerns about confidentiality of the executive decision-making process with the public interest:

> [243] We are of the view that there are two aspects of the public interest which might conflict in cases where a decision must be made as to whether the President ought to be ordered to give evidence. On the one hand, there is the public interest in ensuring that the dignity and status of the President is [are] preserved and protected, that the efficiency of the executive is not impeded and that a robust and open discussion take place unhindered at meetings of the Cabinet when sensitive and important matters of policy are discussed. Careful consideration must therefore be given to a decision compelling the President to give evidence and such an order should not be made unless the interests of justice clearly demand that this be done. The judiciary must exercise appropriate restraint in such cases, sensitive to the status of the head of state and the integrity of the executive arm of government. On the other hand, there is the equally important need to ensure that courts are not impeded in the administration of justice.[6]

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[3] Ibid (citation omitted).

[4] South Africa, unlike Namibia, protects the right of access to information in the Constitution:

> **Access to information**
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> **32.** (1) Everyone has the right of access to-
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> (a) any information held by the state; and
>
> (b) any information that is held by another person and that is required for the exercise or protection of any rights.
>
> (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

[5] Dr Dale T. McKinley, "The State of Access to Information in South Africa", prepared for the Centre for the Study of Violence and Reconciliation, undated [apparently 2003 or 2004], page 5 [footnote inserted].

[6] *President of the RSA v SARFU* [1999] ZACC 11; 1999 (10) BCLR 1059 (CC), para 243.

In Australia, which has an unusually restrictive approach to access to Cabinet materials, it has been argued that blanket protection for Cabinet documents "is antithetical to the values of open government and accountability and prevents legitimate public scrutiny of government activity"[7] Another danger which has been noted in Australia is that some documents might be submitted to Cabinet purely for the purpose of protecting them from public disclosure. (Australia countered this ploy by adding a provision to its Freedom of Information Act 1982 which limits protection for the confidentiality of Cabinet documents only to those "brought into existence for the dominant purpose of submission for consideration by the Cabinet" (s. 34(1)(a)(ii)).)

1.4 Blanket, permanent confidentiality is *not* an international norm. Many parliamentary systems provide for the release of Cabinet documents and records of Cabinet meetings after a certain time period, or provide a "public interest test" which requires balancing the interest in withholding information against the public interest in disclosure – an approach which allows access to information that reveals wrongdoing or corruption, or information that could prevent harm to individuals or the environment. Other democratic jurisdictions allow access to Cabinet documents with the consent of Cabinet to the disclosure, or where the decisions in question have already been implemented. Some also apply confidentiality to Cabinet deliberations, but not to factual background documents submitted to Cabinet for consideration.[8] Here are some examples:

1.4.1 England: The UK's rules on Cabinet confidentiality are contained in The Ministerial Code (dated August 2019). **The only aspect of Cabinet deliberations which is protected is the privacy of individual opinions**:

> 2.1 The principle of collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees, including in correspondence, should be maintained.
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> 2.3 The internal process through which a decision has been made, or the level of Committee by which it was taken should not be disclosed. Neither should the individual views of Ministers or advice provided by civil servants as part of that internal process be disclosed.

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[7] Dr Mark Rodrigues**.** "Cabinet confidentiality", Politics and Public Administration Section. Parliament of Australia, 28 May 2010.

[8] David Banisar, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws,* Privacy International, 2006; K Malan, "To what extent should the Convention of Cabinet Secrecy still be recognised in South African constitutional law?" 49(1) *De Jure (Pretoria)* [2016].

There is **also judicial authority for the principle that the passage of time and the public interest can override the confidentiality of even these limited issues**. In *Attorney-General v Jonathan Cape Ltd* [1976] 1 QB 752, [1976] 3 All E R 484, the Attorney-General sought to prevent publication of certain materials in the diary of a former Cabinet minister. The Court refused the injunction.

The basis of the Attorney-General's argument was the convention of collective Cabinet responsibility "whereby any policy decision reached by the Cabinet has to be supported thereafter by all members of the cabinet whether they approve of it or not, unless they feel compelled to resign. It is contended that Cabinet decisions and papers are confidential for a period to the extent at least that they must not be referred to outside the cabinet in such a way as to disclose the attitude of individual ministers in the argument which preceded the decision."

However, the Court found that even this degree of protection had limitations. It found that there must "be a limit in time after which the confidential character of the information, and the duty of the court to restrain publication, will lapse". In the case before it, The Court held that there was no reason not to publish the information since 10 years had already elapsed - while noting that it may be difficult in a particular case, to say at what point Cabinet material can be published without undermining the doctrine of collective Cabinet responsibility. The Court suggested a three-part test:

> The Attorney-General must show (a) that such publication would be a breach of confidence; (b) that the public interest requires that the publication be restrained, and (c) that there are no other facts of the public interest contradictory of and more compelling than that relied upon. Moreover, the court, when asked to restrain such a publication, must closely examine the extent to which relief is necessary to ensure that restrictions are not imposed beyond the strict requirement of public need.[9]

The key outcome of this case is the principle that there is no blanket rule regarding non-disclosure of Cabinet information. The right to prohibit disclosure depends on the arguments for confidentiality which are specific to the information in question, in light of the lapse of time since the decisions were made, balanced against the public interest in disclosure.

