

YOUR RIGHT OF ACCESS TO INFORMATION

A Simplified Guide to Namibia's Access to Information Act 8 of 2022



BOOKLET 2

HOW TO REQUEST INFORMATION

Booklet 1 in this series outlines the scope and principles of the Access to Information Act and introduces the officials who administer it.

Booklet 2 explains how to request access to information, step by step.

Booklet 3 explains your options if your request for information is denied.

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YOUR RIGHT TO INFORMATION

You have a general right to information held by PUBLIC ENTITIES.

You have a right to information held by PRIVATE ENTITIES IF the information may assist in the exercise or protection of a fundamental human right or freedom.



STEPS FOR ACCESS TO INFORMATION



This overview sets out the steps of a request for information. More details on each step are provided on the following pages.

STEP 1

You make a request for information to the information officer of the public or private entity.

STEP 2

You will either receive the requested information immediately or get a written acknowledgement of your request.

If you do not get the requested information right away, then the next steps apply.

STEP 3

The information officer must consider your request within strict timeframes.

- Normal requests: **21 days**, with a possible extra **14 days** in some limited circumstances.
- Urgent requests for information necessary to safeguard a person's life or liberty: **48 hours** with no option for extra time.

JANUARY 2024

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INFORMATION OFFICERS

The head of every public or private entity must designate a staff member to be its information officer.

If an entity fails to designate an information officer, then the head of the entity must serve as the information officer.

STEP 4

The information officer must notify you of the decision on your request. There are five possible outcomes:

- Your request is **granted**. You will have access to the information, but you may have to pay a reproduction, transcription or translation fee first depending the form of information you requested.
- Your request is **granted but access is deferred** because the information is about to be tabled in Parliament or submitted to the person or body it was prepared for.
- Your request is **granted but access is delayed** because the information involves personal, commercial or confidential information of a third party and the third party must be given a chance to challenge the decision.
- Your request is **referred to another entity** that actually holds the information.
- Your request is **denied** for one of these reasons:
 - The information **cannot be found or does not exist**.
 - The information is **excluded** from the law.
 - The information is **exempt information** that does not meet the special requirements that apply to disclosure of that kind of information.

The categories of **EXCLUDED INFORMATION** are listed below in this booklet.

The categories of **EXEMPT INFORMATION** and the special requirements for accessing exempt information are explained below in this booklet.

STEP 5

If your request is denied, you have a right to challenge the information officer's decision.

STEP 1 THE REQUEST FOR INFORMATION

Who does the request go to?

You must make your request to the **information officer** of the public or private entity that holds the information.

Access to Information Act, section 35(1)

Does the request have to be in writing?

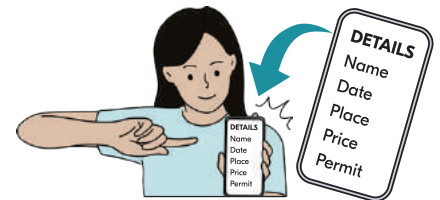
No, your request for information can be **written or oral**. If you make an oral request, the information officer must help you write it down and then give you a copy so that you or someone you trust can make sure it is correct.

Access to Information Act, section 35(2)

What must your request contain?

- 1) **Details about the information you want:** You must include enough details to help the information officer identify the information.
- 2) **Reasons for the request:**
 - ▶ **If the information is necessary to safeguard a person's life or liberty**, you must explain why. In such a case, the information must be provided more quickly and before any fees are paid.
 - ▶ **If the request is being made to a private entity**, you must explain why the information may assist in the exercise or protection of any fundamental right or freedom. This is because private entities do not have a legal duty to disclose any information in any other circumstances.
- 3) **Preferred form and language:** Your request must say how you would like to receive the information and in what language.
- 4) **Permission to act for someone else:** If you are requesting information on behalf of someone else, you must include an authorisation from that person.

Access to Information Act, sections 35(6)-(7), 44



INFORMATION OFFICERS

The head of every public or private entity must designate a staff member to be its information officer.

If an entity fails to designate an information officer, then the head of the entity must serve as the information officer.

Access to Information Act, section 22

Aside from these two situations, the decision on disclosure *cannot* be affected by the reason you give for the request, or the information officer's opinion about the reason why you want the information.

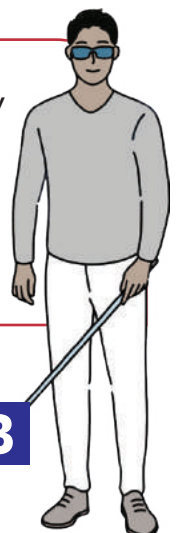
Access to Information Act, section 37(1)

The form and language of the information are discussed in more detail in the next section. Although access to information is free, access to information in certain forms or languages can result in fees.

