Fiji Law Reform Commission

DISCUSSION PAPER

REVIEW OF THE GOVERNANCE LAWS: INFORMATION ACT 2018, CODE OF CONDUCT BILL 2025 AND ACCOUNTABILITY AND TRANSPARENCY COMMISSION BILL 2025

FLRC REPORT 1

FEBRUARY 2025

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Glossary

In this paper, unless the context otherwise requires:

Act or **Information Act** means the *Information Act 2018*;

ATC or **Commission** means the Accountability and Transparency Commission established under section 121 of the Constitution;

Bill means the Code of Conduct Bill 2018;

Constitution means the *Constitution of the Republic of Fiji*;

FLRC means the Fiji Law Reform Commission established under the *Fiji Law Reform Commission Act 1979*;

JSC means the Judicial Services Commission established under the *Administration of Justice Decree 2009* and continued in existence under section 104 of the Constitution;

RTI means the right to information.

Fiji Law Reform Commission

The Fiji Law Reform Commission is an independent statutory body that is established under the *Fiji Law Reform Commission Act 1979.*

The main purpose of the FLRC is to resolve difficulties in the law by conducting systematic development and reform of the law through consultations with the public and relevant stakeholders, comparing our laws with other countries and making proposals to the Attorney-General for the modernisation and simplification of the laws.

Functions of the FLRC

The main functions of the FLRC are contained in section 5(1) of the *Fiji Law Reform Commission Act 1979* and are essentially to take and keep under review all the law applicable of Fiji with a view to its systematic development and reform including in particular:

- the codification of such law;
- the elimination of anomalies;
- the repeal of obsolete and unnecessary enactments;
- the reduction of separate enactments;
- the making of new laws;
- the adoption of new or more effective and economical methods for the administration of the law and the dispensation of justice; and
- generally the simplification, improvement and modernization of the law, and subject to section 6, the FLRC may in these respects act of its own volition.

The Current Project

This Discussion Paper has been prepared by a committee appointed under section 3(6) of the Fiji Law Reform Commission Act 1979 and comprises Ms Lyanne Vaurasi and Mr David Solvalu.

The work of the Committee has been supported by the FLRC through its Director, Ms Raijeli Lebaivalu Vasakula Tuivaga, Senior Legal Officer Mr Leighton Fatiaki and Legal Officers Ms Joyce Hicks and Ms Magdalena Ramoala.

Background & Introduction

Fiji's right to information is embedded in its constitutional framework, international obligations, and domestic legislative instruments, all of which were intended to promote transparency, accountability, and good governance.

The 2013 Constitution explicitly guarantees the right to access information[1], ensuring that citizens can seek and obtain information relevant to governance, policymaking, and public administration, subject to necessary restrictions such as protecting national security, public order, and individual privacy. This is further reinforced by section 150, which establishes the Accountability and Transparency Commission, an independent oversight body designed to uphold ethical standards within government institutions by monitoring compliance with integrity laws and preventing corruption, maladministration, and abuse of power.

Fiji's ratification of the International Covenant on Civil and Political Rights (ICCPR) in 2018 further strengthened its commitment to international human rights standards, particularly in relation to Article 19 of the Covenant, which recognizes access to information as a fundamental component of freedom of expression and underscores the necessity of government transparency to facilitate public participation, informed decision-making, and institutional accountability.

In an effort to operationalize these constitutional and international commitments, the Fijian government enacted the Information Act 2018, which provides the framework for accessing government information, requiring all public agencies to proactively disclose key information while also establishing procedures through which individuals can formally request access to specific documents or records within prescribed timeframes. Complementing the Information Act, the Code of Conduct Bill 2018 was tabled in Parliament to strengthen ethical governance by setting standards of integrity for public officials, requiring them to disclose their financial assets, maintain transparency in decision-making processes, and adhere to strict guidelines governing the use of public resources to prevent conflicts of interest and corruption. This Bill, in alignment with the broader transparency agenda, attempted to reinforce the disclosure obligations under the Information Act while expanding the role of the Accountability and Transparency Commission to include active oversight of ethical compliance among government officials, thereby ensuring that those in positions of power remain accountable to the people they serve.

However, the Information Act 2018, though enacted never commenced and the Code of Conduct Bill did not proceed through later readings of Parliament and lapsed pursuant to the Standing Orders of Parliament. Numerous policy issues were noted in the Act and Bill and so a review was initiated to ensure that the Act is upgraded to meet international best practice standards and gives full effect to the constitutionally guaranteed right of every person to access information held by the State.

[1] Section 25 of the Constitution

Review of the Information Act and the role of the ATC

The review of the Fiji Information Act 2018 is essential to ensuring that it effectively upholds the right to information while addressing implementation challenges and balancing transparency with necessary exemptions.

This discussion paper frames its analysis around the Right to Information (RTI) indicators developed by the Centre for Law and Democracy, which form the basis of the globally recognized RTI Rating system. The RTI Rating assesses the strength of access-to-information laws worldwide based on key criteria such as the scope of access, proactive disclosure, request procedures, appeal mechanisms, and sanctions for non-compliance. Given its international credibility and use in benchmarking transparency laws across jurisdictions, this rating system provides a robust framework for evaluating Fiji's legislation against global best practices.

By using these indicators, the discussion paper will systematically identify areas where the Act aligns with international standards and where reforms may be necessary to enhance transparency, accountability, and public trust in governance. This structured approach ensures that the review is both comprehensive and comparative, allowing Fiji to measure its progress in fostering an open government while strengthening its legal framework in line with evolving democratic principles.

Issues

In order to determine whether the Information Act is aligned to international best practices and presents a strong legal regime for the right to information, a number of issues will be considered and discussed in this paper, against RTI rating indicators[2] and the approaches taken in other jurisdictions in respect of the right to information.

1. Right of Access

The first issue is whether the right of access to information exists in Fiji. We will consider this issue in respect of the following indicators:

(a) Whether Fiji's legal framework recognises a fundamental right of access to information;

(b) Whether Fiji's legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions; and

(c) Whether Fiji's legal framework contains a specific statement of principles calling for a broad interpretation of the right to information law and emphasises the benefits of the right to information.

1A. Is there recognition of the fundamental right of access to information?

In Fiji, there is full constitutional recognition of a public right of access to information.

Section 25 of the Constitution guarantees that every person has the right of access to information that is held by a public office, including information that is held by any other person that the first-mentioned person would require for the exercise or protection of his or her legal rights.

Section 25 (1) and (2) of the Constitution states:

> *"Access to information*
>
> *(1) Every person has the right of access to—*
>
> *(a) information held by any public office; and*
>
> *(b) information held by another person and required for the exercise or protection of any legal right.*
>
> *(2) Every person has the right to the correction or deletion of false or misleading information that affects that person."*

[2] Centre for Law and Democracy, The RTI Rating analyses the quality of the world's access to information laws https://www.rti-rating.org/country-data/ (Accessed 27 January 2025)

In addition, section 150 of the Constitution also guarantees that there be a written law to provide for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.
Section 150 of the Constitution states:

> "*Freedom of information*
> *150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies."*

These constitutional guarantees confirm that Fiji's legal framework recognises a fundamental right of access to information.

1B. Is there a presumption in favour of access to all information held by public authorities?

Public authorities should always proceed from a presumption in favour of disclosure without requiring the demonstration of a particular interest in the information or of the reasons for the request for the information.

In addition to the constitutional guarantees for the right of access to information, the Act sets out a specific presumption in favour of access to all information held by public authorities. This presumption is contained in sections 5 and 6(1) of the Act where a person may access any information that is held by a public agency and can request for the information to be made available to him or her.

Section 5 of the Act states:

> *"Right of access to information*
> *5. Subject to this Act, a person may access any information held by a public agency."*

Section 6(1) of the Act states:

> *"Request for access to information*
> *6.—(1) Subject to subsection (2), any person who is a natural person and is a citizen or a permanent resident of the State may request the Commission to make available to the person any information held by a public agency."*

It should be noted, however, that under these provisions in the Act, only natural persons who are either citizens or permanent residents of Fiji can make such a request. So while the presumption in favour of access to all information held by public authorities exists under these provisions, the presumption does not extend to legal persons. Essentially, legal persons would not be able to access information held by public authorities.

It should also be noted that the Department of Immigration has not issued any permanent resident visas to any person since 2009. A permanent resident visa under Fiji's immigration laws is valid for a period of 5 years, so even if a permanent resident visa was last issued in 2009, that visa would have, unless earlier revoked, expired in 2014.

Questions:

- *Who should be allowed to make a request for information?*

- *Should the Act only allow natural persons to make a request for information or should legal persons also be allowed to make such requests?*

- *If a legal person is allowed to make a request, should all legal persons be allowed to do so or should this be limited to bodies that are incorporated in Fiji? Should bodies incorporated outside of Fiji with a place of business in Fiji be allowed to make a request? Should unincorporated bodies formed outside of Fiji with a place of business in Fiji be allowed to make a request?*

- *Should the Act only allow citizens and permanent residents of Fiji to make a request for information or should any natural person be allowed to make such requests?*

- *If any natural person is allowed to make a request, should the natural person be in Fiji in order to make the request or can the natural person be outside of Fiji and be allowed to make the request?*

1C. Is there a statement of principles calling for a broad interpretation of the right to information law and benefits of the right to information?

The principles of the right to information are set out as follows:

1. Maximum disclosure
2. Duty to publish (proactive disclosure)
3. Processes to facilitate access
4. Costs
5. Right of appeal
6. Limited scope of exceptions
7. Promotion of open government
8. Protection for whistleblowers[3]

Having a statement of these principles in right to information laws would call for a broad interpretation of the laws.