1.4.2 Canada: Canada's Access to Information Act (R.S.C., 1985, c. A-1) includes a **narrow exemption regarding government decision-making processes., which expires completely after the passage of 20 years:**

Operations of Government

[9] Quotes from unpaginated case excerpts located online.

Advice, etc.

21 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains

(a) advice or recommendations developed by or for a government institution or a minister of the Crown,

(b) an account of consultations or deliberations in which directors, officers or employees of a government institution, a minister of the Crown or the staff of a minister participate,

(c) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto, or

(d) plans relating to the management of personnel or the administration of a government institution that have not yet been put into operation,

if the record came into existence less than twenty years prior to the request.

Exercise of a discretionary power or an adjudicative function

(2) Subsection (1) does not apply in respect of a record that contains

(a) an account of, or a statement of reasons for, a decision that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of a person; or

(b) a report prepared by a consultant or an adviser who was not a director, an officer or an employee of a government institution or a member of the staff of a minister of the Crown at the time the report was prepared.

The 20-year limit is replicated in the Privacy Act (R.S.C., 1985, c. P-21), which also places other limits on non-disclosure of Cabinet information – such as allowing the disclosure of discussion papers containing background information presented to Cabinet once the related Cabinet decision has been made public, or in any event after four years have passed.

Confidences of the Queen's Privy Council for Canada

70 (1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing, any information contained in

(a) memoranda the purpose of which is to present proposals or recommendations to Council;

(b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) agenda of Council or records recording deliberations or decisions of Council;

(d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before,

Council or that are the subject of communications or discussions referred to in paragraph (d); and

(f) draft legislation.

Definition of *Council*

(2) For the purposes of subsection (1), *Council* means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

Exception

(3) Subsection (1) does not apply to

(a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or

(b) discussion papers described in paragraph (1)(b)-

(i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

1.4.3 New Zealand: New Zealand has **very limited and qualified protection for the confidentiality of Cabinet deliberations**. Section 9 of its Official Information Act 1982 provides that the withholding of information *may* be necessary to -

(f) maintain the constitutional conventions for the time being which protect—

(i) the confidentiality of communications by or with the Sovereign or her representative:

(ii) collective and individual ministerial responsibility:

(iii) the political neutrality of officials:

(iv) the confidentiality of advice tendered by Ministers of the Crown and officials; or

(g) maintain the effective conduct of public affairs through—

(i) the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; or

(ii) the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment.

However, this is **not a blanket exemption**. The protection from disclosing such information may be overridden where, "in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the **public interest**, to make that information available" (s. 9(1)).

1.4.4 Mexico: Mexico's General Act of Transparency and Access to Public Information is considered to be one of the best access-to-information laws in the world.[10] Article 113 of this law, which sets out several categories of privileged information, protects as confidential only the following **material about government deliberations**:

Information…
VIII. Which contains the opinions, recommendations or views that are part of the deliberative process of Public Servants, while a final decision is made, which must be documented.

[10] See, for example, the Global Right to Information Ratings Map.

Furthermore, under Article 115 of the law, **even this limited category is not protected from disclosure if it relates to serious human rights violations, crimes against humanity, or corruption.** In addition. any privilege under Article 113 applies only for a period of **five years** (Article 101).

1.4.5 **India:** Article 8 of India's Right to Information Act 22 of 2005 exempts the following from disclosure:

> (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

However, this Article also provides that a public authority may allow access to this information "if **public interest** in disclosure outweighs the harm to the protected interests". Furthermore, it also provides that "the **decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over**".

1.4.6 **Kenya**: Section 6 of Kenya's Access to Information Act 31 of 2016 protects **"cabinet deliberations and records" from disclosure**, but provides this protection may be overruled "where the **public interest** in disclosure outweighs the harm to protected interests as shall be determined by a Court", as well as setting a **30-year time limit** on confidentiality:

> Unless the contrary is proved by the public entity or private body, information is presumed not to be exempt if the information has been held for a period exceeding thirty years (s.6(7).

1.4.7 **AU Model Law on Access to Information for Africa:** The AU Model Law does not suggest any exemption for Cabinet-related materials at all. In fact, section 1 of the AU Model Law defines "public body" as any body

> (a) established by or under the Constitution;
> (b) established by statute; or
> (c) which forms part of any level or branch of government.

Section 7(1)(c) of the Model Law Act states in respect of public bodies that "where a meeting is not open to the public, the body must proactively make public the contents of submissions received, the process for decision making and decisions reached".

1.5 **The blanket exemption for "proceedings and decisions of Cabinet and its committees" in the Namibian Access to Information Bill is too broad.** The Bill includes a "public interest override" in clause 64 for information about corruption, public health or safety risks and serious environmental risks – where the public interest outweighs the harm which would be occasioned by disclosure - but clause 2(2)(a)(i) removes proceedings and decisions of Cabinet and its committees from the coverage of the Bill entirely. This means that there is no right of access to such Cabinet materials *at all*, no matter how strong the public interest or how much time has elapsed.

