



# **OVERVIEW OF REVISED DRAFT GUIDELINES AND IMPLEMENTATION**

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# THE FOIA 2011: OBJECTIVES

- Openness and transparency
- TO make public records and information more freely available,;
- To provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy,




Other objectives are to ensure that:

- 1) public institutions answer applications for information.
- 2) public institutions practise good records management to  
Access to any information that is in the custody of  
any public institution is granted
- (4) Impediments or bureaucracy are not deployed to frustrate  
such requests
- (5) the right to take legal action in Courts to compel any public  
institution to comply with the Act is available.



# Why the Guidance?

- **Because:**
  - the HAGF is under section 29 of the Act obliged to ensure that all institutions to which this Act applies comply with the provisions of the Act.
  - The Act endorses the use of guidance in terms of reporting obligations of public institutions
  - It is best practice given the overwhelming number of enquiries to FMOJ from public institutions on FOIA matters
- **Guidelines issued 15<sup>th</sup> of March 2011; Reporting Guidelines issued 29<sup>th</sup> January**



## What are the aims of the Guidelines?

- ❖ Facilitate clearer understanding and seamless implementation of the Freedom of Information Act 2011.
- ❖ Provides formats for dealing with requests
- ❖ Contains Advisories on obligations of Public institutions under the Act
- ❖ Advisories on staffing and institutional mechanism
- ❖ Advisories on weighing and applying the exemption scheme.



# PURPOSE OF GUIDELINES

- **THEY DO NOT:**
  - ❖ Attempt to re-write the law: the revised draft however probes more areas of doubt and proposes solutions;
  - ❖ Provide sanctions as this is not prescribed in the Act.
  - ❖ **CURRENTLY** Provide a demand side perspective: this is undertaken in the revised version



# Why the revision?

- ❖ Revision should be ongoing but the current exercise seeks to:
  - ❖ have better stakeholder inputs; and
  - ❖ improve on earlier version in light of developments
- ❖ Place more emphasis on the proactive duties of disclosure



# DETAILS....

- User friendliness: summaries or abstracts for each chapter; glossary of terms
- In view of the critical importance of this issue of proactive disclosure to the general FOIA framework, CREATE a new chapter with detailed provisions on proactive disclosure which:
- Emphasises the right of the public to proactive disclosure
- Illustrates categories of information required in line with section 2 of the Act
- Proposes protocols for determining sucg information e.g the 3 requests rule





# INSTITUTIONAL FRAMEWORK

- ❖ Tackles the issue of FOIA unit as the ideal implementing organ within the framework of public institutions. Proposes functions for Unit namely
  - ❖ Dedicated help/service lines or online assistance
  - ❖ Organisation Review procedures
  - ❖ Reporting and liaison with FMOJ/HOS
  - ❖ Preparation of a record map/chart –
  - ❖ Compliance with the Institution's Proactive Disclosure Obligations.
  - ❖ Regular training and retraining of the staff of the institution on their FOIA related obligations.
- ❖ **PROPOSES AN INTERNAL REVIEW ROLE FOR EXISTING FOI COMMITTEES**



# Dealing with FOIA requests

- ❖ Designated FOI points of contacts; emphasise that requests need not be submitted in person. include e.mail addresses in publications scheme/websites
- ❖ Assistance to illiterates and physically challenged in making requests. A note of this should be made when request is transcribed
- ❖ *A schedule of fees for photocopying and transcription to be provided . Public institutions should be encouraged to waive these charges if it is very minimal.*



# Dealing with requests

- Take into account the need to have a determined approach to keep to timelines bearing in mind the role of the correspondence Registry as the receiving unit for most requests
- Therefore Institutions should as a first step Register and record the application to note the date its was received, an acknowledgment should be given to the Applicant and a registry or tracking number assigned to the application.
- it is the primary responsibility of the FOIA Officer to deal with the FOIA application and it cannot merely be passed to another department within the institution to deal with.



# Dealing with requests

- Making it clearer that Clarifications if necessary must be sought within the stipulated timelines
- New template for requests falling under section 26i.e information outside scope of FOIA ...if available in a known place FOIA officer to disclose



# The Exemptions Scheme

- Avoiding the phrase absolute exemptions...as these also involves considerations of policy.
- Generally in cases where there is there is need to weigh the contrasting public interests, or exercise a discretion e.g ss 11, 12, 16 and 19 the primary decision is now that of the FOIA officer ...CEO should approve not decide.



# PUBLIC ACCESS GUIDE

- major stakeholders in the FOIA are -
  - The Public - With its given rights to request for any official information and public record, ("Right to request").
  - the Public Institutions - With its provided duty to release information (responsibly) not covered by the exemptions under the FOIA. ("Duty of responsible release").
- FOIA creates an inherent tension between this Right to request and Duty of responsible release.



# The Guide will cover such issues as

- (a) What is the FOIA?
- (b) What is a public institution?
- (c) What information can I receive? Rights charter
- (d) How do I apply for information? Templates/
- (e) When do I receive the information that I have requested?
- (f) Do I have to pay for this information? Schedule of fees
- (g) What help can I expect from a public institution?
- (h) How do I complain or appeal if my application is refused?