GETTING HELP WITH REQUESTS

- ▶ **Information officer's duty to assist:** You may need help to make your request or you may have submitted a request that does not include all of the required details. In either case, the information officer has a duty to help you, free of charge.
- ▶ **Special help for persons with disabilities:** If you have a disability that affects your ability to make the request, the information officer must give you help that is appropriate to your needs.

Access to Information Act, sections 36, 44(5)



FORMS OF INFORMATION

What forms can access to information take?

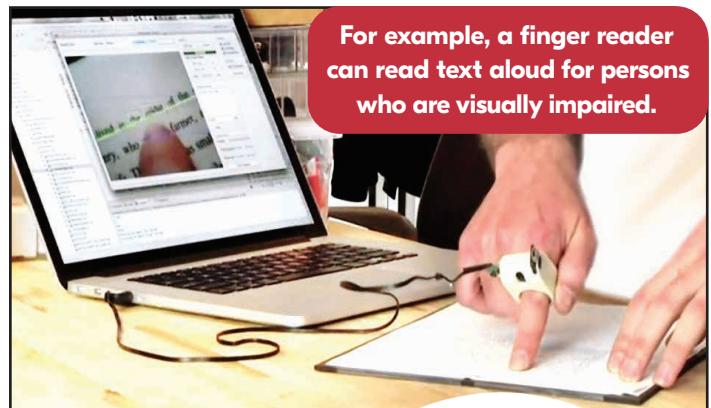
- ▶ You can ask to **inspect** the information at the entity's premises.
- ▶ You can ask for a **copy** of the information that you can take away.
- ▶ In the case of a **sound recording or a video**, you can ask to **hear, see, record or copy it**, or you can for a **written transcript** of the words.
- ▶ In the case of **information on a computer or in some other electronic format**, you can ask for a **printed copy or a digital copy**.
- ▶ The information must be provided to you in **English** or, at your request, in **another language of your choice**.

Access to Information Act, sections 44(1), 45

Special help for persons with disabilities: If you have a disability that affects your ability to read, view or listen to the information you requested, you have the right to ask the information officer to take reasonable steps to make it available in a form that is accessible to you –

- ▶ using the technology of your choice
- ▶ free of charge
- ▶ without undue delay.

Access to Information Act, sections 44(5)



Can you receive the information in a form other than the one you requested?

The information officer must normally supply the information in the form you requested, if this is technically possible. But there are a few situations where the requested information can be provided in a different form:

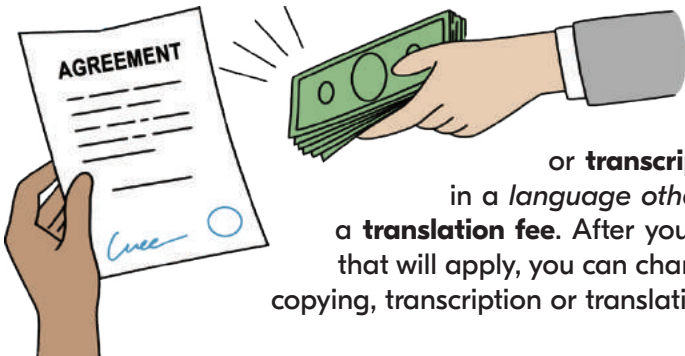
- ▶ **The requested form is likely to interfere unreasonably with the operations of the information holder.** For example, if there no place to view a video without causing disruption in the office, you might be given a copy to watch somewhere else.
- ▶ **The requested form is likely to cause damage to the information.** For example, if you requested a copy of a delicate old document that might be damaged by photocopying, you might be asked to inspect it in person instead.
- ▶ **The requested form is inappropriate in light of the physical nature of the information.** For example, if you requested a printed copy of a computer spreadsheet that is too large to be printed out in a readable way, you might be given a digital copy instead.
- ▶ **The requested form is likely to endanger national security or defence.** For example, if you asked for a copy of a video of an event at State House, you might be asked to inspect it at the government premises instead of taking away a copy, to prevent information affecting security from being shared online.
- ▶ **The requested form is likely to jeopardise a criminal investigation.** For example, if you requested footage of a theft from a security camera, you might be asked to view it on the premises instead of taking away a copy if the police investigation was still ongoing.



Access to Information Act, section 44(2) and (4)

FEES

When can fees be charged for access to information?



Access to information must be **free of charge**. But if you request a *copy* or a *written transcript* of the information, there will be a reasonable **reproduction fee** or **transcription fee**. If you request material in a *language other than the original*, there will be a **translation fee**. After you have been informed of the fees that will apply, you can change your request — as long as the copying, transcription or translation has not already been done.