The Act does not contain a specific statement of these principles. Section 4, which sets out the objectives of the Act, only refers to internal objectives giving effect to the right of access, rather than the external benefits. There is also no statement about interpretation.

Section 4 of the Act states:

"Objectives

[3] UNESCO, Development and promotion of the right to information in national frameworks (2023) https://www.unesco.org/en/articles/development-and-promotion-right-information-national-frameworks (Accessed 24 January 2025)

4. The objectives of this Act are to—

(a) give effect to the right of access to information under sections 25 and 150 of the Constitution;
(b) recognise the right of a person to access information held by a public agency in accordance with the procedure prescribed in this Act;

(c) ensure that a person is informed of the operations of a public agency, including, in particular, the rules and practices followed by the public agency in its dealings with members of the public; and

*(d) allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure tha*t the information is correct, *accurate, complete and not misleading."*

In Australia's *Freedom of Information Act 1982*, section 3 sets out the objects of the Act which refer to internal objectives giving effect to the right of access and also to the external benefits promoting representative democracy. Section 3(3) and (4) of the Act also set out the statement about interpretation.

*"**3 Objects—general***

(1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:

(a) requiring agencies to publish the information; and

(b) providing for a right of access to documents.

(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:

(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;

(b) increasing scrutiny, discussion, comment and review of the Government's activities.

(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.

(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost."

Questions:

- Should the Act be amended to contain a specific statement of the principles of the right to information?

- Should the Act be amended to include the external benefits of the right of access to information?

- Should the Act adopt wording similar to that in section 3 of Australia's Freedom of Information Act 1982?

2. Scope

The second issue is whether the scope of the Act is sufficient. We will consider this issue in respect of the following indicators:

(a) Whether everyone (including non-citizens and legal entities) has the right to file requests for information;

(b) Whether the right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it;

(c) Whether requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents);

(d) Whether the right of access applies to the executive branch with no bodies or classes of information excluded;

(e) Whether the right of access applies to the legislature, including both administrative and other information, with no bodies excluded;

(f) Whether the right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded;

(g) Whether the right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State);

(h) Whether the right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er); and

(i) The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.

2A. Does everyone (including non-citizens and legal entities) have the right to file requests for information?

Section 6(1) of the Act states:

> *"Request for access to information*
> *6.—(1) Subject to subsection (2), any person who is a natural person and is a citizen or a permanent resident of the State may request the Commission to make available to the person any information held by a public agency."*

As discussed with the previous issue, only natural persons who are either citizens or permanent residents of Fiji have the right to make a request for information. Legal persons do not have the right to make requests for information and are therefore not able to access information held by public authorities.

In Australia, section 11 of the *Freedom of Information Act 1982* accords the right of access to information to 'every person'.

Section 11(1) states:

> *"**11 Right of access***
> *(1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:*
>
> *(a) a document of an agency, other than an exempt document; or*
>
> *(b) an official document of a Minister, other than an exempt document."*

Questions:

- *Who should be allowed to make a request for information?*
- *Should the Act only allow natural persons to make a request for information or should legal persons also be allowed to make such requests?*
- *If a legal person is allowed to make a request, should all legal persons be allowed to do so or should this be limited to bodies that are incorporated in Fiji? Should bodies incorporated outside of Fiji with a place of business in Fiji be allowed to make a request? Should unincorporated bodies formed outside of Fiji with a place of business in Fiji be allowed to make a request?*
- *Should the Act only allow citizens and permanent residents of Fiji to make a request for information or should any natural person be allowed to make such requests?*
- *If any natural person is allowed to make a request, should the natural person be in Fiji in order to make the request or can the natural person be outside of Fiji and be allowed to make the request?*

2B. The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it

Under section 2 of the Act, the term 'information' is defined quite broadly.

> *""Information" means any material in any form, including a record, report, correspondence, opinion, recommendation, press statement, circular, order, logbook, agreement, sample, model, data or document such as—*
>
> *(a) a map, plan, drawing or photograph;*

(b) any paper or other material on which there is a mark, figure, symbol or perforation that is capable of being interpreted;

(c) any article or material from which a sound, image or writing is capable of being reproduced with or without the aid of any other article or device; or

(d) any article on which information has been stored or recorded either mechanically or electronically,

provided that the material directly affects a determination or decision made by a public agency in relation to the person making a request under section 6."

The proviso, however, limits the scope to cases where the information directly affects a decision regarding the person making the request. A closer look at section 6(2) of the Act shows the same limitation to the scope. But it is even more limiting in that the information requested for must be information that comes into existence upon or after the commencement of the Act.

Section 6(2) of the Act states:

"(2) Notwithstanding any other provision in this Act, the information requested by a person under subsection (1) must be information which—

(a) directly affects the person making the application; and

(b) comes into existence upon or after the commencement of this Act."

Questions:

- Should a person only be allowed to make a request for information that directly affects him or her?

- Should the Act extend the scope to allow a person to make a request for information regardless of whether the information requested directly affects the person making the application?

- Should a person be allowed to make a request for information that exists before the coming into existence of the Act?

2C. Should requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents)?

While the Act does not explicitly state that a person can make a request for specific documents, section 15 does enable a public agency to create a written document containing information that has been requested for, even if the information was not initially contained in a written document.

The public agency would have to treat the request as though it had been made for a written document.

Section 15 of the Act states:

> *"Information stored electronically etc*
>
> *15. If—*
>
> *(a) it appears to a public agency that a request relates to information of a kind that is not contained in a written document held by the public agency; and*
>
> *(b) the public agency may create a written document containing information of that kind by the use of equipment that is usually available to it for retrieving or collating stored information,*
>
> *the public agency must deal with the request as if it were a request for a written document so created and the public agency is deemed to hold such a document."*

2D. Should the right of access apply to the executive branch with no bodies or classes of information excluded?

Section 2 of the Act defines the term 'public agency':

> *"public agency" means—*
>
> *(a) an office created by, or continued in existence under, the Constitution;*
>
> *(b) an office in respect of which the Constitution makes provision;*
>
> *(c) a commission established by, or continued in existence under, the Constitution or any written law;*
>
> *(d) a Government ministry, department, division or unit;*
>
> *(e) a disciplined force;*
>
> *(f) a court or tribunal established by, or continued in existence under, the Constitution or any written law;*
>
> *(g) a statutory authority;*
>
> *(h) a Government company; or*
>
> *(i) an office established by written law,*
>
> *but does not include a public agency that is exempted under section 21 from the provisions of this Act"*

The right of access to information applies to the executive branch.

The definition of the term 'public agency' includes all bodies created by law or corporations which are 100% owned by the Government. It does not, however, include corporations which

are not 100% owned by the Government but which are Government-controlled, as well as subordinate bodies created in other ways.

Aside from this, section 21 of the Act allows the Minister to exempt bodies.

Questions:

- *Should the definition of 'public agency' be amended to include corporations that are not 100% Government-owned but that are Government-controlled?*

- *Should the responsible Minister be allowed to exempt the executive from the application of the provisions of the Act?*

2E. Should the right of access apply to the legislature, including both administrative and other information, with no bodies excluded?

While there exists a broad definition of the term 'public agency' under the Act, it is unclear from the definition whether the right of access to information applies to the legislature. The definition mentions *"an office created by…the Constitution"* and *"an office established by written law"* but it is unclear whether these refer to the legislature. Unlike the courts in paragraph *(f)*, the legislature is not specifically mentioned.

The indicator also requires that no bodies of the legislature be excluded. However, in the definition there is an exclusionary part that makes direct reference to section 21 of the Act, which is the provision that empowers the responsible Minister, following consultation with the ATC, to exempt and exclude certain public agencies from the application of the provisions of the Act.

Questions:

- *Should the definition of 'public agency' be amended to specifically mention the legislature?*

- *Should the responsible Minister be allowed to exempt the legislature from the application of the provisions of the Act?*

2F. Should the right of access apply to the judicial branch, including both administrative and other information, with no bodies excluded?

Under the Act, the right of access to information also applies to the judicial branch. The definition of 'public agency' in section 2 of the Act includes *"a court or tribunal established by, or continued in existence under, the Constitution or any written law"*.

The indicator also requires that no bodies of the judicial branch be excluded. But under section 21, the responsible Minister, following consultation with the ATC, can always exempt and exclude the judicial branch from the application of the provisions of the Act.

Question:

- Should the responsible Minister be allowed to exempt a court or tribunal from the application of the provisions of the Act?

2G. Does the right of access apply to State-owned enterprises (commercial entities that are owned or controlled by the State)?

The right of access to information under the Act applies to Government companies.

Under section 2 of the Act, a Government company is defined as *"a company where all of the stock or shares in the capital is or are beneficially owned by the Government, whether such shares are held in the name of a Minister, public officer, nominee of the State or otherwise"*. So the right of access to information under the Act applies only to companies that are 100% Government-owned, when control exists at 50% ownership.

Questions:

- *Should the right of access to information apply only to commercial entities that are wholly-owned by the State?*

- *Should the right of access to information apply also to commercial entities that are controlled by the State?*

- *Should the definition of 'Government company' under the Act be amended so that it refers to Government-controlled companies with at least 50% ownership?*

2H. The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er)

The Act uses the term 'public agency' to refer to public authorities.

Section 2 of the Act provides a definition that applies to all public authorities, including constitutional, statutory and oversight bodies.

However, it is imperative to note that section 21 of the Act empowers the responsible Minister, following consultation with the ATC, to exempt a public agency from the provisions of the Act. So while the definition of public agency is broad and encompasses all public authorities, it exists alongside the exemption provision.