1.6 **RECOMMENDATION:** Remove clause 2(2)(a)(i) which exempts Cabinet entirely from the Act. Substitute it with a new provision exempting information about Cabinet *deliberations* until a period of 10 years have passed (ie two presidential terms of office) – but do not provide any exemption for Cabinet decisions and resolutions, or for factual information submitted to Cabinet or its committees. In addition, all Cabinet materials (like other government documents) should be subject to the public interest override in clause 64.

2. Blanket confidentiality of judicial functions and nomination, selection and appointment of judicial officers (clause 2)

2.1 **Section 2(2)(a) (ii)-(iii) excludes (2) from the Act's coverage "judicial functions of a court, a tribunal or investigating unit established under any law" and "the nomination, selection and appointment of a judicial officer or any other person exercising a judicial or quasi-judicial function in terms of any law".** This goes too far.

2.2 **"Judicial functions": It is accepted that judicial deliberations should remain confidential** – such as internal discussions between the judges or members of a tribunal of investigating unit who have heard or considered a case on how they are going to decide the matter. **However, "judicial functions" seems to cover more than this.**

Article 12(1)(a) of the Namibian Constitution states that, in the determination of their civil rights and obligations or any criminal charges against them, "all persons shall be entitled to a fair *and public* hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society". Even where a court proceeding is held in private for one of the Constitutionally accepted reasons, the *outcome* of the case (with names or sensitive information redacted) should still be public. The same is true for the *outcome* of a tribunal or investigating unit.

Furthermore, the public should also be entitled to **information about the numbers and types of cases heard by a court or tribunal, and statistics on case outcomes** – all of which could fall under "judicial functions".

2.3 **"Nomination, selection and appointment of a judicial officer or any other person exercising a judicial or quasi-judicial function in terms of any law": It is accepted that the *deliberations* of a body like the Judicial Service Commission or the Magistrate's Commission are best kept confidential.** However, again this wording captures too much. **The public should be able to know who has been nominated, their qualifications and (rather obviously), who has been selected and appointed to judicial decision-making roles.** In fact, judicial appointments are currently gazetted, which is a positive practice. The same approach should apply to other judicial-type positions.

Furthermore, **in some counties, judicial nominees undergo a public interview process**. The Access to Information Act should not establish principles to the contrary which might mitigate against the future introduction of such a procedure in Namibia.

2.4 **RECOMMENDATION:** Remove clause 2(2)(a)(ii) and (iii) and substitute them with more narrowly-worded provisions which exempt from the Act only material relating to the *deliberations* of judicial officers and judicial selection bodies - without shielding from the public other information about the operation and the decisions of courts and tribunals, or information about the nominations, qualifications and appointment of judicial officers.

3. Exemptions of some non-profit public entities (clause 29)

3.1 The rationale for exemptions under clause 29 is unclear.

> **Exemptions of certain categories of organisations from obligations**
> 29. The Information Commissioner may, in writing, exempt a category of organisations operating on a non-profit basis which are public entities by virtue of paragraph (c)(ii) of the definition of public entity from any obligation under this Act.

Paragraph (c)(ii) of the definition of "public entity" refers to private entities that carry out "statutory functions or services or public functions or services". Surely any entity that is doing this kind of work should be subject to the Act's requirements. Otherwise, any government activity can be hidden by creating a private non-profit entity for it.

3.2 The AU Model Law in section 58(2)(c) authorises the oversight body to "exempt any category of organisations operating on a non-profit basis that are relevant private bodies by virtue of

subsection (b) of the definition of relevant private body carrying out a public service, from any of the obligations in this Act."[11] However, the motivation for this potential exclusion is unclear and in our view unwise. If any entity, non-profit or profit-making, is carrying out a public function, then it should be treated as government.

3.3 **The South African Promotion of Access to Information Act appears to contain no exemption for non-profit entities carrying out public functions.** It defines "public body" in section 1 as -

> (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
> (b) any other functionary or institution when-
> (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
> (ii) exercising a public power or performing a public function in terms of any legislation.

3.4 Examples of such non-profit private entities which come to mind are:

- a non-profit NGO which is commissioned by government to run a state children's home, a shelter or a child detention centre
- a non-profit entity which is commissioned to deliver government social grants to recipients or to set up a food bank;
- some future restructuring of a regulatory agency such as NAMFISA or CRAN as a private non-profit entity.

The test should not be the structure of the entity, but whether it is performing a function which puts it into the shoes of a public body.

3.4 RECOMMENDATION: Either remove clause 29 completely or provide clear criteria for the exclusion of certain "public entities" from the coverage of the Bill, if there is a rational motivation for any such exclusion.

4. Third party "personal information" (clause 1 definition read with clause 38)

[11] Section 1 of the AU Model Law defines "relevant private body" as "any body that would otherwise be a private body under this Act that is: (a) owned totally or partially or controlled or financed, directly or indirectly, by public funds, but only to the extent of that financing; or (b) carrying out a statutory or public function or a statutory or public service, but only to the extent of that statutory or public function".
or that statutory or public service;

4.1 The definition of "personal information" in clause 1 (based on South Africa's Promotion of Access to Information Act, or PAIA) may be too broad – and the procedure for dealing with situations involving third party personal information in clause 38 seems too cumbersome. While privacy concerns are important, it would seem useful to debate the contents of the definition of "personal information" and some of their potential applications. It would also be useful to find out more about how South Africa's similar definition has been applied in practice and to compare the approaches of a wider range of countries.