The fees will be set out in regulations issued from time to time.

Access to Information Act, sections 44(3), 45(2), 46(1), (2), (4)

You should ask about reproduction, transcription and translation fees at the time of your request, so you can change your request if you wish, to avoid paying fees.

Exceptions to reproduction fees

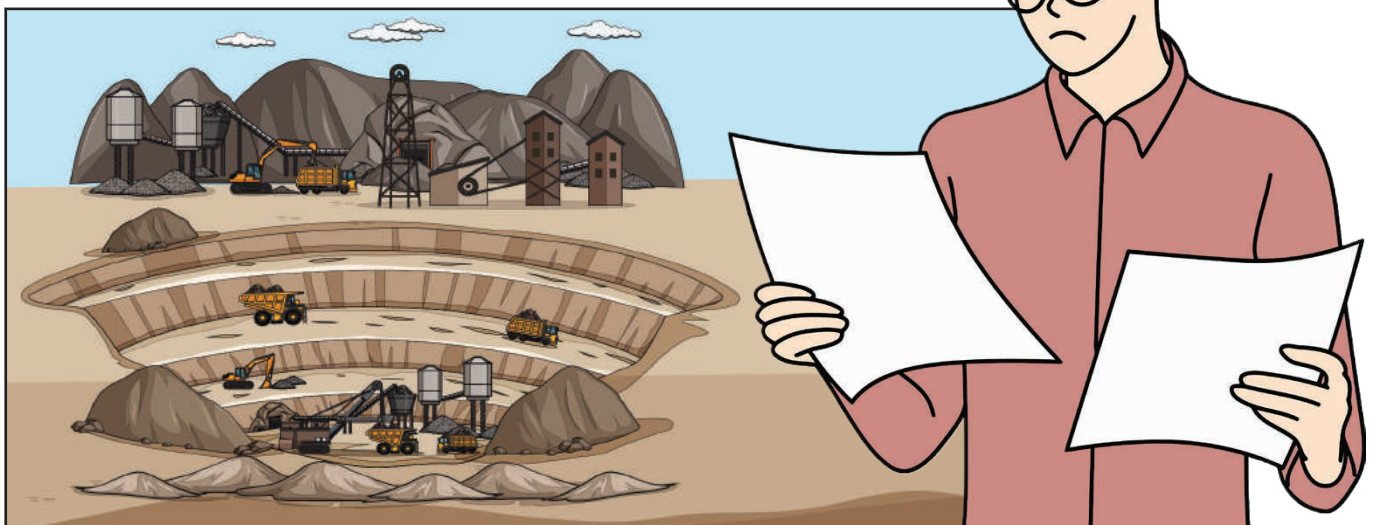
You *cannot* be charged a reproduction fee for copies of information in some circumstances:

- ▶ You do not have to pay for a copy of your own **personal information**, or a copy of someone else's personal information where you acted on their behalf.
- ▶ You do not have to pay for a copy of information that is in the **public interest**.
- ▶ You do not have to pay for a copy of the requested information if the **response to your request was delayed** beyond the timeframes set by the law.
- ▶ You do not have to pay for a copy of the requested information if you have **insufficient financial means**. The test for this will be set out in regulations issued from time to time.

There are no exceptions to translation fees or transcription fees.

Access to Information Act, section 46(3)

For example, suppose that you have requested a copy of all mining licences issued in the last five years because you suspect that the minister is giving licences only to his friends. This request is in the public interest. You cannot be charged a reproduction fee for a copy of this information.

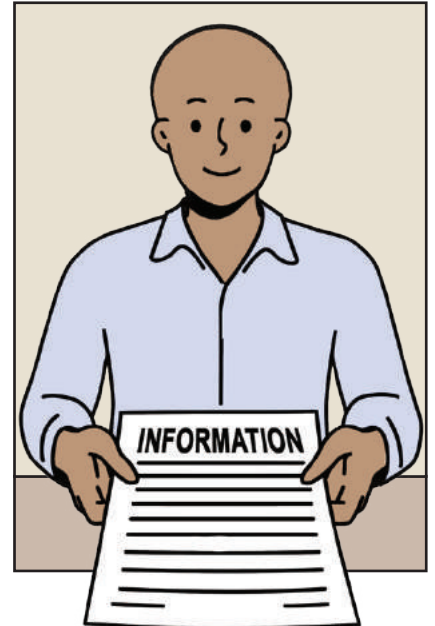


STEP 2

IMMEDIATE PROVISION OF INFORMATION

OR

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST



If the requested information is readily available, the information officer must provide it to you immediately. In this case, the information officer must make a record of the request and the response and keep this record on file.

