



Africa Freedom of Information Centre

**Analysis of Zimbabwe's Access to Information
and Protection of Privacy Act, 2008**

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Thank you all.

Gilbert Sendugwa
Coordinator & Head of Secretariat

About AFIC

The Africa Freedom of Information Centre (AFIC) is a pan African non governmental, not for profit and non partisan organization promoting the right of access to information in Africa. The organization was established in the year 2008 as part of the implementation of the September 2006 Lagos Declaration. In April 2012 the organisation attained Observer Status with the African Commission on Human and Peoples Rights and is represented on Steering Committees of major regional networks and right to information initiatives. AFIC works to:

1. Promotion of the right of access to information through providing a coordinated approach to regional advocacy initiatives;
2. Increasing knowledge base on access to information through coordination and development of ATI research;
3. Promote the ratification, domestication and implementation of regional and international standards;
4. Facilitate information sharing and learning among different civil society groups and actors through network development and website;
5. Promoting the improvement of the law through coordination of public interest litigation at regional and sub regional level;
6. Facilitating capacity enhancement of various in-country civil society groups.

AFIC first operated from Lagos Nigeria but moved offices to Kampala at the beginning of 2010. The organization has grown its membership to twenty six members in sixteen African countries.

This review is part of our effort to increase knowledge base on access to information and raise awareness about the right to information in Francophone Africa in particular and Africa in general.

Section I: Introduction

The Zimbabwe Access to Information and Protection of Privacy Act (the “Zimbabwe Act”) was first published in 2002 and most recently amended and restated in 2008. The Zimbabwe Act has been criticized as being more of a regulatory device than a means for which Zimbabwean citizens may meaningfully avail themselves of Zimbabwean law as a means to access information. Accordingly, this memorandum analyses the Zimbabwe Act on the basis of the Draft Model Law for AU Member States on Access to Information (the “Model Law”)¹ and the Declaration of Principles on Freedom of Expression in Africa (the “Declaration”)², the former being widely considered the standard for freedom of information statutes in Africa and the latter containing overarching principles by which African states may find thematic guidance in drafting freedom of information statutes. This memorandum summarizes key provisions of the Zimbabwe Act and details the content’s treatment in the Model Law and the Declaration, where applicable.

Section II: Access to Information

The Zimbabwe Act provides for general access to information except for certain excluded information. General access however, does not apply to non-citizens, permanent residents or persons holding some other employment or residency permit. Only mass media services registered pursuant to the Zimbabwe Act or broadcasters registered pursuant to the Broadcasting Services Act can avail themselves of the Zimbabwe Act.³ By contrast, the Model Law and the Declaration provide that any person can request and receive information, irrespective of a citizenship or other registration requirement. Foreign states and their agencies have less access to information rights under The Zimbabwe Act. As a general rule, applicants requesting information must make detailed requests in order to make it easier to find the information. Subject to certain exemptions, applicants must pay a fee for accessing records and related services. When reasonable and necessary, the head of a public body must take reasonable steps to assist an applicant in retrieving information. Unlike the Model Law, the Zimbabwe Act does not contain a proactive disclosure provision that requires public and private bodies to disclose certain information without having to wait for an individual to request such information. It similarly lacks a provision creating an Information Officer charged with managing information requests, handling mandatory disclosures and otherwise facilitating the legitimate disclosure of information to the public.⁴

A response by a public head to an applicant’s request shall state whether or not access to the requested information is granted. If information is not granted, an applicant may request that the Zimbabwe Media Commission (the “Commission”) review the decision. Refusal may be based on (a) requests that contravene the Zimbabwe Act, (b) disclosure relates to a third party protected from disclosure, and/or (c) it is not in the public interest to disclose. If access is granted then an applicant gets the opportunity to examine the information or receive a copy.

If receiving a copy is untenable then the applicant will have the opportunity to take notes. The Zimbabwe Act does not contain an affirmative duty for public bodies to ensure that applicant’s request complies with its procedural requirements, although the Zimbabwean Act does permit a public body to assist an applicant in requesting information in an appropriate manner.

1 The Model Law was prepared under the auspices of the Special Rapporteur on Freedom of Expression and Access to Information in Africa in partnership with the Centre for Human Rights, University of Pretoria.

2 The Declaration was a product of the African Commission on Human and Peoples’ Rights, 32nd Session, October 17-23, 2002.