4.2 The definition in clause 1 of Namibia's Bill is as follows:

> "personal information" means information or opinion, including information forming part of a database, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, and includes information relating to -
> (a) the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language or birth of the individual;
> (b) the education or the medical, criminal or employment history of the individual or to financial transactions in which the individual has been involved;
> (c) any identifying number, symbol or other particular assigned to the individual;
> (d) the address, fingerprints or blood type of the individual;
> (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;
> (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
> (g) the views or opinions of another individual about the individual;
> (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and
> (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, **but excludes information about an individual who has been dead for more than 20 years.**

There appears to be a small but important lay-out problem with the phrase in bold. **The end of protection 20 years after the death of the individual concerned seems to have been intended to apply to the entire list and not just to paragraph (i)**; in the South African law which served as a model for the Namibian one, the 20-year rule applies to the entire list of personal information.

One other problem concerns the structure of the definition. Note that the use of the word "includes" in the opening phrase does not create a closed list. As a result, "information" and "opinion" could refer to *any* information or opinion about an identifiable individual – it is not limited to information or opinion about the listed matters. This broadens privacy protection, but it may prove to be unworkably wide.

4.3 Even though the Namibian definition is broad – and perhaps too broad in some respects - **it neglects to protect personal information about sexual orientation or gender identity – such as information that a specific individual has registered a sex change. It also fails to protect an individual's email address and telephone number.**

As a point of comparison, the South African definition of "personal information" – as it will be amended by section 110 of the Protection of Personal Information Act 4 of 2013 when that section is brought into force – will read as follows (with key distinctions highlighted):

> "personal information" means information relating to an identifiable natural person, including, but not limited to-
> (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, **sexual orientation**, age, physical or mental health, **well-being,** disability, religion, conscience, belief, culture, language and birth of the person;
> (b) information relating to the education or the medical, financial, criminal or employment history of the person;
> (c) any identifying number, symbol, **email address**, physical address, **telephone number, location information, online identifier** or other particular assigned to the person;
> (d) the **biometric information** of the person;
> (e) **the personal opinions, views or preferences of the person**;
> (f) **correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;**
> (g) the views or opinions of another individual about the person; and
> (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person,
> but excludes information about an individual who has been dead for more than 20 years.

4.4 **The main mechanism for disclosure of personal information is the consent of the person in question – or that person's failure to object.** (Disclosure may also take place if it is not possible to locate the person in question (clause 38(5).) **However, under clause 38(2)(b)(iii), the information officer *may* still grant or refuse the request for disclosure *regardless of* the objections of the third party. This provision provides no criteria to guide this decision – which undercuts the entire consent mechanism.** Clause 66(2)(c)-(f) provides a list of situations where the request for information *must* be granted even in the absence of the third party's consent, but clause 66 does not state that these are the *only* situations in which requests under clause 38 may be granted without the third party's consent. Similarly, clause 64 (the public interest override) applies to personal information, which is a positive point - but again, it is not clear if any *other* criteria might also be applied to the decision to release or withhold personal information.

4.5 **The approach in the Bill creates other areas of uncertainty.**

4.5.1 There is no specific exception for personal information which is subpoenaed, or for reasonable instances of disclosure – such as:

- checking marital status to enforce the Married Persons Equality Act, or to check on possible bigamy;
- verification of information on a birth or marriage certificate voluntarily presented by the individual concerned, or a death certificate presented by that person's next of kin;
- information relating to the allocation of public licences or benefits, such as a liquor licence, a fishing quota, a mining licence, a resettlement farm, of which might have information about address, age, sex or possibly even race (to support affirmative action)
- information about the trustees of a trust, the directors of companies or the members of close corporations provided upon registration of the entity.

The rules on personal information might also be applied to block access to information about the following issues in the absence of the consent of the affected third parties - just to provide a few examples:

- the relative merits of candidates who sought appointment to a public position, after the fact, to see if there was unwarranted favouritism (although clause 73(2) may take care of this in most cases)
- qualifications relevant to the award of a public tender, in the interests of transparency
- confirmation of information on an individual's cv sought by a prospective employer.

Some of these situations may be covered by clause 66(2)(f), which allows disclosure of "information that was supplied to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it is given that the information belongs to a class of information that would or might be made available to the public". However, this could lead to a question of evidence about what the individual was or was not told at the time of providing the information, or whether notice in a law mandating the collection of the information in question suffices, or whether the contemplated notice must be announced specifically to the person in question.