Questions:

- Should any of the public authorities be allowed to be exempted from the application of the Act?

- Should section 21 of the Act be amended to limit the broad powers given to the responsible Minister?

2I. Should the right of access apply to private bodies that perform a public function and private bodies that receive significant public funding?

The Act does not provide for the right of access to information applying to private bodies that perform a public function and/or private bodies that receive significant public funding.

Questions:

- Should the right of access to information also apply to private bodies that perform a public function, such as independent contractors engaged by the State?

- Should the right of access to information also apply to private bodies that receive any public funding or should the right only apply to private bodies that receive significant public funding?

- What would be considered as significant public funding?

3. Requesting Procedures

The third issue is whether Fiji's legal framework has appropriate requesting procedures. We will consider this issue in respect of the following indicators:

(a) Requesters are not required to provide reasons for their requests;

(b) Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery);

(c) There are clear and relatively simple procedures for making requests;

(d) Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification;

(e) Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled;

(f) Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days;

(g) Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information;

(h) Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record);

(i) Public authorities are required to respond to requests as soon as possible;

(j) There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication);

(k) There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension;

(l) It is free to file requests;

(m) There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities;

(n) There are fee waivers for impecunious requesters;

(o) There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.

3A. Requesters are not required to provide reasons for their requests

Section 6(3) of the Act sets out the requirements for a request for information as follows:

> *"(3) A request made under subsection (1) must—*
>
> *(a) be made in the form prescribed by regulations made under this Act;*
>
> *(b) specify the public agency with which the information is held;*
>
> *(c) specify the particulars of the information requested or such other particulars as are necessary for the identification of the information requested;*
>
> *(d) subject to section 12, specify the form preferred by the person making the request for accessing the information;*
>
> *(e) comply with any other requirement of the Commission; and*
>
> *(f) be accompanied by such fee as prescribed by regulations made under this Act."*

There is no requirement in the Act for the reasons for the request to be provided. However, the Act states that a person can only request for information that directly affects him or her. So while there is no need to provide the reasons for the request, having the right of access to information limited only to information that directly affects a person arguably has the same effect as requiring a person to provide the reasons for the request because in order for the public agency to determine whether the information requested for directly affects the person, the public agency would have to make inquiries into the request.

Questions:

(i) Should the Act be amended to explicitly state that the reasons for a request for information are not required to be made known when making the request?

3B. Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery)

Section 6(3) of the Act does not require any extraneous material at the moment.

The list is reasonably complete and appears to only require from the person making the request for information, the details necessary for the public agency to identify and disclose the information.

3C. There are clear and relatively simple procedures for making requests

This indicator promotes the submission of requests by any means of communication, with no requirement to use official forms or to state that the information is being requested under the right to information law.

Section 6(3)*(a)* of the Act states that *"a request made…must be made in the form prescribed by regulations made under this Act"*. This means that a person can only make a request for information if he or she uses the official prescribed form.

Questions:

- Should a person making a request for information be allowed to make the request without using an official form?

- Should a person making a request for information be allowed to make the request through electronic means?

- What would be a clear and relatively simple procedure for making requests for information?

3D. Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification

The Act has provisions requiring public officials to provide assistance to persons making requests for information.

Section 12(1)*(a)* of the Act states that a *"public agency to which a request has been forwarded by the Commission under 8 or 10 must render effective and timely assistance"*.

Section 36(2)*(c)* of the Act states that the *"information officer must assist persons seeking information or the correction or deletion of information under this Act"*.

These provisions are rather general but they exist nonetheless.

Questions:

- *Should the Act be amended to specify the type of assistance that may be rendered by public officials to persons making requests for information?*

- *Should the Act be amended to specify the circumstances around which public officials may need to contact persons making requests for information, for clarification of the materials or details they had provided with their requests? If yes, what would these circumstances be?*

3E. Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled

This indicator requires public officials to provide assistance to persons who make requests for information if they require it due to special needs i.e. illiteracy and disabilities.

Section 13(7) of the Act states that *"in giving access to information, a public agency must take such measures as reasonably practicable to ensure that persons with disabilities are able to access such information in accordance with the rights of persons with disabilities as prescribed under section 42 of the Constitution*".

The Act only mentions assistance being rendered by public officials to those who require it due to disabilities, but there is no mention in the Act of assistance being rendered by public officials to those who are illiterate.

Questions:

- *Should the Act be amended to require public officials to provide assistance to persons who make requests for information if they require the assistance due to illiteracy?*

- *Should the Act be amended to specify the type of assistance that may be rendered by public officials to those who require the assistance due to disabilities and illiteracy?*

3F. Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days.

Section 8(c) of the Act requires the ATC to, within 20 days from the receipt of the request, inform the person who made the request that the request has been accepted and that the relevant public agency has been directed to make the information available to the person.

Questions:

- *Should persons making requests for information be provided with a receipt or acknowledgement upon the lodgement of their request to a public agency?*

- *Should the requirement for a receipt or acknowledgement to be provided be set out in the Act or in regulations or in guidelines or operating procedures?*

- *Should the receipt or acknowledgement set out the timeframe within which the request will be processed and finalised?*

- *Is it reasonable for a request for information to be processed and finalised within a timeframe of 5 working days?*

3G. Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information.

Under the Act, there are procedures in place for the redirection of a request for information from one public agency to another if the public agency that initially received the request does not have the information requested for or if they reasonably believe that the information requested is "more closely connected" with the functions of another public agency.

These procedures include an obligation on the part of the ATC to inform the person who made the request that the information is not held by the first public agency and that the request is being redirected to another public agency.

Section 10 of the Act states:

> *"(1) Notwithstanding section 12, where the Commission forwards a request to a public agency under section 8 or this section and the information to which the request relates is—*
>
> *(a) not held by that public agency but is, to the knowledge of that public agency, held by another public agency ("second public agency"); or*
>
> *(b) reasonably believed by that public agency to be more closely connected with the functions of the second public agency,*
>
> *the public agency to which the request is forwarded must notify the Commission in writing within 10 days from the receipt of the request from the Commission.*
>
> *(2) The Commission must, within 10 days from the receipt of the written notice under subsection (1) -*
>
> *(a) transfer the request to the second public agency;*
> *(b) direct the second public agency to make available to the person who made the request, where reasonably practicable, all the particulars of the information specified in the request; and*
>
> *(c) inform the person who made the request that the request has been transferred to the second public agency and that the second public agency has been directed to make the information available to that person."*

With the system under section 10 of the Act, the time limits add another 20 days onto the process (10 days to notify the ATC and another 10 days to forward to the second agency). So it takes even longer for information requested for to be disclosed.

Questions:

- *Should the grounds for the transfer be made clearer?*

- *Should the timelines be shortened to allow for a more efficient process for disclosure?*

3H. Public authorities are required to respond to requests as soon as possible.

The Act requires public agencies to provide the information requested for as soon as possible.

As mentioned above, there is an added 20 days after a request is made if the request is redirected from one public agency to another.

3I. Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).

Section 13(1) Act requires public agencies to make available the requested information in a number of different ways and in the form preferred by the person who made the request:

- by giving the person making the request a reasonable opportunity to inspect the information

- by giving the person a copy of the information

- in the case of information that is an article or material from which sounds or images are capable of being reproduced, by giving the person a copy of the article or material or by making arrangements for the person to hear those sounds or view those images

- in the case of information that is a document where words are recorded in a way in which the words are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document

The above are subject to clear and limited overrides which are contained in section 13(2) of the Act.

3J. There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).

Under the Act, the timelines can take a total of 40 days.

Questions:

- *How long should it take for a person who made a request for information to receive the information requested for?*
- *Are 20 working days a reasonable timeframe?*
- *Should the timeframe in the Act be shortened?*

3K. Are there clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension?

Under the Act, public agencies are required to give notice.

However, it is not clear whether notice is to be given within the original time period, even though they must be given as soon as possible. Also, the grounds for extensions are too broad. The wording used in section 18(1)*(c)* of the Act - *"cannot reasonably be provided … within the prescribed period"* is too broad. Finally, extensions may be for up to 90 days.

3L. Should information requests be free of charge?

Under the Act, a person who makes a request for information is required to pay the prescribed fee.

Section 6(3)*(f)* of the Act states "a request made under subsection (1) must … be accompanied by such fee as prescribed by regulations made under this Act.

Questions:

- Should it be free to make a request for information?
- Should the fee for a request for information vary between persons making the request?
- Does having a fee for a request for information prevent frivolous or vexatious requests from being made to public authorities?

3M. There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities.

The Act mentions that the fees for accessing information will be prescribed by regulations. At the moment, there is no clear indication as to whether the fees are set centrally or are being determined by individual public authorities. There is also no clear indication as to whether fees will be limited to the cost of reproducing and sending the information and whether a certain initial number of pages are provided for free.

3N. There are fee waivers for impecunious requesters

The Act does not provide for waivers of fees for those who are unable to pay the fees.

Questions:

- *Should a person who cannot afford to pay the fee for making a request for information be prevented from exercising his or her right of access to information?*

- *Should there be special consideration for waivers or exemptions for those who are unable to pay the fees for making a request for information?*

- *Who would qualify for these waivers or exemptions?*

3O. There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.

There is no mention in the Act of any limitations on or charges for the reuse of information received from public authorities.

Questions:

- Should the Act include limitations on or charges for the reuse of information received from public authorities?

- How will public authorities monitor the reuse of information received from them?

