

**Access to Information Bill 2023: Did Government Get the Balance Right?**

**O’Brien Kaaba and Mwami Kabwabwa\***

Government has finally tabled the Access to Information Bill No. 24 of 2023. The Bill is accessible via the National Assembly website at:

https://www.parliament.gov.zm/node/11413.

Should the Bill pass, it would bring closure to a protracted history of lobbying the government to enact the law on access to information. Giving citizens access to state-held information as well as information held in private hands which is relevant to the protection of fundamental rights is the bedrock of an accountable and democratic government. As Cora Hoexter has argued, “accountability is unattainable if the government has a monopoly on the information that informs its actions and decisions.” Access to information, apart from facilitating informed participation in governance by citizens, enhances public confidence in government and may increase the legitimacy of public institutions in the estimation of citizens. It may also discourage corruption and arbitrariness.

So what is contained in the Access to Information Bill? Clause 6(1) of the Bill entitles a citizen and a residence permit holder to access information in the hands of an “information holder.” Information holder is defined under clause 2 as a “public body or a private body.” What constitutes a private body is defined under clause 2 as “a private entity, or non-state actor, that utilises public funds or is in possession of information that is of significant public interest.” This definition entails that not every private entity can be requested to provide information. Only private entities that either receive public funds or those in possession of information of significant public interest. Individuals are excluded from the disclosure obligation. Clause 3(a) and 3 (b) then requires public and private information holders to disclose requisite information.

It must be noted that although both public and private bodies have a duty to disclose information, a distinction should be drawn. Accessing information from a public body is unqualified while accessing information from a private body has a condition precedent of needing the information. This is in order to “assist in the exercise or protection of any right.” In other words, members of the public are entitled to access public information in the hands of public bodies, unless there are legitimate reasons for limiting access. However, when it comes to information in private hands, the information should only be available on a “need to know” basis. The requester needs to provide reasons to justify access and the reasons must relate to the exercise or protection of a human right. Therefore, the private sector is entitled to keep its information to itself, unless that information is needed to protect rights. This approach is consistent with international best practices and standards.

Access to information is not unlimited. Although the default position is to allow access to information, there is information that is exempted from disclosure. Information that cannot be disclosed include personal information; certain commercial information; information that may endanger life or property; privileged information; information that may substantially harm international relations and national security; and certain information about policy formulation. However, even in relation to these, where necessary, information may be disclosed where there is strong public interest. The limitations are, therefore, not absolute.

Who will be responsible for enforcing the provisions of the Bill should it pass? Clause 4 of the Bill designates the Human Rights Commission as the oversight body. International best practices require the oversight body to be operationally independent and that its officers be appointed in a transparent and competitive manner. For example, Part V of the Model Law on Access to Information for Africa requires that an oversight body responsible for enforcing the norms of access to information legislation should be independent and impartial. To this end, the oversight body should be independent and autonomous in its operations and administration. The officers of the oversight body must be employed in a competitive and transparent manner where positions are advertised. Does the Human Rights Commission meet this standard? The Human Rights Commission is established under Article 230 of the Zambian Constitution. Article 216 establishes all Commissions, including the Human Rights Commission, as independent entities, not subject to the control of any person or authority. Based on this, it would seem the Human Rights Commission meets the requirements of the Model Law as an independent body. However, currently commissioners for the Human Rights Commission are not appointed in a competitive and transparent manner as the law reposes the privilege to appoint them in the President. Additionally, issues relating to the removal from office and general enforceability of the Human Rights Commission mandate will need to be reviewed. However, these are not matters that can be resolved by the current Bill as that mandate sits in other pieces of legislation.

Overall, although there are a few technical issues that may need to be corrected before it is passed, the Bill is drafted in a manner consistent with international standards and would be a useful tool in enhancing transparency, citizen participation in governance, and public scrutiny of government.

\*O’Brien Kaaba teaches law at the University of Zambia, while Mwami Kabwabwa works for SAIPAR. Both are writing in a personal capacity