Some of these situations may be also be covered by clause 64, which allows for the disclosure of evidence of corruption or other illegal acts; an imminent and serious public health or safety risk; an imminent and serious public health orf safety risk; or where "the public interest demonstrably outweighs the resulting harm to the interest protected under the relevant exemption. But these may be very difficult cases to make

4.5.2 It is also unclear if the limits on disclosure apply to data-sharing between government ministries or agencies – such as:

- a ministry wanting to confirm the age of a specific individual to confirm eligibility for a social welfare grant
- a ministry seeking to confirm the taxpayer status of an individual for the purposes of a grants such as the state maintenance grant for children or the Covid emergency grant
- police seeking to match fingerprints or dental records to identify an unknown corpse
- confirmation of an individual's age and citizenship (and continued state of being alive) by the ECN for purposes of verifying the voter's register.

4.5.3 Even though the third party's consent or lack of consent is not necessarily the decisive factor, some limited categories of exemption from the general rules against disclosure of personal information might provide useful guidance.

4.6 South Africa: The Promotion of Access to Information Act 2 of 2000 in South Africa, which was clearly a model for the Namibian Bill in many respects, provides for the mandatory protection of certain personal information of natural people – but with an important qualification. It states that **public and private bodies must refuse access to a record if its release would involve the *unreasonable* disclosure of personal information about a third party person**. This qualification may be a better way to provide a workable balance between privacy and the right to access information. The Namibian Bill does not contain a similar "reasonableness" qualification. Some key South African cases show how a reasonableness standard might work in practice"

4.6.1 *Centre for Social Accountability v The Secretary of Parliament and Others* (paras 61-84): When reviewing the refusal by the Speaker of Parliament to grant access to records relating to the alleged abuse of the Parliamentary travel voucher system individual Members of Parliament, the Eastern Cape High Court found that the respondents had failed to show that the release of the names of members of parliament on a document relating to the alleged abuses of the parliamentary travel voucher system would be 'unreasonable'. The Court further found that the information related the position or functions of the parliamentarians and was therefore specifically excluded from the personal information exemption under section 34(2)(f) of The Promotion of Access to Information Act. The Court applied a three-part test to determine what constitutes an unreasonable disclosure:

- is the information said to be personal covered by the principle of freedom of identity;
- did the individual subjectively harbour a legitimate and reasonable expectation that such information would be protected by the right to privacy; and

- does society have an objective legitimate and reasonable expectation that the information should be protected.[12]

4.6.2 *Treatment Action Campaign v Minister of Correctional Services and Another* (paras 32-38): The Transvaal Provincial Division of the High Court held that the Minister of Correctional Services must provide access to a report on the death of a particular inmate, because the Minister did not meet its burden of proof that providing the report would be an unreasonable disclosure of personal information. The Court found that it would be possible to provide the requested report with the name of the individual blacked out to protect her identity.[13]

4.6.3 *South African History Archive Trust v South African Reserve Bank and Another* (paras 36-37): An NGO writing a book on apartheid-era procurement practices and public accountability requested access from the South African Reserve Bank to evidence obtained by the bank at any time as part of investigations into eight specific individuals. The Bank refused on the grounds that it could not find the records for five of these individuals, and refused to provide the records for the other three individuals on the grounds that they contained third party information. This latter refusal was the subject of the appeal. The Court found that the Bank did not go through proper notification process with respect to two of the individuals - and with respect to the third, it had not provided evidence that the records requested met any of the criteria in the Act which would justify a refusal of access.[14] (This case also contains a helpful summary of how the notice provisions under the South African law are supposed to operate (paras 7-20.)

4.7 **Notice procedure:** It is questionable if the procedure set out in clause 38 of the Namibian Bill is possibly too cumbersome. In terms of clause 38(1), in *any* circumstance where information is sought that includes personal information relating to a third party, notice must be directed to the third party within 7 days. The third party has 14 days to give consent or to make representations against the release of the information. A third party's objections do not have to be heeded. Once a decision is made, the third party must be notified of the decision to release or not to release the information. If the information is released over the third party's objections, the third party must be given an opportunity to launch a review (within a 14-day deadline).

In South Africa, in contrast, the notice requirement is triggered only if the information officer believes that responding to the request "would involve the *unreasonable* disclosure of personal information about a third party, including a deceased individual" (s. 34(1)). This means that

[12] *Centre for Social Accountability v. The Secretary of Parliament and Others* 298/2010) [2011] ZAECGHC 33; 2011 (5) SA 279 (ECG); [2011] 4 All SA 181 (ECG) (28 July 2011), quote from paragraph 74.
[13] *Treatment Action Campaign v Minister of Correctional Services and Another* (18379/2008) [2009] ZAGPHC 10 (30 January 2009). The Namibian Bill contains a similar provision for redaction in clause 77.
[14] *South African History Archive Trust v South African Reserve Bank and Another* (17/19) [2020] ZASCA 56 (29 May 2020)

reasonable disclosures of personal information are quicker and more streamlined, but it may also be argued that the right to receive notice should apply in all circumstances – rather than being based on the information officer's perception of reasonableness.

One compromise might be to provide for a list of permitted disclosures of personal information which do not trigger the notice requirement because they do not infringe personal privacy in any meaningful way – as a way to strike a balance between the protection of personal and the need to avoid administrative processes which are so burdensome that they may unnecessarily frustrate to right of access to information.