If the requested information is *not* readily available, the information officer must give you a written acknowledgement of your request. In this case, the next steps will apply. It is important to have an acknowledgement confirming the date and time of your request to calculate the timeframes for responses.

The information might not be readily available if the information officer must consider whether or not it is exempt or contact a third party who would be affected by disclosure.

Access to Information Act, section 35(3)-(5)



STEP 3

CONSIDERATION OF YOUR REQUEST WITHIN SET TIMEFRAMES

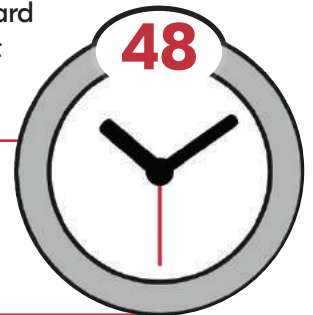
NORMAL REQUESTS: The information officer must make a decision on your request within **21 days**. The count starts on the day *after* the request, and *does not include Sundays and public holidays*. In calendar days, this means that you should have an answer to your request in about three and a half weeks.

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URGENT REQUESTS: If the request concerns information that is necessary to safeguard a person's life or liberty, the information officer must make a decision on your request within **48 hours**. The count starts from the time the request was received.



EXAMPLE: The Ministry of Health has just announced an outbreak of a new virus that can be transmitted from cattle to humans. It is often fatal. But the announcement did not explain what steps to take to prevent transmission of the virus. You request this information urgently so you can protect yourself and your farm workers.

TIME EXTENSIONS: The information officer can extend the timeframe for deciding on your request by a maximum of **14 days**. The count starts on the day *after* the initial 21 days, and *does not include Sundays and public holidays*.

The possibility of a time extension applies only to normal requests, not to urgent requests for information that is necessary to safeguard a person's life or liberty.

Only one extension is allowed and only for one of these two reasons:

- Your request **covers a large amount of information or involves searching through a large amount of information**.
- The information holder **must conduct consultations** before making a decision, and it is not reasonably possible to do this without extra time.

NOTIFICATION OF TIME EXTENSION: The information officer must notify you if extra time is needed to respond to your request. The notice must state **how much extra time is needed** (within the maximum of 14 days) and **the reason for the time extension**. You have the right to challenge the time extension.



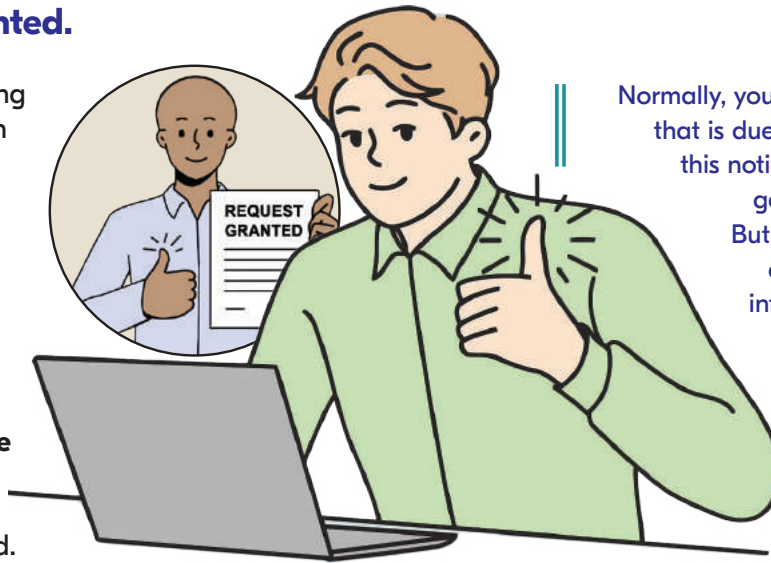
Access to Information Act, sections 35(3), 37(2)-(3), 39
Interpretation of Laws Proclamation 37 of 1920, section 4 (on how to count "days")

STEP 4 POSSIBLE DECISIONS

1) Your request is granted.

You will be notified in writing that your request has been granted. This notice must include this information:

- ▶ any **fee** that is due, and your right to have that fee reviewed
- ▶ the **form** in which the information will be provided
- ▶ your **right to challenge** the form of the information and any fee that is charged.



Normally, you must pay any fee that is due when you receive this notice, before you can get the information. But if the request was an urgent one, the information must be provided as soon as the request is granted, even if you have not yet paid any fee that applies.

Access to Information Act, sections 37(4)-(6)

2) Your request is granted but access is deferred because the information is about to be tabled in Parliament or submitted to the person or body it was prepared for.

Access can be deferred for information that was prepared for tabling in the National Assembly and will be tabled soon.