4. Promotional Measures

The fourth issue is whether there are measures in Fiji's legal framework that promote the right of access to information. We will consider this issue in respect of the following indicators:

(a) whether in Fiji's legal framework public authorities are required to appoint officials (information officers) or units with dedicated responsibilities for ensuring that they comply with their information disclosure obligations;

(b) whether in Fiji's legal framework a central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information;

(c) whether Fiji's legal framework requires public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) to be undertaken by law;

(d) whether in Fiji's legal framework a system is in place whereby minimum standards regarding the management of records are set and applied;

(e) whether Fiji's legal framework requires public authorities to create and update lists or registers of the documents in their possession, and to make these public;

(f) whether Fiji's legal framework requires training programmes for officials to be put in place;

(g) whether Fiji's legal framework requires public authorities to report annually on the actions they have taken to implement their disclosure obligations; and

(h) whether in Fiji's legal framework a central body has an obligation to present a consolidated report to the legislature on implementation of the law.

4A. Public authorities are required to appoint officials (information officers) or units with dedicated responsibilities for ensuring that they comply with their information disclosure obligations

The Act requires public agencies to designate its employees to be information officers. The information officers facilitate and process requests for access to information. They are also responsible for facilitating and processing requests for the correction and deletion of information.

Section 36(1) of the Act states:

> *"Public agencies to designate information officers*
>
> *36.—(1) A public agency must, within 20 days from the application of this Act to that public agency, designate an employee of that public agency to be the information officer of that public agency to facilitate and process requests for access to information and correction and deletion of information."*

4B. A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information

The Act vests the responsibility for promoting the right to information in the ATC. The ATC is given overall responsibility for promotional measures.

Section 38(2) of the Act states:

> *"(2) In addition to the powers and functions prescribed in this Act, the Commission is also responsible for—*
>
> *(a) publishing guidelines on minimum standards and best practices for public agencies to proactively publish information and make information publicly available;*
>
> *(b) publishing guidelines to public agencies on information and records management, including the manner in which access to information can be made more efficient by public agencies;*

(c) publishing guidelines on the creation, management and disposal of records and, subject to availability of resources, the digitising of records and use of the internet as far a possible to publish information by public agencies;

(d) training information officers and other employees of public agencies on the right to information and the effective implementation of this Act;

(e) promoting public awareness in relation to the application of this Act; and

(f) disseminating information to the public in relation to the framework and procedures for the exercise of a person's rights under this Act, including publishing material in relation to exempt matter."

4C. Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law

The Act requires the ATC to promote public awareness in relation to the right of access to information and to also disseminate information to the public in relation to the framework and procedures for the exercise of a person's right to access information.

This requirement to be undertaken by law is set out in section 38(2)*(e)* and *(f)* of the Act, which is shown above.

4D. A system is in place whereby minimum standards regarding the management of records are set and applied

The Act attempts to put in place a system whereby standards for the management of records are set and applied. It does this in sections 36(2)*(a)*(iii) and 38(2)(b) and (c).

Section 36(2)*(a)*(iii) of the Act states:

"(2) The information officer must—

(a) promote, within the respective public agency, best practices in relation to—

(iii) record management and the archiving and disposal of records."

Section 38(2)(b) and (c) of the Act states:

"In addition to the powers and functions prescribed in this Act, the Commission is also responsible for - [...] (b) publishing guidelines to public agencies on information and records management, including the manner in which access to information can be made more efficient by public agencies; (c) publishing guidelines on the creation, management and disposal of records and, subject to the availability of resources, the digitising of records and use of the internet as far as possible to publish information by public agencies [...]"

4E. Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public

The Act requires public agencies to ensure that certain information is available upon request to any member of the public. This includes the types of documents held by the public agencies, whether for inspection only, for purchase or free of charge. The information is not required to be made publicly available as it is only available upon request by a member of the public. This is evident in section 35(f) of the Act which states:

> *"A public agency must, within 12 months from the application of this Act to that public agency, ensure that the following information is available upon request to any member of the public - [...] (f) the types of documents held by the public agency, including the categories of documents that are available - (i) for inspection only; (ii) for purchase; or (iii) free of charge [...]"*

4F. Are training programmes for officials mandatory?

Section 38(2) of the Act states:

> *"(2) In addition to the powers and functions prescribed in this Act, the Commission is also responsible for - [...] (d) training information officers and other employees of public agencies on the right to information and the effective implementation of this Act [...]"*

Under section 38(2)*(d)* of the Act, the ATC may provide training to information officers and other employees of public agencies on the right to information. However, the Act does not require training programmes to be put in place for the information officers and employees of the public agencies.

4G. Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations

Fiji's legal framework does not provide for public agencies to report annually on the actions they have taken to implement their disclosure obligations, including statistics on requests received and how they were dealt with.

4H. Does the central body have an obligation to present a consolidated report to the legislature on implementation of the law?

Under section 40 of the Act, the ATC is required to include in its published annual report, a report on the exercise of its functions under the Act. The Act does not mention that the report must be tabled or reported to Parliament. However, the Act would have to be read in conjunction with other legislation, such as the *Financial Management Act 2004* which does have certain requirements for the annual reports of off-budget State entities. Interestingly, the Code of Conduct Bill tabled in Parliament in 2018 contained a similar provision on annual reports of the ATC, but with the addition of the requirement that the Report be tabled in Parliament by the responsible Minister. As the Bill has lapsed and is not written law, it does not significantly impact these deliberations.

Vanuatu has a very extensive list of the matters to be included in their central body's report. In Vanuatu's *Right to Information Act 2016*, section 61 requires the central body to provide an annual report to Parliament on a number of different matters:

- the general operation of the Act
- the activities and audited accounts of the central body for the previous financial year
- the number of applications for information made to each Government agency, relevant private entity or private entity
- the number of applications for access to information that were granted, granted subject to deletions, deferred or refused
- the provisions of the Act under which these decisions were made and the number of times each provision was invoked
- the number of transfers made
- the number of applications received for the amendment or annotation of personal records
- the number of applications for review of decisions under the Act and the outcome of those applications
- the number of complaints made to the Information Commissioner with respect to the operation of the Act and the nature of those complaints
- the number of notices served by the Information Commissioner in respect of compliance with the Act and the number of decisions made by Government agencies, relevant private entities or private entities, which were adverse to an application made under the Act
- the particulars of any disciplinary action taken against any officer in respect of the administration of the Act
- the amount of fees, fines and penalties collected under the Act
- particulars of any reading room or other facility provided by a Government agency, relevant private entity or private entity, for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility
- any other facts which indicate an effort by the Government agency, relevant private entity or private entity to administer and implement the Act

Questions:

- Should the Act be amended to require the ATC to include additional matters in the report, such as those mentioned in Vanuatu's *Right to Information Act 2016*?

- Should the Act be amended to require the tabling of the annual report of the ATC in Parliament or, if there is a standalone legislation for the formation of the ATC, should all administrative aspects of the ATC be removed from the Information Act?

5. Exceptions & Refusals

This part of this Paper considers the applicable grounds for exceptions to and refusals of information requests. The indicators used to assess these elements are:

(a) Should the Information Act prevail over other related laws?
(b) Are the exceptions under the Act consistent with international standards?

(c) Is there a harm test for exceptions?
(d) Is there a mandatory public interest override?
(e) Do exceptions cease to apply when no longer relevant?
(f) Is there consultation with relevant third parties?
(g) Are reasons required for refusal and notification of the right to an appeal?

5A. Should the Information Act prevail over other related laws?

The first indicator is whether the Information Act supersedes other written laws to the extent of conflict. Although the Act does not expressly declare its superior legislative ranking, the right to information is enshrined in the Constitution and the Constitution is the supreme law of Fiji[4]. However, even this constitutional guarantee may be limited by laws which are "necessary".[5] As the Information Act is the specific law related to information disclosures it stands to reason that its framework would be the most appropriate. This may be addressed by inserting a standard 'Act to Prevail' clause under the Information Act, similar to section 5 of the Vanuatu Right to Information Act 2016.

The UK Freedom of Information Act 2000 does not prevail over other laws, and in fact specifically states otherwise.[6]

Question:

- *Should the Information Act be subject to limitations under other laws or should prevail where there is inconsistency?*

5B. Are the exceptions consistent with international standards?

Under international best practice standards permissible exceptions are:
(a) national security;
(b) international relations;
(c) public health and safety;
(d) the prevention, investigation and prosecution of legal wrongs;
(e) privacy;
(f) legitimate commercial and other economic interests;
(g) management of the economy;
(h) fair administration of justice and legal advice privilege;
(i) conservation of the environment; and
(j) legitimate policy making and other operations of public authorities.

The Information Act provides 5 exceptions which are beyond the scope recognized for this indicator –

[4] See section 2 of the Constitution.
[5] Section 25(3) of the Constitution.
[6] Section 44(1)(a) of the UK Freedom of Information Act 2000

- that the work involved in processing the request would substantially and unreasonably divert the resources of the public agency from its operations;
- scientific and economic interests;
- privileges of Parliament;
- Cabinet documents; and
- information deemed to not be in the public interest by the Commission.

Although these additional exceptions under the Information Act exceed the list of permissible exceptions under the gold standard RTI indicators, some are found in other notable jurisdictions. Parliamentary privilege is also an exception in the United Kingdom[7], Cabinet documents[8] and documents in the public interest[9] are exceptions in Australia

Furthermore, some jurisdictions have additional exceptions, such as "information held by the system of custom, traditions and practices throughout Vanuatu"[10] and "information which for the purposes of journalism, art or literature is held by a publically owned media body in relation to its program content"[11] - also in Vanuatu.