3 Zimbabwe Act §5.

4 Model Law §§6 and 8. Declaration §IV.

In certain cases where a large amount of information is requested, a request is not very detailed or a department body needs to consult with a third party, then a department's response may be delayed. The department body must provide the reason for the extension and provide a date when a response can be expected. If a department head determines that a request is more appropriate for another public body, it can be transferred so long as the applicant is notified. The Zimbabwe Act provides the potential for lengthier delay in the production of requested information. The extension period whereby a public body can request more time to search for information is much longer under the Zimbabwe Act (30 days) than under the Model Law (14 days). However, the period in which a public body may transfer an information request to another public body is not significantly longer than the Model Law (10 days under the Zimbabwe Act as opposed to 5 days under the Model Act).⁵ Both the Model Law and the Zimbabwe Act permit a charge for reproducing records and information; however the Model Law provision contains additional language limiting the set of circumstances in which a fee can be charged for reproducing information. For example, the Model Law provides that no fee shall be charged when the information requested is in the public interest, for reproduction of personal information of the requester or where the requester is indigent, while the same provisions are not present in the Zimbabwe Act.⁶

Section III: Protected Information

Information relating to cabinet deliberations may not be revealed except those contained in records for twenty-five years or more or where deliberations, resolutions and the like were held in the presence of members of the public. Advice given to the president, a cabinet minister or a public body may not be disclosed except public opinion polls, statistical surveys, economic forecasts, information that a head of a public body has cited publicly and information contained in the record that has been in existence for ten years or more.⁷ Also, information subject to client-attorney privilege may not be disclosed. The same protection (or treatment at all) is not afforded to private parties in possession of potentially regulated information. Whereas the Model Law contemplates an entire class of entities that are private (bodies receiving government funding or support), the Zimbabwe Act does not, on its face, cover relevant private bodies.

It addresses public bodies, only which include governmental departments, boards, commissions, agencies and courts. The Model Law defines private bodies as partnerships, natural persons engaged in trade business or a profession but only in such capacity, or any former or existing "juristic" person or any successor in title. This disparity fits with the general trend that the Zimbabwe Act is primarily a tool for controlling information withheld by the government of Zimbabwe and for determining the potential dangers of information disclosed by the media (e.g. whether or not the disclosure of information by the media warrants censure).

A head of a public body may not disclose information whose disclosure would unreasonably prejudice a law enforcement process. However, the head of a public body may disclose reports prepared in the course of routine inspections, statistical analysis on the degree of law enforcement success or statistical information regarding the Attorney General's decision on prosecution of offenses. The head of a public body may disclose reasons for not disclosing similar information to the person requesting such information.

5 Zimbabwe Act §12. Model Law§15.

6 Zimbabwe Act §21.3. Declaration §IV.

7 Zimbabwe Act §§14, 15.

Upon the advice of the minister responsible for local government or the minister responsible for foreign affairs, information (including secret communications) that could affect the relations between the Zimbabwean government and foreign states or international organizations may not be disclosed. However, information other than law enforcement information may be disclosed after being in existence for twenty or more years.

The exemption contained in the Zimbabwe Act for freedom of information requests is similar to that of the Model Law. It provides for refusal to release information that could prejudice international relations, hinder the ability of public bodies to receive frank and honest advice, and where necessary for law enforcement reasons. However, the Zimbabwe Act does not provide for redaction of parts of a document when person requests information but parts of the document contain sensitive information.

A head of a public body may refuse to disclose to an applicant any information that may result in harm to the planning, financial or economic interests of the public body or state. Such information includes trade secrets, personnel management data, and certain negotiations. However, product or environmental testing information may be disclosed if carried out by a public body unless it was a service to a person, group or organization that paid a fee for such service or for the development of testing methods.

The head of a public body may refuse to disclose to an applicant the personal information concerning the applicant if such disclosure will result in a threat to the applicant's or another person's safety or mental or physical health.⁸

The right of access to information pursuant to this Act may not be deemed to be denied where under the Zimbabwe Act or any other law the head of a public body refuses to disclose information; (a) that is otherwise available to members of the public upon payment of a specific fee; or (b) that will be published or released to members of the public within sixty days of the date of receiving the applicant's request.

The head of a public body may refuse to disclose to an applicant any information that will reveal the trade secrets or commercial, financial, employment, scientific or technical information of a third party that was supplied, in confidence to the public body, and the disclosure of which could reasonably be expected to— (a) significantly harm the competitive position or interfere with the negotiating position of the third party; or (b) result in similar information being no longer provided to the public body when it is in the public interest that such information continues to be so provided. This provision may not apply when a third party consents to the disclosure, the information is in the custody or control of the National Archives or the information is contained in a record that is in the archives of a public body and has been in existence for thirty or more years.

The head of a public body shall not disclose personal information to an applicant if the disclosure will result in the unreasonable invasion of a third party's personal privacy. In determining whether or not a disclosure of personal information amounts to an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether—(a) the disclosure is desirable or necessary for the purpose of subjecting the activities of the government or a public body to public scrutiny; (b) the disclosure is likely to promote

⁸ Zimbabwe Act §§17-21.

public health and safety or the protection of the environment; (c) the personal information is relevant to a fair determination of the applicant's rights; (d) the disclosure will assist in researching or validating the claims, disputes or grievances of indigenous people; (e) the third party will be exposed unfairly to financial or other harm; and other similar factors.