Access can be also deferred for information in a report that is about to be submitted to a public or private entity, or to a Government officer. In this case, access can be deferred until the report is given to the body or person it was prepared for or made publicly available.

In either case, the deferral cannot be longer than **21 days** from the date of the request for information.

There is a procedure to challenge the deferral, but the timeframes provided mean that in many cases the challenge is unlikely to be decided before the 21-day maximum period of deferral has passed.

Access to Information Act, section 42

3) Your request is granted but access is delayed because the information contains third party information and the third party must be given a chance to challenge the decision.

If the third party objected to the disclosure of the information, that third party must have time to challenge the decision under the internal review procedures (explained in **Booklet 3**) before the information can be disclosed to you.

Third party information refers to personal information about another individual or commercial or confidential information about another individual or entity.

Information containing third party information is one of the categories of exempt information, so there is more information about this in the section below on EXEMPT INFORMATION.

Access to Information Act, section 49(6)

4) Your request is referred to another entity that actually holds the information.

A referral is allowed if the public entity you approached does not hold the information you want but knows (or reasonably believes) that another public entity has it. The information officer you approached must confer with the other entity before making a referral – which helps make sure that you are not sent around in circles. The entity you approached must give you notice of a referral within **5 days** of receiving your request, and the entity that receives the referral must give you an acknowledgement of receipt within **5 days** of the referral.

Access to Information Act, section 40

Even where there is a referral, the timeframes for responding to your request still run from the date when you first made the request for information.

A referral cannot be used as a reason for a delayed response.

5) Your request is denied.

You must be notified in writing that your request has been denied, along with written reasons for the refusal. The notice must cite the provisions of the law that justify the refusal and inform you of your right to challenge the decision.

Access to Information Act, section 37(7)



If you receive no decision at all within the timeframe that applies to your request, this is treated as a refusal.

This gives you the right to challenge the refusal, instead of being stuck in limbo because your request was ignored.

Access to Information Act, section 41

There are only certain grounds for refusing a request for access to information. Each of these grounds is explained below.

THE INFORMATION CANNOT BE FOUND OR DOES NOT EXIST

This reason for denying a request for information applies only if the information officer has taken all reasonable steps to find the information or to see if it exists. The information officer must make a sworn statement with details about the steps taken:

- ▶ all the locations that were searched
- ▶ who conducted the searches
- ▶ communications with others who might know about the information's existence or location
- ▶ any other relevant evidence, such as evidence that the information was destroyed or details about its last known location.

Access to Information Act, section 43(1)-(2)

The notice to the person who requested the information must include a copy of this sworn statement. This requirement helps to prevent this reason for denying disclosure from being abused to conceal information.

If the information is found later on, the information officer must **immediately** give written notice of this development to the person who made the request. The information officer must then consider the request for access to the information in the usual manner within **14 days** of finding the information.

Access to Information Act, section 43(3)

EXCLUDED INFORMATION

The law does *not* apply to this information:

- 1) **meetings and decisions of Cabinet and Cabinet committees**
- 2) **the judicial functions of courts, tribunals or investigative units** (such as the Immigration Tribunal, the Namibian Competition Commission or the Namibia Refugees Committee).
- 3) **the nomination, selection and appointment of judges, magistrates or other persons with judicial functions** (such as the presiding officer of an election tribunal that decides on electoral challenges or the persons appointed to serve on a tax tribunal).
- 4) **materials that have already been published** (which are already publicly available).
- 5) **materials available for public use, reference or exhibition purposes at a library or museum** (which are already publicly available).

This means that the law *cannot* be used to get access to these five types of information.

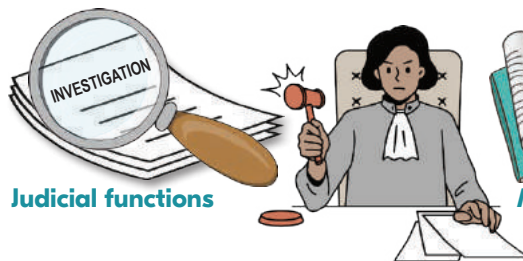
Note also
that private entities are only required to provide access to information *IF the information may assist in the exercise or protection of a fundamental human right or freedom.*
The law does not cover any other kinds of information held by private entities.