Questions:

- *Are the additional exceptions under the Information Act appropriate?*
- *Are additional exceptions present in other jurisdictions also worth considering for Fiji?*

5C. Is there a harm test for exceptions?

Given the presumption in favour of disclosure, disclosure should pose a risk of actual harm to a protected interest for it to be refused.

Four exceptions under the Information Act are not subject to the harm test – fiduciary duty, information received in confidence from other States, Cabinet documents and commercial information.

Question:

- *Should Fiji apply the harm test to all exceptions under the Information Act?*

5D. Is there a mandatory public interest override?

Under international best practice, information must be disclosed where it is in the overall public interest, even if to do so could harm a protected interest as public interests triumph over personal or specific interests. Essentially, information about human rights, corruption or crimes against humanity must be released as it is in the public interest to do so and such interest overrides personal protections.

[7] Section 34 of the UK Freedom of Information Act 2000
[8] Section 4 of the Australia Freedom of Information Act
[9] Section 47C of the Australia Freedom of Information Act
[10] Section 4(1)(a) of the Vanuatu Right to Information Act 2016
[11] Section 4(1)(c) of the Vanuatu Right to Information Act 2016

The Information Act only sets up a mandatory override for two out of its 15 exceptions – information available to a person in the exercise of their fiduciary duty (section 20(f)) and personal information which does not affect public activity or public interest or would cause an unwarranted invasion of privacy.

Question:

- *Should public interest override protected interests?*

5E. Should exceptions cease to apply when no longer relevant?

As the right to information is a constitutional guarantee only limited by necessary laws, information should be released if the necessary exception which prevented its increase ceases to apply. Additionally, after at most 20 years, information should become available.

The Information Act does not have any provision of this nature, however, the Public Records Act 1969 prohibits the destruction of public records without the permission of the Archivist.[12] Additionally, public records over 15 years of age may be deposited with the Archives Office if the Archivist is of the opinion that the records warrant preservation.[13]

Question:

- *Should the Information Act provide the framework for the maintenance and destruction of public records?*

5F. Is consultation undertaken with relevant third parties?

In circumstances where a third party has provided the information held by a public agency, processes may be put in place to ensure that such persons are consulted, and their objections are considered.

The Information Act does not provide this.

Question:

- *Should third parties be consulted, and their objections considered?*

5G. Are reasons required for refusal and notification of the right to an appeal?

If a request is refused, the refusal should be accompanied by a statement of the reasons for refusal and must inform the applicant of their right to an appeal.

[12] Section 12 of the Public Records Act 1969
[13] Section 7 of the Public Records Act 1969

Sections 9(2) and 19(3) expressly require a statement of reasons for a refusal, however there is no mention of the need to advise the applicant of their right to an appeal.

Question:

- *Should the Act specifically require the responsible authority to inform the applicant of their right to an appeal?*

6. Appeals

The Information Act does not fully meet 11 of the 14 best practice indicators related to appeals and so these will be assessed below.

6A. An internal appeal system

To meet this metric, the Information Act must have an internal appeal system which is simple and free to use, and completed within clear timelines, such as 20 working days.

There is no internal appeal mechanism under the Information Act as requests are received by the ATC and then forwarded to the public agency for decision. An internal appeal mechanism may operate in the secondary portion of the request process, where decisions of the public agency are first appealed to a senior officer or a higher office within the public agency itself. However, as there are numerous public agencies across the State framework, creating an internal appeal mechanism within each agency may carry cost implications for the State as well as further extend an already lengthy timeline under the Act.

Additionally, as the initial request is made to the ATC and not the public agency, it is uncertain as to whether an internal appeals system would also be required within the ATC itself.

Questions:

- *Should there be an internal appeals system under the Information Act?*
- *If yes, should there be a new office created within each agency to hear that appeal or should internal appeals be made to an existing officer holder, such as the Permanent Secretary or Minister of each Ministry?*
- *Should such a system be created within the ATC, the public agency or both?*

6B. An external appeal to an independent oversight body

Under this indicator, requesters should have the right to appeal decisions to an independent administrative oversight body such as an information commission or an ombudsman.

The Information Act provides for an appeal to the Accountability and Transparency Commission (ATC), however the ATC in this regard may not be considered a fully independent body as it is involved in the original application.

Questions:

- *Is the ATC the appropriate body to hear an appeal when the initial application is received by the ATC?*
- *If not, should there be a separate administrative body established to receive the first request for information, such as an Information Unit so the ATC may serve as a purely appellate body with no role in the initial application process?*

6C. Are members of the oversight appellate body independent and qualified?

Under best practice standards an oversight appellate body must be independent and qualified in order to properly discharge its functions. The first-tier external appellate body, which in the Information Act is the ATC, must be free from strong political connections and must have relevant professional experience.

The ATC is established under the Constitution and its members are appointed by the President, on the advice of the Judicial Services Commission following consultation by the JSC with the Attorney-General.[14] The President holds a constitutional office,[15] the appointment for which is made by Parliament[16] and he or she cannot be a member of a political party.[17] The JSC advises the President on the appointment of the ATC and is in itself a constitutional body comprising the [18] Chief Justice, as chairperson; the President of the Court of Appeal; the permanent secretary responsible for justice; a legal practitioner appointed by the President on the advice of the Chief Justice following consultation with the Attorney-General; and a lay person similarly appointed.

These safeguards are in place to ensure an independent appointment process for the ATC and an additional safeguard, for the **conduct** of the ATC, exists under section 121(10) which states that "[i]n the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law". Furthermore, as a final overarching safeguard to ensure that the work of the ATC cannot be undercut by executive control over funding, section 121(11) of the Constitution provides that the remuneration of the ATC "must not be varied to their disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State".

However, in relation to the qualifications of the ATC, it is worth noting that only the qualifications of the Chairperson are prescribed, i.e., that he or she must be qualified for appointment as a judge. While this certainly ensures that the Chair is a suitably qualified individual for such an illustrious role, there remains a noticeable lack of clarity on what qualifications the other two members of the ATC must hold.

[14] Section 121 of the Constitution
[15] Established under section 81(1) of the Constitution
[16] Section 84(1) of the Constitution
[17] Section 83(1)(c) of the Constitution
[18] Established under section 104 of the Constitution

That said, further clarity for the appointment requirements of the ATC cannot reasonably be made via amendments to the Constitution considering the sheer difficulty built into the constitutional amendment process.[19] Enacting domestic legislation may be the more appropriate avenue, whether this is by way of an amendment to the Information Act, the making of standalone legislation or the enactment of a Code of Conduct Act (similar to what was attempted in 2018 with the Code of Conduct Bill 2018) to further clarify the processes for creating the ATC.

Questions:

- *Should the qualifications of the other two members of the ATC be prescribed under legislation?*
- *If so, what law would be appropriate for expanding the appointment requirements for the ATC?*
- *Also, what qualifications would be appropriate for these members?*

6D. Powers of the appellate body

In order to properly carry out its functions, the appellate body may need the power to exercise certain types of legal authority, such as the power to review classified documents and inspect premises.

Although the Constitution broadly mandates the making of legislation to prescribe the ATC's "jurisdiction, authority and powers to receive and investigate complaints against permanent secretaries and all persons holding public office", the Information Act only prescribes limited powers, such as to require a written explanation for refusal. Broader functions and powers have not been prescribed for the ATC, not even in relation to its current role under the RTI framework.

This may simply be because the ATC's role under the Information Act is facilitative and not investigative or quasi-judicial, which then begs the question of whether it needs to be. This is discussed further in points five and six below.

Questions:

- *Should the ATC have the power to review classified documents and inspect premises?*
- *Are there any other powers the ATC should exercise?*
- *Should these powers be prescribed under standalone legislation or incorporated into the current Information Act?*

6E. The decisions of the appellate body are binding

An appellate body traditionally has the power to decide on matters submitted for its review, however, this is not the case for the ATC under the Information Act. Section 22 of the Act empowers the ATC to request written explanations for refusals and

[19] Chapter 11 of the Constitution of Fiji

facilitate access to the requested information. If these conciliatory attempts are not successful, the ATC may apply to the High Court for a court order.

Ultimately it is the decision of the High Court which is binding and not the ATC.

Questions:

- *Is the role of the ATC as only a facilitator sufficient or should it operate as a quasi judicial body?*
- *Should the ATC be given the authority to hear appeals and make binding decisions?*

6F. Appropriate remedies

Flowing from points four and five above, the indicators appear to envision a framework where an appellate body, having the right to hear an appeal and make binding decisions on the appeal would then naturally require the power to order appropriate remedies for the requester, including the declassification of information where appropriate.

In Fiji the ATC's *broader* functions and powers have not, as explained above, been prescribed by written law. However, it must be noted that under the Information Act, the ATC would perform more of a facilitative function and certainly not a quasi-judicial one. As such, it may not be appropriate for a body limited to a facilitative role to have the power to make remedial orders. The questions listed in point five above would impact the discussion under this metric, as the formulation of the ATC and its role in the RTI framework may dictate the type of power it would be appropriate to possess, if any.

Questions:

- *Should the ATC be the proper appellate body for information requests?*
- *If so, should the ATC be granted the power to make remedial orders to give effect to their role as a quasi-judicial body?*

6G. Should appeals be free and accessible?

The Information Act does not prescribe a fee for complaints to the ATC over the refusal to provide information, and if the ATC is unable to facilitate subsequent access to the information, it is the ATC that initiates proceedings in the High Court on behalf of the requester.[20] Therefore, it would stand to reason that the ATC would be responsible for any fees or costs in the cause.