The Zimbabwe Act provides some examples in which disclosure would result in an unreasonable invasion of a third party's personal privacy including if the information: (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation; (b) was compiled and is identifiable as part of an investigation into a possible violation of law, unless disclosure is necessary to prosecute such violation or to continue the investigation; (c) relates to eligibility for income assistance or social welfare benefits or to the determination of benefit levels; or (d) relates to employment, occupational or educational history. Certain disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if authorized by another law, pertains to expenses incurred while traveling on business for a public body, or the information is for the purposes of information or statistical compilation authorized by law.

Section IV: Collection, Protection and Retention of Personal Information by Public Bodies

A public body may only collect personal information if (a) the collection of that information is expressly authorized in terms of an enactment; (b) the information is to be collected for the purposes of national security, public order or public health; (d) the information is necessary for an operating program, function or activity of the public body; or (e) the information will be used to formulate public policy.

A public body shall inform a person from whom it intends to collect personal information of the purpose for which the personal information is being collected and the legal authority for collecting it unless (a) the information relates to law enforcement; or (b) the Commission excuses a public body from complying with the subsection if doing so would result in the collection of inaccurate information, or defeat the purpose of, or prejudice the use for which, the information is collected. A public body shall, if it intends to use an individual's personal information to make a decision that will directly affect that individual, take every reasonable step to ensure that the information is accurate and complete.

Where a person has reason to believe that personal information relating to her that is in the custody or control of a public body contains an error or omission, he may request the head of that public body to correct such information. The head of a public body shall protect personal information that is under his custody or control by taking reasonable steps to ensure that there is adequate security and there is no unauthorized access, collection, use, disclosure or disposal of such personal information. If a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to have access to it. Any person who, when required under any enactment to supply to a public body any personal information verbally or in writing about herself or a third party, supplies any information which he or she knows to be false or does not have reasonable grounds for believing to be true, shall be guilty of an offence and liable to receive a fine or to imprisonment for a period not exceeding six months or to both a fine and imprisonment.

Section V: Use and Disclosure of Personal Information

Section 36 of the Zimbabwe Act considers the use of personal information by public bodies. Unfortunately, the Model Law does not contain an analogous provision. Section 36 indicates that information collected by a public body may be used only for the purposes for which it was collected or if the individual who is the subject of such information consents to its use. The provision, though facially protective of information, may be used by a government to deny information that might otherwise be released under the Model Law. The Model Law places no similar restriction on the release of information, and it often permits/prohibits the release of information by a public body based on a number of factors (e.g. its sensitivity, its public purpose, its effect on international relations, etc.) that generally do not include the original purpose for which the information was collected. This provision endows various public bodies of Zimbabwe to deny the release of information for no other reason than that the information was collected for a purpose other than the purpose intended by the requestor. Implicit in the requirement is that the requestor must have a specific purpose, that such purpose must be made clear in the request for information, and that no use other than the use for which the information was collected is a relevant use. It relies on misplaced assumptions and provides a needless barrier to the release of information held by public bodies.

Under Section 37 of the Zimbabwe Act, the national archives (or the archives of any public body) may disclose personal information to a third party if it serves historical research or any other lawful purposes, so long as (i) the disclosure would not result in an unreasonable invasion of a person's personal privacy under the terms of The Zimbabwe Act or (ii) the information is about a person who has been deceased for thirty years or more. The Model Law treats similar information under the larger umbrella of Section 38: Personal information of a third party. Section 38 of the Model Law provides that a request for information made by a third party may be refused if such request may result in "the unreasonable disclosure of personal information about a natural third party, including a deceased individual." However, under Section 38(2) of the Model Law, a request for the disclosure of information must not be refused if the third party about whom the information has been requested has been deceased for longer than 10 years.⁹

Section VI: Media and Information Commission

Sections 38 and 39 of the Zimbabwe Act create a Media and Information Commission and articulate the functions of the Commission. The Commission is tasked with, among other things, upholding and developing a free press, ensuring equitable access to information by the people of Zimbabwe, to inform the public of the Zimbabwe Act, commission research into anything affecting the achievement of the purposes of the Zimbabwe Act, to register mass media in Zimbabwe, and enact provisions permitted under the Zimbabwe Act. Pursuant to Section 38, nine individuals shall comprise the Commission, one of whom shall be the chairperson. Individuals appointed to the Commission must be chosen for their knowledge and experience in "the press, printed, or electronic media or broadcasting." The Model Law, by contrast, contains a lengthy section contemplating an oversight mechanism (the "Oversight Commission") that is similarly charged with promoting, monitoring, and protecting the right to access information. Part VI of the Model Law¹⁰, includes (i) the establishment of the Oversight Commission, (ii) its independence and powers, (iii) its monitoring responsibilities, (iv) its

⁹ Exceptions to this policy exist under the Model Law in the event that the requestor of the information is requested by or on behalf of the deceased's next of kin or by the executor of an estate.