Access to Information Act, section 4(b)



Cabinet meetings and decisions

Access to Information Act, section 2(2)



Judicial functions



Materials already published or publicly available

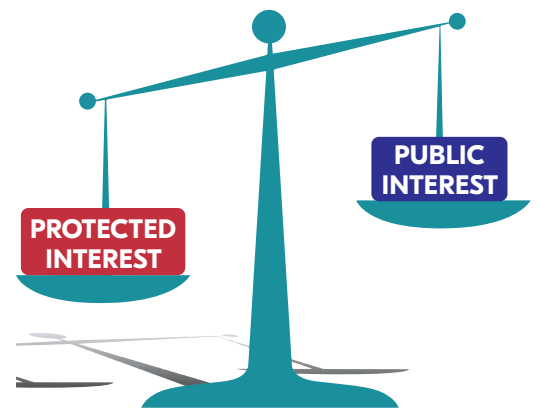
EXEMPT INFORMATION

There are a number of categories of information that are exempt from disclosure *unless the following two conditions are met*:

- 1) the disclosure of the information would reveal **evidence of corruption, a serious violation of a law or a serious risk to public health, public safety or the environment** that could happen soon
- AND**
- 2) the **public interest** in the information clearly outweighs the interest that is protected by the exemption.

It is up to the information officer to prove that information is exempt from disclosure on the listed grounds. The information officer can refuse disclosure only by showing that the public interest in disclosure is outweighed by the harm to the protected interest that would result from the release of the information. The test is “a balance of probabilities”, which means what is more likely.

Access to Information Act, sections 63-76





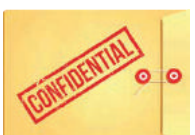

Exempt information is protected against disclosure **ONLY** if the possible harm from disclosure outweighs the public interest.

If your request covers some exempt information and some other information, the exempt information must be separated out so that you can have access to the other information.

Access to Information Act,
section 77

EXEMPT INFORMATION

Information exempted from disclosure except when public interest justifies disclosure to combat corruption, serious crime or serious risk of impending harm to public health, public safety or the environment.

INFORMATION CATEGORY	EXPLANATIONS AND EXAMPLES
1) Classified information 	Classified information is defined in the Namibia Central Intelligence Service Act, 1997 as information that is of such a sensitive nature and value that its disclosure would create a security risk for Namibia. No details are provided for the classification or declassification of information in the Namibia Central Intelligence Service Act or any other law, and there are no legal provisions on classification periods.
2) Information that could endanger individuals or property if disclosed	Examples: <ul style="list-style-type: none"> • details about the identity of a police informer or a witness who is being protected under a witness protection programme • access codes for a computer system • details about the security detail of a high-ranking public official.
3) Information that could compromise national security or defence if disclosed 	Examples: <ul style="list-style-type: none"> • details about military exercises designed to train personnel on how to respond to a threat of terrorism • intelligence information about foreign spies operating in Namibia • information about phone taps used to collect intelligence information about terrorism or foreign attacks on Namibia • details about weapons used by the Namibian Defence Force. Note: There is NO restriction on the disclosure of information about nuclear, chemical or biological weapons.
4) Confidential information about international relations	Examples: <ul style="list-style-type: none"> • internal government discussions about what stance to take on a forthcoming UN resolution • confidential correspondence between government officials and diplomats.
5) Information that could compromise law enforcement if disclosed	Examples: <ul style="list-style-type: none"> • a list of police informers • information about a criminal investigation that is still underway.
6) Legally privileged documents 	This includes – <ul style="list-style-type: none"> • information covered by doctor-patient privilege or attorney-client privilege • confidential communications between journalists and their sources • confidential communications between spouses. Note: The information can be disclosed if the person protected by the privilege consents. For example, a patient might agree to the disclosure or his or her personal medical records to provide evidence of problems at the State hospital.
7) Information about ongoing academic and professional examinations and recruitment or selection processes , if disclosure would compromise them	Example: <ul style="list-style-type: none"> • information about the questions on a test being given to candidates for a government position while the interviews of other job candidates are still underway. Note: In this case, the information can be released once the exams are complete or the recruitment selection is done.
8) Obviously frivolous or vexatious requests	“Frivolous” means having no serious purpose or value. “Vexatious” means something done maliciously to cause a nuisance. Example: requesting a list of the birthdays of all the ministry’s staff members.
9) Information that could help someone commit a crime 	Examples: <ul style="list-style-type: none"> • police information about how criminals disable alarm systems to break into a house • information on how to build a bomb • information on the weak points in the security of buildings, computers or communication systems or the measures used to protect them.
10) Information that is about to be published	This applies where the information officer believes on reasonable grounds that the requested information will be published within 21 days of the request. The period that applies can be extended by an additional 35 days if the information is still being printed or translated for publication.