However, if the ATC agrees with the decision of the public agency to refuse a request for information, the requester has only one recourse and that is to appeal to the High Court against the ATC[21] and would thus bear their own costs. Similarly, even though

[20] Section 24(1) of the Information Act
[21] Section 25(1) of the Information Act

the preliminary 'appeals' processes may not require legal representation, appeals against decisions of the ATC are undertaken solely by the requester and so would most likely require legal representation in the High Court in order to properly make out a case for the appellant.

The resulting conclusion may be that only the preliminary aspects of the appeals framework in Fiji is truly free and accessible under the Information Act.

As such, this aspect of the appeals framework may need further consideration.

Questions:

- *Should the Information Act expressly state that appeals must be free of charge?*
- *Should appeals against the decision of the ATC be free of charge?*
- *Is the High Court the appropriate body for appeals against decisions of the ATC or is a tribunal, where legal representation may not be required, more appropriate?*

6H. Grounds for appeal are broad

To give full effect to the right to access information under the Constitution, a presumption must exist in favor of transparency and accessibility. This means that limits on this right should be carefully considered and applied in only necessary circumstances.[22] In the same vein, where requests are refused a sympathetic framework would enable a broad range of appeals to ensure refusals are scrutinized carefully. This would not be limited to refusals to provide information but also include refusals to provide information in the *form* requested, administrative silence and other breach of timelines, charging excessive fees, etc.

In the preliminary appeals process the Information Act limits appeals to a public agency's refusal to provide information[23], and not to the broader aspects such as refusals to provide information in the form requested etc listed above. It is unclear as to why such a limit exists.

However, in the secondary appeals process – where appeals may be made against decisions of the ATC, no such limits are prescribed.[24] It is possible that the secondary process may be sufficient to address the limits under the first, however this may depend on how the processes are undertaken in practice, after the law commences.

Question:

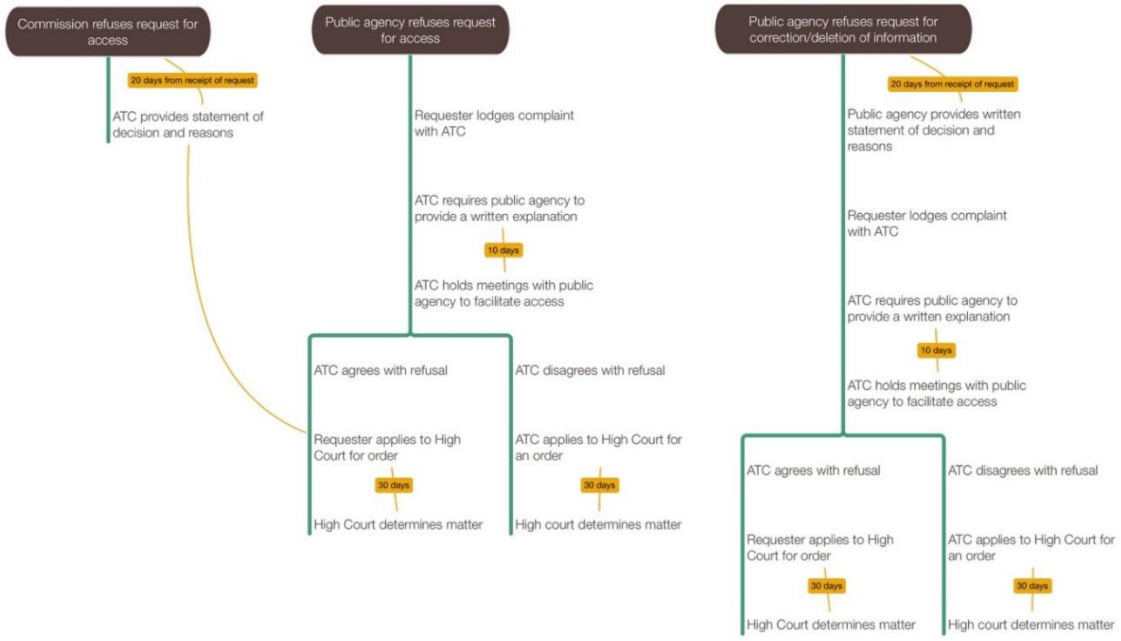
- *Should the grounds of appeal to the ATC be extended to include refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc?*

[22] See section 25(3) of the Constitution
[23] Section 22(1) of the Information Act
[24] Section 25(1) of the Information Act

6I. Clear procedures and timelines for dealing with external appeals

A functional and effective law must have clear procedures and timelines. The Information Act sets out the following process for external appeals:

Figure 1 – RTI Appeals processes



As can be seen in Figure 1 above, there are three appeals processes which flow from refusals under the Information Act – where the ATC refuses a request for information at the outset, where a public agency refuses a request for information and where a public agency refuses a request to correct or delete information. For the latter two of these processes the ATC serves as a preliminary 'appellate body', receiving complaints against decisions of the public agency. However, the ATC does not have any actual authority to compel the release or correction of information and must instead apply to the High Court for an order to accomplish this.

It is of particular note that not all timelines are prescribed.

Questions:

- *Is the appeals procedure clear and capable of being understood?*
- *Is there a need for timelines to be set out throughout the process?*
- *If so, what timelines would be appropriate?*

6J. The State's burden to show that it did not breach rules

The right to information may only be limited by laws which are necessary and as such, a sympathetic framework would incorporate presumptions in favour of securing the right and not in arbitrarily limiting it. This could include guarantees that where requests

are refused, the appeals process places the burden on the refusing party to demonstrate that in doing so it did not breach the Act.

The Information Act contains no such provision to establish this presumption.

Question:

- *Should there be express provision ensuring that the State bears the burden of showing that it did not breach the requirements under the Act?*

6K. Imposing structural measures

As assessed in points four, five and six above, the ATC as an 'appellate' body has limited powers during proceedings, does not make binding decisions and cannot put in place interim measures. Similarly, the ATC cannot order structural measures to give effect to their decisions or to improve the information sharing capacity or processes of a public agency, such as better record management or mandatory training programmes.

However, the High Court as a secondary appellate authority does have inherent powers to make a range of orders, although no details are provided in the Information Act to guide or specify the framing of such orders.

In other Fiji legislation, some direction is provided for the exercise of the High Court's authority when making orders, such as section 147(5) of the Fijian Competition and Consumer Commission Act 2010 which states:

> *"(5) The orders that may be made under this section are of the following kinds—*
>
> *(a) an order for payment of the amount of the loss or damage;*
> *(b) an order avoiding, or refusing to enforce, in whole or part, a contract or instrument;*
> *(c) an order for the variation of a contract or instrument;*
> *(d) an order directing the refund of money or the return of property;*
> *(e) an order directing the repair of, or provision of parts, for goods or the supply of specified services;*
> *(f) an order directing the payment of an amount of money in lieu of some other act required by an order being done;*
> *(g)* ***any other order the court thinks appropriate****."*

Although these orders under the FCCC Act 2010 may not be particularly relevant here, that Act demonstrates how framing the types of orders the Court may make, could be a useful tool in guiding and enabling the exercise of its powers.

Alternatively, empowering the ATC to impose mandatory structural measures may also be worth considering.

Questions:

- *Should the ATC be empowered to impose mandatory structural measures?*
- *Should the types of orders the High Court can make be specified in the Information Act?*
- *What type of structural measures should the ATC or High Court be able to impose?*

7. Sanctions and Protections

The issues to be considered under this subcategory are:

(a) Can sanctions be imposed on those who willfully act to undermine the right to information, including through the unauthorised destruction of information?

(b) Is there a system for redressing the problem of public authorities which systematically fail to disclose information or underperform?

(c) Are there legal protections against imposing sanctions on whistleblowers?

7A. Are there sanctions against those who willfully undermine the right to information?

As the right to information is constitutionally guaranteed, willfully undermining such a right may be considered severe enough to warrant some form of sanction. The Information Act, however, does not create any such sanction, whether by civil or criminal penalty. Instead, offences seem to focus more on restricting disclosure, though not unreasonably. These include restrictions for the purposes of maintaining confidentiality[25] and an offence provision for gaining unlawful access to information.[26]

In the region, Vanuatu's Right to Information Act 2016 establishes the following criminal offences:

> *86. Offences*
> *(1) A person who:*
> *(a) **refuses to receive an application for information**; or*
> *(b) in bad faith, denies an application for information; or*
> *(c) knowingly gives incomplete, misleading or wrong information; or*
> *(d) destroys information, without lawful authority; or*
> *(e) obstructs access in any way to any information; or*
> *(f) obstructs the performance of a Government agency, relevant private entity or private entity from carrying out a duty under this Act; or*
> *(g) interferes with or obstructs the work of the Information Commissioner, a Right to Information Officer or any other officer assisting the Information Commissioner or the Right to Information Officer; or*
> *(h) directs, proposes, counsels or causes any person in any manner to do any of the above,*
> *commits an offence punishable on conviction by a fine not exceeding VT500,000 or by a term of imprisonment not exceeding 1 year, or both.*

[25] Section 39(2) of the Information Act
[26] Section 41 of the Information Act

(2) If a Right to Information Officer, without reasonable cause:

(a) refuses to receive an application; or

(b) has not responded to an application within the time specified in this Act; or

(c) has vexatiously denied an application; or

*(d) has given **incorrect**, incomplete or misleading information; or*

(e) refuses to render any assistance under this Act; or

(f) obstructed in any manner the release of information,

he or she commits an offence punishable on conviction by a fine of VT500,000.

These offences appear to criminalize willful obstructions by external parties as well as by the State authority or its officers. Some of these carry elements of intention and bad faith but it is particularly interesting that under subsection (2)(d), an RTI officer who gives incorrect information without reasonable cause also commits a criminal offence.