4.8 **Unfair assumptions where third parties cannot be located:** In Namibia, clause 38(5) says that where no response if received from a third party – even if this is because that third party could not be located – it will be assumed that the third party has no objections to the disclosure of the information. Clause 66(2)(a) says that the requested information must be disclosed if the third party did not make any representations.

In South Africa, in contrast, section 49(2) of the Promotion of Access to Information Act says:

> If, after all reasonable steps have been taken as required by section 47(1), a third party is not informed of the request in question and the third party did not make any representations in terms of section 48, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 48 why the request should be refused.

The South African approach seems to be the more fair approach in such instances, and ties in with the concept of reasonableness. Failure to locate a third party should not be treated as automatically cancelling that person's rights to privacy if the requested disclosure is not reasonable.

4.9 **Canada:** The definition of "personal information" for similar purposes in Canada is similar, but with some important exemptions (Access to Information Act, s, 3, which refers to the Privacy Act, s. 3) – including exceptions for information about public officials, information about individuals performing services under government contract and information relating to the award of licenses or other financial benefits:

> ***personal information*** means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,
> **(a)** information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
> **(b)** information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> **(c)** any identifying number, symbol or other particular assigned to the individual,
> **(d)** the address, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

- **(i)** the fact that the individual is or was an officer or employee of the government institution,
- **(ii)** the title, business address and telephone number of the individual,
- **(iii)** the classification, salary range and responsibilities of the position held by the individual,
- **(iv)** the name of the individual on a document prepared by the individual in the course of employment, and
- **(v)** the personal opinions or views of the individual given in the course of employment,

(j.1) the fact that an individual is or was a *ministerial adviser* or a member of *ministerial staff*, as those terms are defined in subsection 2(1) of the *Conflict of Interest Act*, as well as the individual's name and title,

(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(m) information about an individual who has been dead for more than twenty years.

Section 8 of the Privacy Act also provides extensive exceptions to the protection of personal information – including legal investigations or proceedings, certain information-sharing between government organizations and statistical research – as well as a public interest override provision similar to that in the Namibian Bill and the South African Act.

Disclosure of personal information

8 (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

(f) under an agreement or arrangement between the Government of Canada or any of its institutions and the government of a province, the council of the Westbank First Nation, the *council of a participating First Nation* as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act*, the council of a *participating First Nation* as defined in section 2 of the *Anishinabek Nation Education Agreement Act*, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

(i) to the Library and Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution-

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

4.10 Comparison: The table below compares the exceptions to the protection of personal information in the Namibian bill, South Africa and Canada. **Namibia has fewer exceptions than either of the other two countries – which raises the question of whether the protection for personal information is possibly too broad.**

Exceptions to the protection for personal information	Namibia (ATI Bill)	South Africa (PAIA)	Canada (ATIA/Privacy Act)
Consent	s. 66(2)(b)	s. 34(2)(a); s. 63(2)(a)	s. 19(2)(a) ATIA
Person concerned is notified but does not respond	s. 66(2)(a)		
Individual informed of possible disclosure when information was supplied	s. 66(2)(f)	s. 34(2)(b); s. 63(2)(b)	s. 19(2)(a) ATIA
Information is already publicly available		s. 34(2)(c); s. 63(2)(c)	s. 19(2)(b) ATIA
Disclosure to caregiver of a minor or incapacitated individual concerned & in well-being/best interests of that individual	s. 66(2)(c)	s. 34(2)(d); s. 63(2)(d)	s. 8(2)(m)(ii) Privacy Act
Consent given by next of kin of deceased person in question	s. 66(2)(d)	s. 34(2)(e); s. 63(2)(e)	
Person in question has been deceased for extended time period	s. 3 (definition of "personal information", assuming that 20-year time period applies to entire list)	s. 1 (definition of "personal information")	s. 3 Privacy Act (definition of "personal information")
Information concerns functions of public official	s. 66(2)(e)	s. 34(2)(f); s. 63(2)(f)	s. 3 Privacy Act (definition of "personal information")
Legal investigations and proceedings		**s. 7**	s. 8(2)(c)-(e) Privacy Act
Information is shared between government organisations			s. 8(2)(f)-(i). (k)-(l) Privacy Act
Statistical research			s. 8(2)(j) Privacy Act
Other legislative authorisation		ss. 5, 6	s. 8(2)(b) Privacy Act
Public interest override	s. 64	ss. 46, 70	s. 8(2)(m)(i) Privacy Act

4.11 RECOMMENDATIONS:

(1) Re-consider the definition of "personal information" which is too narrow in some respects and too broad in others. The Namibian approach does follow in broad terms the approach of the AU Model Law, but we would urge wider public consultation on the definition, and along with a consideration of examples of matters than should be protected or not. For instance, there are reasonable arguments against providing a presumption of protection to information about an individual's education, employment history or criminal record.

(2) To streamline the access process, the law should enumerate more specific exemptions to the protection of personal information to give guidance to the exercise of discretion by information officers. A list of exemptions of the type enumerated in the Canadian law seems appropriate and helpful – such as removing from the personal information protection things such as information about public officials, information about individuals who have received government tenders and information relating to the award of licenses or other financial benefits.