EXEMPT INFORMATION

Information exempted from disclosure except when public interest justifies disclosure to combat corruption, serious crime or serious risk of impending harm to public health, public safety or the environment, BUT WITH ADDITIONAL WAYS TO OVERCOME THE EXEMPTION

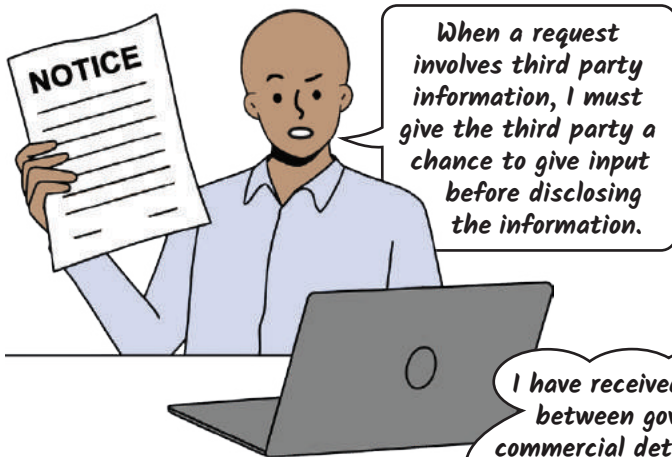
INFORMATION CATEGORY	EXPLANATIONS AND EXAMPLES
<p>1) Confidential commercial and economic information</p>	<p>This applies to –</p> <ul style="list-style-type: none"> ● trade secrets ● confidential financial, commercial, scientific or technical information, if disclosure would harm commercial or financial interests ● disclosures that would interfere with the government’s ability to manage the Namibian economy ● disclosures that would give anyone an undue economic benefit.
<p>Additional ways to overcome the exemption: This category of information <i>can</i> be disclosed –</p> <ul style="list-style-type: none"> ● if disclosure would advance accountability and transparency or reveal misconduct or deception ● if the information relates to the expenditure of public funds ● if the third party who would be affected consents to the disclosure ● if the information is already available to the public. 	
<p>2) Third party information: personal information about an individual, or information that is confidential to an individual or an entity</p> <p>You can find more details about the procedure that applies to requests involving third party information on the next page.</p>	<p>“Personal information” means information or opinions about an identifiable individual. It includes information about an individual’s –</p> <ul style="list-style-type: none"> ● race, gender, sex, pregnancy, marital status, national or ethnic origin, age, health, disability, religion, belief, culture, language or birth ● education or medical, criminal or employment history ● financial transactions ● address, fingerprints or blood type ● private correspondence ● personal opinions, views or preferences (in some circumstances). <p>The definition also applies to the views or opinions of another person about the individual, such as a lecturer’s evaluation of the individual’s academic performance.</p> <p>Note: This category does NOT apply to information about an individual who has been deceased for more than 20 years.</p>
<p>Additional ways to overcome the exemption:</p> <hr/> <p>The information <i>can</i> be disclosed if the third party consents, or fails to provide a motivation for non-disclosure. If the third party was notified about the request for disclosure and makes no reply at all, then the requested information can be disclosed.</p> <hr/> <p>The information <i>can</i> be disclosed if it relates to the physical or mental wellbeing of a child (or a person incapable of understanding the request), <i>if</i> the request is made by the person’s care-giver <i>and</i> disclosure would be in the person’s interest. For example, the staff of an old age home might need personal information from the medical records of a person in their care who is suffering from dementia.</p> <hr/> <p>The information <i>can</i> be disclosed if it relates to the position or functions of an individual who is or was an official in any public or private entity. For example, the job performance of an individual public servant is relevant to the operation of the entity and not just to the individual concerned.</p> <hr/> <p>The information <i>can</i> be disclosed if the third party was informed that the information could be made public at the time it was supplied. For example, persons who apply for the government old age pension might be informed at the time that their ID details and fingerprints will be shared with the company that distributes the pension payments every month.</p> <hr/> <p>Information about a person deceased for less than 20 years <i>can</i> be disclosed if the request is made by the deceased’s next of kin or legal representative, by the executor of the deceased’s estate or by the trustee of a trust that will benefit from the deceased’s estate. For example, the executor of the deceased’s estate might need to request information from the civil register about the children of the deceased who are eligible to inherit.</p>	

PROCEDURE FOR THIRD PARTY INFORMATION

Request for third party consent

If the information you requested includes third party information, the information officer must give the third party written notice within **7 days** of your request. The third party has **14 days** to reply, either orally or in writing.

Third party information refers to personal information about an individual, or commercial or confidential information about an individual or an entity.



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The third party can either consent to disclosure or motivate why the requested information should not be disclosed.

I have received notice of an information request that covers a contract between government and my company. The contract includes some commercial details about our work, but I am happy for those details to be disclosed. I will send a reply consenting to the disclosure of the commercial information – but I will ask the information officer to remove my personal cell phone number before the contract is shared, to protect my privacy.

