



### Summary comparison of AIPPA and the gazetted Freedom of Information Bill

More than six years after the adoption of the 2013 Constitution, most of Zimbabwe’s laws are still to be aligned with the substantive human rights and fundamental freedoms enshrined in Chapter 4 of the Constitution known as the Declaration of Rights. The proposed repeal and amendments to laws such as the Access to Information and Protection of Privacy Act (AIPPA) are grossly inadequate and far from meeting regional, continental, and international benchmarks and best practice.

The recently gazetted Freedom of Information Bill (FOI Bill) is one such law as it has serious deficiencies in its framing and efforts to be constitutionally compliant in terms of Section 62 of the Constitution that provides for the right to access to information.

AIPPA provisions	Issue	FOI Bill proposed provisions	Recommendations
<p><b>Sec 5: Right to Information is limited to:</b></p> <ul style="list-style-type: none"> <li>i. Information held by a public body</li> <li>ii. Citizens, permanent residents and long term visitors to Zimbabwe</li> <li>iii. Locally registered media organisations</li> </ul>	<p>The restriction is against Section 62 of the Constitution which states that:</p> <ul style="list-style-type: none"> <li>i. The right to provide access information applies to State, public and private bodies. See Section 62 (1) and (2) of the Constitution</li> <li>ii. Every person has the right to access information held by the State, public and private bodies if such information is required for the exercise or protection of a right. <b>Section 62 (2) of the Constitution</b></li> </ul>	<p>The Memorandum of the Bill states:</p> <ul style="list-style-type: none"> <li>i. Only citizens and residents may make requests to public entities</li> <li>ii. Non-citizens and non-residents may make requests to private entities if such information is required for the exercise and protection of a right</li> </ul> <p><b>Section 7 of the Bill</b> only deals with access to information held by public entities and is silent on requests from private entities.</p>	<p>Expand Section 7 of FOI Bill to include requests for access information held by private entities.</p>

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<p><b>Section 6 Request for Record:</b></p> <p>i. Requests for information must be in written form (and in English).</p>	<p>Written requests in English make it impossible for the illiterate and people with disabilities to request for information.</p> <p>These people can be assisted to request information in written form, but some information might be so private/sensitive that an illiterate or handicapped person does not wish a third person to know about the request for the sensitive information.</p>	<p><b>Section 7(1) of the Bill</b> states that requests for information must be in written form.</p>	<p>i. There should be room for verbal requests for information made any of Zimbabwe’s recognised languages as listed in Section 6 (1) of the Constitution.</p> <p>ii. There should be provision for the lodging of verbal requests for information.</p> <p>iii. Information officers would receive the verbal requests and then reduce them to writing with the assistance of the person making the request.</p>
<p><b>Section 7 Fees to access records:</b></p> <p>Fees may be charged for:</p> <p>i. Obtaining access to <i>any</i> record</p> <p>ii. Any service rendered in connection with providing access to any record.</p>	<p>Excess fees are sometimes used to prevent members of the public from requesting for information.</p>	<p><b>Section 17 of the Bill</b> permits for the charging of the following fees:</p> <p>i. Inspection fees</p> <p>ii. Search fees</p> <p>iii. Copying and printing fees</p> <p>iv. Translation fees</p> <p><b>Section 8(4)(a) of the Bill</b> states that requested information will only be released after full payment of the necessary fees by the applicant.</p>	<p>i. Fees are necessary for example, to purchase stationery necessary to facilitate information requests. However, the Bill should not permit the charging of repetitive fees for example, search and inspection fees.</p> <p>ii. The fees must be reasonable and affordable to low income members of society.</p>
<p><b>Sec 8 Duty to assist applicants:</b> The head of a public body has a duty to assist people making information requests.</p>	<p>There is need to place a duty on office bearers to be professional when assisting members of the public making information requests. Currently, some office bearers interact with applicants in a way that is discouraging and intimidating thus restricting people from requesting information.</p>	<p><b>Section 5 of the Bill</b> only creates a duty to disclose information; the Bill is silent on the duty to assist people making information requests.</p>	<p>i. There should be broad and clear responsibilities for information officers when assisting applicants making requests for information.</p> <p>ii. Information officers must be given the duty to assist members of the public making requests for information.</p>