(3) The law should not equate inability to locate the third party in question, or a lack of response by the third party, with consent to the release of the information. If the third party cannot be found or makes no representations, the information officer should proceed to consider the appropriateness of the request, mindful of the lack of response from the third party.

5. **Narrow public interest override** (clause 64)

5.1 An exemption preventing access to information can be overridden in the public interest only where the information would reveal -

(a) a corrupt activity or any serious contravention of law;

(b) an imminent and serious public health or safety risk; or

(c) an imminent and serious environmental risk; AND

the public interest demonstrably outweighs the resulting harm to the interest protected under the relevant exemption should the disclosure of the information be granted.

5.2 This is **almost identical to South Africa's similar provisions** (PAIA, s. 46 and 70) – which has been criticised for being too narrow:

> While PAIA provides for the mandatory disclosure of information in the 'public interest', the applicability of such a public interest override is incredibly narrow. The stated grounds for mandatory disclosure are only applied to records that would reveal evidence of illegal acts and/or 'serious public safety or environmental risk'. There is also no clear guide as to what the 'public interest' might actually be.[15]

5.3 **The Canadian public interest override provision is more general;** it applies in any instance where, in the opinion of the head of the institution, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure (section 8(m)(ii), Privacy Act).

5.4 **The AU Model Law public interest override provision is also more general:**

> **25 Public interest override**
>
> (1) Notwithstanding any of the exemptions in this Part, an information holder may only refuse a requester access to information if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably outweighs the public interest in the release of the information.
>
> (2) An information officer must consider whether subsection (1) applies in relation to any information requested before refusing access on the basis of an exemption stated in this Part.

5.4 **RECOMMENDATION:** Change the "and" in clause 64 to "or" so that it reads as follows:

> **64.** Despite any exempt information set out in this Part, an information officer from whom access to information has been requested under this Act must grant such access, if –
>
> (a) the disclosure of the information would reveal evidence of -
>
> (i) a corrupt activity or any serious contravention of law;
>
> (ii) an imminent and serious public health or safety risk;
>
> (iii) an immanent and serious environmental risk; **OR**
>
> (b) the public interest demonstrably outweighs the resulting harm to the interest protected under the relevant exemption should the disclosure of the information be granted.

6. ATI law should be inapplicable if disclosure is reasonably regulated by another law

[15] Dr Dale T. McKinley, "The State of Access to Information in South Africa", prepared for the Centre for the Study of Violence and Reconciliation, undated [apparently 2003 or 2004], page 5.

6.1 **Clause 3(2) of the Bill states that it is intended "to complement and not replace the procedures for access to information existing under any other law" – but it also says in clause 3(3) that in the case of a conflict between it and any other such legislation law, "the legislation with a provision that is more favourable than the other in terms of granting access to information prevails".** While this seems like a sound principle at first blush, it is a very broad and abstract statement which may not produce the desired result in every case.

6.2 **There may be other laws (now or in future) that mandate disclosure of information which might be protected from disclosure under the proposed ATI Bill** – such as laws requiring asset disclosure by public officials to prevent conflicts of interests and laws requiring the disclosure of campaign financing of independent candidates. **There are also existing laws with detailed provisions concerning record-keeping and public disclosure in respect of specific topics, and there may be additional such laws in future.** Any such law should overrule this Act as long as it does not *prevent* access to any form of information which would otherwise be available under the ATI law.

6.2.1 One example is the **Child Care and Protection Act 3 of 2015**, which already sensitively regulates access to information about adoptions.

> **Access to Adoption Register**
>
> **184.** (1) The information contained in the Adoption Register may not be disclosed to any person, except -
>
> (a) to an adopted child after the child has reached the age of 18 years;
> (b) to the adoptive parent of an adopted child after the child has reached the age of 18 years;
> (c) to the biological parent or a previous adoptive parent of an adopted child after the child has reached the age of 18 years, but only if the current adoptive parent and the adopted child give their consent in writing;
> (d) for any official purposes subject to conditions determined by the Minister;
> (e) by an order of court, if the court finds that such disclosure is in the best interests of the adopted child; or
> (f) for purposes of research, but information that would reveal the identity of an adopted child or his or her adoptive or biological parent may not be revealed.
>
> (2) The Minister may require a person to receive counselling before disclosing any information contained in the Adoption Register to that person in terms of subsection (1) (a), (b), (c) or (e).
>
> (3) Despite subsection (1), an adopted child or an adoptive parent is entitled to have access to any medical information concerning -
>
> (a) the adopted child; or
> (b) the biological parents of the adopted child, if such information relates directly to the health of the adopted child.
>
> (4) Despite subsection (1), parties to an adoption plan contemplated in section 174 are entitled to have access to such information about the child as has been stated in the plan.

These rules are well-crafted and appropriate to the topic, even though it is not immediately possible to say if they are "more favourable" to access than the ATI law.

6.2.2 As another example, the Electoral Act contains specific details about record-keeping by political parties to account for their receipt of public funds (s. 158) and requires annual reporting to the National Assembly on this (s. 160). These details should not be overruled by the ATI law ion the basis of what system is more or less "favourable" to access.