- ▶ If the third party consents, then the information will be disclosed.
- ▶ If the third party motivates non-disclosure, the information officer may still give access to the information, but only after giving the third party a chance to challenge the decision.
- ▶ If the third party does not reply, this is treated like consent.
- ▶ If the third party cannot be located, the information can be released. The information officer must make a sworn statement about the steps taken to locate the third party.



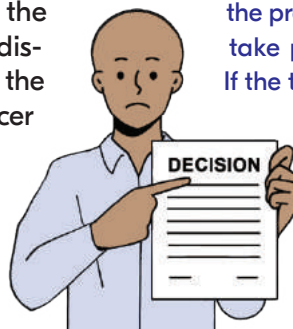
Access to Information Act, section 38

Notice to third party of decision on disclosure



In the case of normal requests with a 21-day deadline for decision, the information officer must notify the third party of the decision on disclosure within **7 days** of making the decision. If the information officer

decided to grant access even though the third party motivated non-disclosure, the information officer must give the third party a written notice of the decision with the reasons for granting the request. The third party may apply for a review of the decision within **14 days**.



In the case of an urgent request that contains third party information, the process is similar but must take place within **48 hours**. If the third party does not reply

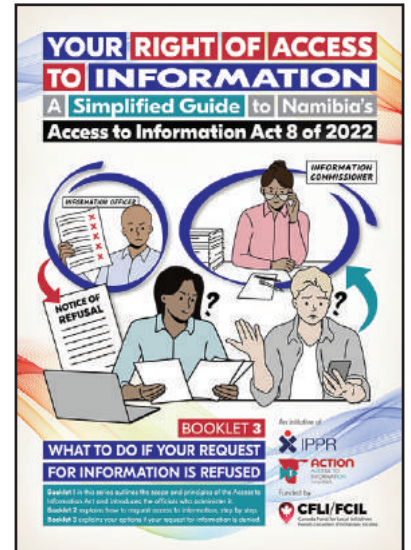
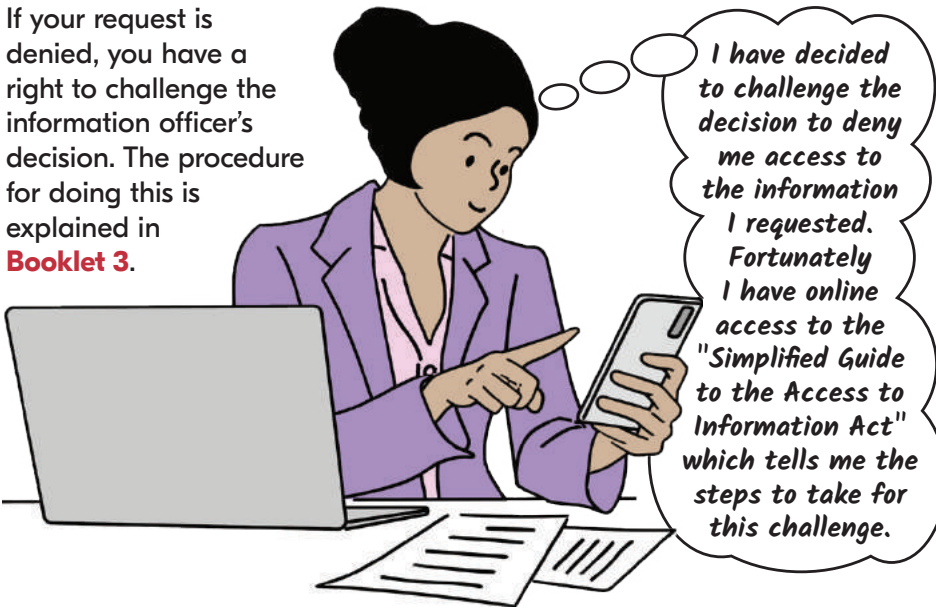


or cannot be located, the information officer may decide on the request without the third party's input. Another option is to provide access to the requested information without the part that relates to the third party.

STEP 5

CHALLENGING THE DECISION OF THE INFORMATION OFFICER IF YOUR REQUEST IS DENIED

If your request is denied, you have a right to challenge the information officer's decision. The procedure for doing this is explained in **Booklet 3**.



DISCLOSED INFORMATION BECOMES PUBLIC INFORMATION

In general, if you are granted access to the information you requested, that information becomes **public information** – meaning that you can use it in any way that you wish. The only **exception** is where you requested personal information about yourself, a close family member or someone for whom you act as a legal representative. That information remains private to you unless you wish to share it.

Access to Information Act, section 78

IPPR / ACTION Coalition Project

Access to Information for Civil Society Organisations (ATI for CSOs)

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