This approach, where a State authority may be criminally liable for what may ultimately be a single failure or refusal to perform its statutory duty, is not common in the Fiji jurisdiction except for notable and rare exceptions, such as the Registration of Skilled Professionals Act 2016, which makes it an offence if the Director of Immigration does not comply with a written directive of the Skilled Professionals Evaluation Committee[27] and the Regulation of Building Permits Act 2017 which similarly criminalises the non-compliance of an approval agency with a directive of the Building Permits Evaluation Committee.[28]

The United Kingdom takes a more limited approach under section 77 of their Freedom of Information Act 2000, which states:

"77.—(1) Where—

(a) a request for information has been made to a public authority, and

*(b) under section 1 of this Act or section 7 of the Data Protection Act 1998, **the applicant would have been entitled** (subject to payment of any fee) to communication of any information in accordance with that section,*

*any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, **with the intention** of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.*

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

The element of intention applies to the entire offence and the offence appears to only activate if the requester would have been entitled to the information. The offence does apply to the public agency as well as its officers but the restrictive elements may create an appropriate balance.

These two options are worth considering if Fiji is to create sanctions for willfully undermining the right to information, however it is also worth noting that in the region neither Australia nor New Zealand have done so under their respective RTI laws.

[27] Section 10(3) of the Registration of Skilled Professionals Act 2016

[28] Section 12(3) of the Regulation of Building Permits Act 2017

Questions:

- *Should Fiji create sanctions for willfully undermining the right to information?*
- *If so, what type of sanctions would be appropriate?*
- *Are there aspects of the Vanuatu or United Kingdom RTI models that could be adapted for Fiji?*

7B. Is there a system for redressing the problem of public authorities which systematically fail to disclose information or underperform?

This issue considers whether a public agency should be held accountable for the systematic failure to disclose information or systematic underperformance. The Information Act does not create sanctions for systematic failure but given what may be described as a noted propensity for public agencies to sometimes operate rather lethargically, creating a redress mechanism may be worth considering.

The UK Freedom of Information Act 2000 empowers the Lord Chancellor to issue codes of practice "providing guidance to relevant authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the keeping, management and destruction of their records". This is similar to the guidelines the ATC may issue under the Fiji Information Act "on information and records management, including the manner in which access to information can be made more efficient by public agencies."[29] However, the UK goes further by empowering their Commissioner to give practice recommendations to the agencies when their conduct falls short of the codes of practice[30] and an enforcement notice.[31] If the agency fails to comply with the enforcement notice, the Commissioner may certify that non-compliance to the High Court where the agency may be dealt with "as if it had committed a contempt of court".[32]

In the region, Australia and Vanuatu do not have redress mechanisms for systematic failures or underperformance, but New Zealand does. The NZ Ombudsmen Act 1975 empowers the Ombudsmen to make recommendations for altering practice[33] and if these are not complied with, subsequent administrative proceedings commence for a report to the Prime Minister and the House of Representatives.

The different frameworks under UK and NZ laws are worth considering.

Questions:

- *Should Fiji establish a system for redressing systematic failure to disclose information or underperformance?*
- *If so, should Fiji adapt the UK or NZ frameworks to match Fiji circumstances?*
- *If not, are there any other ways in which systematic failure or underperformance can be addressed?*

[29] Section 38(2)(b) of the Information Act
[30] Section 48 of the UK Freedom of Information Act 2000
[31] Section 52 of the UK Freedom of Information Act 2000
[32] Section 54 of the UK Freedom of Information Act 2000
[33] Section 22(3)((d) of the New Zealand Ombudsmen Act 1975

7C. Should there be legal protection for whistleblowers?

This issue considers whether legal protections should exist to prevent the imposition of sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers). The Information Act does not provide for whistleblower protection although the enactment of written law to "provide for the protection of whistleblowers, being persons who, in good faith, make disclosures that an officer … has contravened any written law or has breached the code of conduct or has engaged in fraudulent or corrupt practices" is mandated under section 149(e) of the Constitution. This appears to have been attempted via the Code of Conduct Bill 2018 which was tabled in Parliament in 2018 but has since lapsed for lack of progress through the parliamentary process. Part 5 of the Bill sets out a framework which protects complainants from civil or criminal liability, disciplinary action and breaches of confidentiality or secrecy provisions[34] as well as making it an offence to take detrimental action against complainants[35] or to disclose information that might identify the complainant.[36] Under the Bill, the ATC may also seek remedial or injunctive orders from the High Court to stop any detrimental action taken against a complainant.[37]

Additionally, there are specific laws which set out whistleblower protections in limited circumstances which taken together may create a bare, incomplete whistleblower protection framework. These include informer protection for information connected to offences under the Prevention of Bribery Act 2007[38] and breaches under tax laws.[39] However, given the inadequacy of the current framework, it is clear that the lapsing of the Code of Conduct Bill 2018 has left a significant lacuna.

In the United Kingdom, Australia and New Zealand separate laws provide these protections – namely the UK Public Interest Disclosure Act 1998, Australia Public Interest Disclosure Act 2013 and New Zealand Protected Disclosures Act 2000. In Vanuatu, the following provision is couched within the Right to Information Act 2016:

> *"83. Whistleblowers*
>
> *(1) A person is not liable to any civil or criminal action or any administrative or employment related sanction or detriment for:*
>
> *(a) releasing information on any wrongdoing; or*
> *(b) releasing information which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.*
>
> *(2) For the purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious mal-administration regarding a Government agency, relevant private entity or private entity."*

[34] Clause 20 of the Code of Conduct Bill 2018
[35] Clause 21 of the Code of Conduct Bill 2018
[36] Clause 23 of the Code of Conduct Bill 2018
[37] Clause 22 of the Code of Conduct Bill 2018
[38] Section 30A of the Prevention of Bribery Act 2007
[39] Section 51A of the Fiji Revenue and Customs Service Act 1998

Finally, it is worth noting that under the Fiji Code of Conduct Bill, whistleblower protections cease to apply if:

(a) the complainant fails, without reasonable excuse, to assist the Commission in its investigation;
(b) the complainant discloses the details of their complaint to another person;
(c) the complaint is malicious, politically motivated or intended to defame; or
(d) the complainant breaches provisions of the Bill.

Questions:

- *Should there be legal protection for whistleblowers?*
- *If so, should these be enacted as standalone legislation, under the RTI framework or under the Code of Conduct framework as was attempted in 2018?*
- *Are the whistleblower provisions under the Code of Conduct Bill sufficient?*
- *Should the grounds of forfeiture of protection under the Bill be reviewed or removed?*

Annex 1 – Terms of Reference

FIJI LAW REFORM COMMISSION

TERMS OF REFERENCE
REVIEW OF THE INFORMATION ACT 2018, ACCOUNTABILITY AND TRANSPARENCY BILL 2025, CODE OF CONDUCT BILL 2025

I, . Graham Leung, Attorney-General of Fiji, by virtue of the power conferred on me by section (5)(2)(a) of the Fiji Law Reform Commission Act 1979, refer as follows:

1. **Review of the Information Act 2018**

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the *Information Act* 2018:

A. Basic Purposes and Principles -

i) to evaluate whether the basic purposes of, and benefits of the *Information Act* 2018 aligns with the Act's intended purpose concerning the right of access to information established under sections 25 and 150 of the Constitution;

ii) to assess whether the Act requires modifications to better achieve these purposes;

B. Proposed Amendments to *Information Act* 2018 -

i) to determine if the objectives outlined in section 4 of the Act fully reflects its purpose and supports the right of access to information;

ii) to explore whether the scope of the application of the Act should be extended to cover:
- private sector bodies;
- Government Business Enterprises;
- Legislative bodies; and
- Bodies owned, controlled or funded by public agencies;

iii) to review whether the power of the Minister to exclude public agencies should be amended;

iv) to review the scope of information covered to consider whether it should be amended so that any information held by a public agency, irrespective of direct interest and regardless of the date of its existence should be subject to the Act.

v) to revise the requesting procedure allowing requests to be made directly to the public agency, or a central processing unit, rather than through the Accountability and Transparency Commission (ATC);

vi) otherwise, to align the procedures for making and processing requests with international standards;

vii) to evaluate the existing exemption provisions, including the potential to remove or amend any existing grounds for exemption, identifying which exemptions should be subject to a public interest test and the need for standardization of that test;

viii) to promote proactive disclosure and mandate public agencies to publish information contained on the list in section 35 of the Act, to expand the list in section 35, and enabling ATC to expand this list;

ix) to explore whether the Act needs to explicitly provide that it overrides conflicting provisions in other laws including, secrecy provisions;
x) to determine whether the Act should provide for sanctions for those who wilfully obstruct access to information contrary to its provisions;
xi) to provide whistle-blower protections for good faith disclosures of wrongdoing;
xii) to examine the possibility of incorporating a sunset clause that automatically release information of public interest after a certain period;
xiii) to provide for a system for consulting third parties where information provided by them in confidence has been requested;
xiv) to evaluate the appropriateness and necessity of the existing regime of fees and charges and whether section 19(1)(b)should be repealed;
xv) to strengthen the regime for records management in the Act;
xvi) to require public agencies to ensure that their staff receive proper training on access to information and to report annually on how they have implemented the Act;
xvii) to consider any consequential amendments to the Official Secrets Act 1922 and Public Records Act 1969 and any other relevant legislation; and
xviii) to address any related matters.