6.2.3 The forthcoming **Civil Registration and Identification Bill** is expected to contain detailed provisions on access to different kinds of civil event certificates (such as birth and death certificates), which balance privacy against other interests.

6.2.4 Namibia's forthcoming **data protection legislation** may refine protections for sensitive personal data, as such laws do in some other jurisdictions.

6.3 The **AU Model Law** contains this provision, which allow the ATI legislation to prevail over any other legal provision that "**prohibits or restricts the disclosure of information":**

> **4 Primacy of Act**
>
> (1) Save for the Constitution, this Act applies to the exclusion of any provision in any other legislation or regulation that prohibits or restricts the disclosure of information of an information holder.
>
> (2) Nothing in this Act limits or otherwise restricts any other legislative requirement for an information holder to disclose information.

6.4 The **South African Promotion of Access to Information Act** contains these provisions on harmonisation, with the crucial test being that another law must not "**prohibit or restrict**" access, be "**materially inconsistent**" with the access to information law, or make access "**materially more onerous"**:

> **5. Application of other legislation prohibiting or restricting disclosure**
>
> This Act applies to the exclusion of any provision of other legislation that-
>
> (a) prohibits or restricts the disclosure of a record of a public body or private body; and
>
> (b) is materially inconsistent with an object, or a specific provision, of this Act.
>
> **86. Application of other legislation providing for access**
>
> (1) The Minister must, within 12 months after the commencement of section 6, introduce a Bill in Parliament proposing the amendment of-
>
> (a) Part 1 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a public body; and
>
> (b) Part 2 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a private body.
>
> (2) Until the amendment of this Act contemplated in subsection (1) takes effect, any other legislation not referred to in the Schedule which provides for access to a record of a public

body or a private body in a manner which, including, but not limited to, the payment of fees, is not materially more onerous than the manner in which access may be obtained in terms of Part 2 or 3 of this Act, respectively, access may be given in terms of that legislation.

6.5 **RECOMMENDATION:** Clause 3(3) should be reworded or omitted since some other laws may have rules about access to information which are appropriate to their context – without necessarily being more or less "favourable" to access. The general rule provided in clause 3(3) as it stands is too general to fit every situation. It would be better to allow the rules about access in current laws to apply as they stand, rather than implicitly amended by the Access to Information Act – and to allow future laws to provide specific rules for specific contexts – as long as such other laws-

- do not deny or materially restrict access to information that would be available under the ATI law; and
- are generally consistent with the public interest in access to information and the principles on privacy protections set out in the ATI law.

7. Appointment of Information Commissioner (clause 6)

7.1 The Selection Committee described in clause 6(2) consists of five persons:

(a) the Chairperson of the Public Service Commission
(b) the Chairperson of the Council of the Law Society of Namibia
(c) the Executive Director of the Ministry administering information;
(d) the Chief Executive Officer of the Communications Regulatory Authority of Namibia
(e) a person nominated by non-governmental organisations established in terms of the laws of Namibia dealing with media; and appointed by the Minister.

7.2 **RECOMMENDATION**: We propose that the Media Ombudsman (who could be defined in the law) should be an additional member of the Selection Committee, which would also provide a better government-civil society balance.

We further propose that interviews of short-listed candidates for Information Commissioner should take place at a public meeting, in a manner similar to the public interviews of candidates for Chief Electoral Officer under section 17 of the Electoral Act 5 of 2014. This would be more consistent with the value of openness and transparency represented by the law.

8. Definition of "private entity" (clause 1)

8.1 Clause 12 contains a **broad definition of "private entity"** -

(a) a natural person who carries on or has carried on any trade, business, profession or activity, but only in such capacity;
(b) a partnership or trust which carries on or has carried on any trade, business, profession or activity; or
(c) a juristic person or a successor in title, and where applicable, includes a former juristic person, but excludes a public entity.

8.2 This definition would capture even an informal street trader. We wonder if it will be feasible for a very small business to carry out the functions mandated by this law.

8.3 **RECOMMENDATION**: We propose that the appropriateness of the current definition be discussed with the Namibian Chamber of Commerce and Industry and the Namibian Employers Federation, to ensure that it will be practically workable.

APPENDIX

The following figures are compiled from reports on the operation of the South African Promotion of Access to Information Act (PAIA). They provide a useful overview of how its implementation in practice.

	2016	Total	% of total	2017	Total	% of total
Total PAIA requests made	369	369	100.0%	408	408	100.0%
PAIA requests made to private bodies	15	369	4.1%	22	408	5.4%
PAIA requests made to public bodies	354	369	95.9%	386	408	94.6%
Public body PAIA request responded to in statutory timeframe	142	354	40.1%	104	386	26.9%
Public body PAIA request still in process	1	354	0.3%	30	386	7.8%
Public body PAIA request denied (or deemed denied by lack of response)	161	353	45.6%	169	356	47.5%
Public Body PAIA request released in full	121	353	34.3%	48	356	13.5%
Public Body PAIA request partially released	43	353	12.2%	70	356	19.7%
Public Body PAIA request transferred	13	353	3.7%	42	356	11.8%
Public Body PAIA request transferred	20	237	8.4%	15	156	9.6%