AIPPA provisions	Issue	FOI Bill proposed provisions	Recommendations
<p><b>Section 8(1) Time limits to process request:</b></p> <ul style="list-style-type: none"> <li>i. This section states that requests for information must be given not later than 30 days of receiving the request for information.</li> <li>ii. In terms of <b>Section 11</b>, this period may be extended by another 30 days with the permission of the Zimbabwe Media Commission.</li> <li>iii. This means in practice information requests can be dealt with for up to 60 days</li> </ul>	<ul style="list-style-type: none"> <li>i. Requests for information must be dealt with within a reasonable amount of time.</li> <li>ii. Delays in finalising requests for information must be communicated to the applicant.</li> </ul>	<ul style="list-style-type: none"> <li>i. <b>Section 8(1)</b> states that requests for general information must be finalised within 21 days of receiving the information request.</li> <li>ii. This period may be extended by an additional 14 days in terms of <b>Section 9 of the Bill</b>. This means that in theory information requests can be finalised after 35 days.</li> <li>iii. <b>Section 8(2)</b> states that requests for information that is necessary to safeguard the liberty or life of a person, such information has to be released within 48 hours of making the request.</li> <li>iv. The information officer will hold on to the requested information until full payment of the charged assistance fees.</li> </ul>	<ul style="list-style-type: none"> <li>i. The reduction in the processing times for requests from 60 days under AIPPA to 35 days under the current Bill is welcome.</li> <li>ii. There is need to work on the issue of “Deemed Refusals” set out in <b>Section 10</b> of the Bill.</li> <li>iii. Deemed refusals refer to instances when an information officer does not give any response to a request for information after the lapse of 21 days or 35 days in instances where such information officer requests an extension of time.</li> <li>iv. A mechanism must be put in place to ensure that even in instances of deemed refusals reasons for the refusals are given.</li> </ul>
<p><b>Section 12 Transfer of Request:</b></p> <ul style="list-style-type: none"> <li>i. The head of a public body may transfer a received information request to another public entity better positioned to respond to a request for information.</li> <li>ii. This transfer has to happen within 10 days and the entity that the request for information is transferred to has to respond to the request within 30 days of receiving it</li> </ul>	<p>No issues arise</p>	<ul style="list-style-type: none"> <li>i. The Bill is silent on this ability to transfer requests from one entity to another.</li> <li>ii. In its current form, this means an applicant who submits a request for information at a wrong or less relevant entity would have to resubmit their information request at the correct entity on his or her own.</li> </ul>	<ul style="list-style-type: none"> <li>i. There should be a maximum time limit within which requests are transferred from one entity to another. This provision might have been erroneously excluded from the final version of the gazetted Bill.</li> <li>ii. It is recommended that the gazetted Bill also adds a provision for the transferability of information requests from one entity to another.</li> </ul>

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<p><b>Section 9 Contents of response:</b></p> <p>i. The head of the entity is responsible for responses to information requests.</p> <p>ii. Responses to information requests are in writing and in English</p>	<p>Written responses in English do not cater for those with disabilities/handicapped and illiterate. There is need to ensure that the written response is in a language that one understands, including where possible use of Sign language etc.</p>	<p>i. <b>Section 8</b> of the Bill allows responses to be in a language of the applicant's choice but the applicant has to cover the costs of translating the information from English to another officially recognised Zimbabwean language.</p> <p>ii. <b>Section 8(3)</b> speaks about the form a response will take but the section is not explicit about verbal responses being given in addition to the written responses to requests for information.</p>	<p>i. It is recommended that verbal responses be given if requested in addition to a written response to the request for information.</p> <p>ii. The verbal response must be in a local language that the applicant can understand.</p>
<p><b>Section 14 Protection of government deliberations:</b></p> <p>i. <b>Section 14(1) (2)</b> provides a blanket exception to information relating to deliberations of Cabinet, including draft legislation being prepared for submission to or submitted to Cabinet.</p> <p>ii. <b>Section 14 (3)</b> states that information exempted under Section 14 (1)(2) may be declassified after 25 years.</p> <p>iii. <b>Section 15(1) Protection of information relating to policy advice</b></p>	<p>i. No issues arise from Section 14(1) – (3) save for the prohibition against accessing draft legislation.</p> <p>ii. A blanket restriction of information relating to policy advice is unwarranted and may be abused to exempt the release of information that may actually be in the public interest.</p>	<p>i. <b>Section 6(a) of the Bill</b> protects deliberations and functions of Cabinet and its committees.</p> <p>ii. There is no provision for declassification of information that relates to deliberations and functions of Cabinet and its committees.</p>	<p>i. There is need to reintroduce the time period beyond which records and information relating to deliberations and functions of Cabinet and its committees may be declassified and shared.</p> <p>ii. This means revisiting other laws such as the Official Secrets Act.</p>