2. Accountability and Transparency Commission ("ATC") Bill 2025

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the **Accountability and Transparency Commission ("ATC") Bill 2025**:

i) to set out clear objectives or a clear purpose of the ATC Bill 2025;
ii) to give effect to the provisions set out in Section 121 of the Constitution of Fiji regarding the establishment of the Accountability and Transparency Commission whilst proposing additional provisions to enhance the effectiveness of the Bill;
iii) to consider repealing the provisions relating to the ATC under the existing Information Act 2018 (e.g. Part 5 of the Act, sections 6-11, 22-25, 45 and 47 of the Act) and the Code of Conduct Bill 2018 (e.g. Parts 2 and 4 of the Bill), so that the same can be reflected in the ATC Bill instead;
iv) to address any other related matters.

3. Code of Conduct Bill 2025

The Fiji Law Reform Commission is tasked with a review into the following matters concerning the **Code of Conduct ("CoC") Bill 2025**:

i) to set out clear objectives or a clear purpose of the CoC Bill 2025;
ii) to give effect to the provisions set out in Section 149 of the Constitution regarding the establishment of a code of conduct for public office holders and the standards of accountability and transparency required of those persons;
iii) to consider the role of the ATC in handling complaints about the conduct of public office holders and the enforcement of a code of conduct;
iv) to consider the role of declarations made by public office holders and the most effective way to make the information accessible to the public;
v) to address any other related matters.

4. Joint Review

The Commission shall conduct this review in cooperation with the Office of the Attorney-General.

5. Timeline

A Final Report, is to be presented to the Attorney-General by 17th February 2025

Issued this 21 day of January 2025.

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Mr. Graham Leung

ATTORNEY- GENERAL

Annex 2 – Consolidated List of Guiding Questions

1. Who should be allowed to make a request for information?
2. Should the Act only allow natural persons to make a request for information or should legal persons also be allowed to make such requests?
3. If a legal person is allowed to make a request, should all legal persons be allowed to do so or should this be limited to bodies that are incorporated in Fiji? Should bodies incorporated outside of Fiji with a place of business in Fiji be allowed to make a request? Should unincorporated bodies formed outside of Fiji with a place of business in Fiji be allowed to make a request?
4. Should the Act only allow citizens and permanent residents of Fiji to make a request for information or should any natural person be allowed to make such requests?
5. If any natural person is allowed to make a request, should the natural person be in Fiji in order to make the request or can the natural person be outside of Fiji and be allowed to make the request?
6. Should the Act be amended to contain a specific statement of the principles of the right to information?
7. Should the Act be amended to include the external benefits of the right of access to information?
8. Should the Act adopt wording similar to that in section 3 of Australia's Freedom of Information Act 1982?
9. Should a person only be allowed to make a request for information that directly affects him or her?
10. Should the Act extend the scope to allow a person to make a request for information regardless of whether the information requested directly affects the person making the application?
11. Should a person be allowed to make a request for information that exists before the coming into existence of the Act?
12. Should the definition of 'public agency' be amended to include corporations that are not 100% Government-owned but that are Government-controlled?
13. Should the responsible Minister be allowed to exempt the executive from the application of the provisions of the Act?
14. Should the definition of 'public agency' be amended to specifically mention the legislature?
15. Should the responsible Minister be allowed to exempt the legislature from the application of the provisions of the Act?
16. Should the responsible Minister be allowed to exempt a court or tribunal from the application of the provisions of the Act?
17. Should the right of access to information apply only to commercial entities that are wholly-owned by the State?
18. Should the right of access to information apply also to commercial entities that are controlled by the State?
19. Should the definition of 'Government company' under the Act be amended so that it refers to Government-controlled companies with at least 50% ownership?
20. Should any of the public authorities be allowed to be exempted from the application of the Act?
21. Should section 21 of the Act be amended to limit the broad powers given to the responsible Minister?
22. Should the right of access to information also apply to private bodies that perform a public function, such as independent contractors engaged by the State?
23. Should the right of access to information also apply to private bodies that receive any public funding or should the right only apply to private bodies that receive significant public funding?
24. What would be considered as significant public funding?

25. Should the Act be amended to explicitly state that the reasons for a request for information are not required to be made known when making the request?
26. Should a person making a request for information be allowed to make the request without using an official form?
27. Should a person making a request for information be allowed to make the request through electronic means?
28. What would be a clear and relatively simple procedure for making requests for information?
29. Should the Act be amended to specify the type of assistance that may be rendered by public officials to persons making requests for information?
30. Should the Act be amended to specify the circumstances around which public officials may need to contact persons making requests for information, for clarification of the materials or details they had provided with their requests? If yes, what would these circumstances be?
31. Should the Act be amended to require public officials to provide assistance to persons who make requests for information if they require the assistance due to illiteracy?
32. Should the Act be amended to specify the type of assistance that may be rendered by public officials to those who require the assistance due to disabilities and illiteracy?
33. Should persons making requests for information be provided with a receipt or acknowledgement upon the lodgement of their request to a public agency?
34. Should the requirement for a receipt or acknowledgement to be provided be set out in the Act or in regulations or in guidelines or operating procedures?
35. Should the receipt or acknowledgement set out the timeframe within which the request will be processed and finalised?
36. Is it reasonable for a request for information to be processed and finalised within a timeframe of 5 working days?
37. Should the grounds for the transfer be made clearer?
38. Should the timelines be shortened to allow for a more efficient process for disclosure?
39. How long should it take for a person who made a request for information to receive the information requested for?
40. Are 20 working days a reasonable timeframe?
41. Should the timeframe in the Act be shortened?
42. Should it be free to make a request for information?
43. Should the fee for a request for information vary between persons making the request?
44. Does having a fee for a request for information prevent frivolous or vexatious requests from being made to public authorities?
45. Should a person who cannot afford to pay the fee for making a request for information be prevented from exercising his or her right of access to information?
46. Should there be special consideration for waivers or exemptions for those who are unable to pay the fees for making a request for information?
47. Who would qualify for these waivers or exemptions?
48. Should the Act include limitations on or charges for the reuse of information received from public authorities?
49. How will public authorities monitor the reuse of information received from them?
50. Should the Act be amended to require the ATC to include additional matters in the report, such as those mentioned in Vanuatu's Right to Information Act 2016?
51. Should the Act be amended to require the tabling of the annual report of the ATC in Parliament or, if there is a standalone legislation for the formation of the ATC, should all administrative aspects of the ATC be removed from the Information Act?
52. Should the Information Act be subject to limitations under other laws or should prevail where there is inconsistency?
53. Are the additional exceptions under the Information Act appropriate?
54. Are additional exceptions present in other jurisdictions also worth considering for Fiji?
55. Should Fiji apply the harm test to all exceptions under the Information Act?

56. Should public interest override protected interests?
57. Should the Information Act provide the framework for the maintenance and destruction of public records?
58. Should third parties be consulted, and their objections considered?
59. Should the Act specifically require the responsible authority to inform the applicant of their right to an appeal?
60. Should there be an internal appeals system under the Information Act?
61. If yes, should there be a new office created within each agency to hear that appeal or should internal appeals be made to an existing officer holder, such as the Permanent Secretary or Minister of each Ministry?
62. Should such a system be created within the ATC, the public agency or both?
63. Is the ATC the appropriate body to hear an appeal when the initial application is received by the ATC?
64. If not, should there be a separate administrative body established to receive the first request for information, such as an Information Unit so the ATC may serve as a purely appellate body with no role in the initial application process?
65. Should the qualifications of the other two members of the ATC be prescribed under legislation?
66. If so, what law would be appropriate for expanding the appointment requirements for the ATC?
67. Also, what qualifications would be appropriate for these members?
68. Should the ATC have the power to review classified documents and inspect premises?
69. Are there any other powers the ATC should exercise?
70. Should these powers be prescribed under standalone legislation or incorporated into the current Information Act?
71. Is the role of the ATC as only a facilitator sufficient or should it operate as a quasi judicial body?
72. Should the ATC be given the authority to hear appeals and make binding decisions?
73. Should the ATC be the proper appellate body for information requests?
74. If so, should the ATC be granted the power to make remedial orders to give effect to their role as a quasi-judicial body?
75. Should the Information Act expressly state that appeals must be free of charge?
76. Should appeals against the decision of the ATC be free of charge?
77. Is the High Court the appropriate body for appeals against decisions of the ATC or is a tribunal, where legal representation may not be required, more appropriate?
78. Should the grounds of appeal to the ATC be extended to include refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc?
79. Is the appeals procedure clear and capable of being understood?
80. Is there a need for timelines to be set out throughout the process?
81. If so, what timelines would be appropriate?
82. Should there be express provision ensuring that the State bears the burden of showing that it did not breach the requirements under the Act?
83. Should the ATC be empowered to impose mandatory structural measures?
84. Should the types of orders the High Court can make be specified in the Information Act?
85. What type of structural measures should the ATC or High Court be able to impose?
86. Should Fiji create sanctions for willfully undermining the right to information?
87. If so, what type of sanctions would be appropriate?
88. Are there aspects of the Vanuatu or United Kingdom RTI models that could be adapted for Fiji?
89. Should Fiji establish a system for redressing systematic failure to disclose information or underperformance?
90. If so, should Fiji adapt the UK or NZ frameworks to match Fiji circumstances?

91. If not, are there any other ways in which systematic failure or underperformance can be addressed?
92. Should there be legal protection for whistleblowers?
93. If so, should these be enacted as standalone legislation, under the RTI framework or under the Code of Conduct framework as was attempted in 2018?
94. Are the whistleblower provisions under the Code of Conduct Bill sufficient?
95. Should the grounds of forfeiture of protection under the Bill be reviewed or removed?