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<p><b>Section 17(1)(e)</b> protection of information relating to or used in the exercise of prosecutorial discretion. An exception to this is given in <b>Sec 17(3)</b></p>	<p>Some prosecutions are of public interest and have a bearing on public welfare, for example, prosecutions against corruption. There should therefore be no blanket ban against accessing information relating to or used in the exercise of prosecutorial discretion</p>	<p>The Bill is silent on this.</p>	<p>Information relating to or used in the exercise of prosecutorial discretion must not be generally exempted from being accessed.</p>
<p>The Zimbabwe Media Commission had excessive powers over the voluntary disclosure of information. For example, in terms of <b>Section 28</b>, ZMC must be notified before the disclosure of information, including information that is in the public interest or related to public safety.</p>	<p>The Zimbabwe Media Commission exists to promote and foster media freedoms in Zimbabwe. Section 249 (1)(f) of the Constitution says the ZMC has a role to ensure access to information. This role must be interpreted in line with media freedom.</p>	<p>i. The Bill gives the ZMC powers to oversee the exercise and enjoyment of the right to access information by administering the Freedom of Information Bill when becomes law.  ii. <b>Sec 18</b> of the Bill says the ZMC must receive reports on statistics about information requests received in a given year.  iii. <b>Sec 35</b> of the Bill says the ZMC will be responsible for hearing appeals over denied requests for information.</p>	<p>i. The Zimbabwe Human Rights Commission and not the ZMC is the guardian of human rights in Zimbabwe. This includes the right to access information.  ii. The ZHRC is better suited to deal with the administration of a freedom of information law.  iii. The ZHRC will interpret the right to access information in a much wider context than the ZMC and should therefore, be given the task of overseeing the protection and promotion of the right to access information in Zimbabwe.</p>
<p>AIPPA does not provide for appeal procedures against decisions to deny access to requested information. The head of the public entity has the final say in the information request chain. Unreasonable and unjustifiable</p>	<p>There must be appeal procedures to ensure that denials of access to requested information are fair and justifiable in an open and democratic society. A body that is independent of the entity appealed against must hear</p>	<p>The FOI Bill provides the right to appeal in Section 35. These appeals are heard and finalised by the Zimbabwe Media Commission.</p>	<p>i. A court of law such as the High Court should be the final arbiter in settling disputes over the denial of access to requested information.  ii. Rulings by such a court of law would further enrich the</p>

denials cannot not be appealed against in terms of the Act.	these appeals to ensure fairness. Ideally, this body may be the Zimbabwe Human Rights Commission in its role as overseer and guardian of human rights in Zimbabwe or even a court of law assigned with the function to decide the fairness of denials for information requests.		discourse and exercise of the right to access information in the country.
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### Positive parts of the FOI Bill

Position in the Bill	Importance	Recommendation (if any)
<b>Section 2</b> Designation of Information Officer	Information officers are the point persons responsible for the receiving and processing of information requests. This is a marked improvement where only the head of the entity was the one responsible for dealing with information requests.	Information officers must be oriented into knowing how to handle information requests and more importantly, in dealing with members of the public in a fair manner.
<b>Sec 5 Duty to disclose information</b>	Public entities must have a written information disclosure policy	<ul style="list-style-type: none"> <li>i. This is welcome but it should be strengthened by returning to the position in the ministerial draft of the FOI Bill.</li> <li>ii. Just writing an information disclosure policy is not enough to ensure that entities will release information voluntarily.</li> <li>iii. Ideally, entities should publish more comprehensive information including the types of information under their control, salary thresholds, number of staff etc.</li> </ul>