¹⁰ Part VI contains §§59 – 98.

promotion responsibilities, (v) its enforcement powers, (vi) procedural protections relating to applications made to the Oversight Commission, (vii) its investigative responsibilities, and (viii) the treatment of decisions made by the Oversight Commission.

The differences between the Zimbabwe Act's treatment of the Commission and the Model Law's treatment of the Oversight Commission are significant. For example, while the Zimbabwe Act requires only that individuals appointed to the Commission be chosen on the basis of press, media, or broadcast experience,¹¹ the Model Law requires that individuals selected for the Oversight Commission must be recognized human rights advocates, must not have been convicted of a crime involving violence or dishonesty, and must not have, in the last five years, occupied an office within a political party¹². Section 61 of the Model Law establishes a term of office and limits members of the Oversight Commission to two terms, while the Zimbabwe Act is entirely silent on the issue. Section 62 of the Model Law suggests a scale for remuneration of the Oversight Commission members, while the Zimbabwe Act is similarly silent. Whereas Section 39 of the Zimbabwe Act provides a list of "functions" of the Commission, the Model Law devotes entire sections to critical items such as ensuring Oversight Commission independence¹³, establishing an Oversight Commission code of conduct¹⁴, the hiring of staff members and experts¹⁵, and the indemnification of individuals working under the Oversight Commission¹⁶.

Whereas the Zimbabwe Act treats the monitoring responsibilities of the Commission with a single broad provision, the Model Law includes multiple provisions relating to monitoring, including provisions that require the submission of reports of the Oversight Commission, the creation of reporting guidelines to help further aid public and private entities required to comply with the Model Law, the right to request additional information from public and private entities required to comply with the Model Law.

Section 41 of the Zimbabwe Act references the Fifth Schedule, which includes basic financial and accounting details relating to the operation of the Commission. Perhaps understandably, the Model Law scants the more practical issues relating to the financial operations of the bodies that it contemplates. Whereas Section 42 of the Zimbabwe Act requires that the Commission submit an annual report to the [Minister] assigned to administer the Zimbabwe Act, Section 74(c)(3) of the Model Law requires the Oversight Commission send a full report of its audit findings to Parliament. In addition, the Model Law requires that the Oversight Commission collect annual reports from all public and private bodies that receive information requests under the Model Act.

The Model Law goes so far as to permit the Oversight Commission to sanction those bodies that fail to provide annual reports to the Oversight Commission.

Section VII: Media Council

One structural difference between the regulatory systems contemplated under the Zimbabwe Act and the Model Law is that the Zimbabwe Act maintains both the Commission and a Media Council. The Council's stated purpose is "exercising disciplinary control" along with any other powers conferred under the Zimbabwe Act. Together, the Council and the

11 Zimbabwe Act §38(3).
12 Model Law§60.
13 Model Law§63.
14 Model Law§64.
15 Model Law§§66, 67.
16 Model Law§68.

Commission oversee and administer the Zimbabwe Act. The Council is made up of one member of the Commission, along with representatives from various industries (including representatives working in journalism, publishing, advertising, mass media training, organized religion, business, legal practice, legal academia, trade unions, youth groups, and women's groups). Council members, much like Commission members, are not subject to any specific disqualifications based on political affiliation or criminal history (unlike those placed on Oversight Commission members under the Model Law). Instead, much like Commission members, Council members need only be drawn from a certain designated sector of society.

Section 42B of the Zimbabwe Act contemplates the creation of a code of ethics to govern journalists and mass media services. There is no analogous provision in the Model Law; the only code of ethics contemplated under the Model Law is a code of conduct that governs the behavior of the Oversight Commission¹⁷. The most striking distinction between the collective role of the Council and the Commission as compared to the Oversight Commission is the enforcement mandate of each entity. The Commission, in consultation with the Council, is charged with enforcing a code of conduct that expressly dictates the proper behavior of journalists and mass media entities. Section 42B of the Zimbabwe Act specifically focuses on allegations made against journalists who have published statements that are injurious or in contravention of the Zimbabwe Act. The Commission and the Council are charged with calling for an investigation whenever there exists reasonable grounds for believing that any journalist or mass media service has committed a breach of the code of ethics established under the Zimbabwe Act¹⁸. Although the Council is expressly created for the purposes of hearing and resolving potential breaches under the Zimbabwe Act, the Commission may, for any reason it deems fit, determine not to bring an allegation of wrongdoing under the Zimbabwe Act to the Council for its decision.

It may instead determine to impose a fine upon the violator in question, skirting the entire procedural guarantee provided by the Zimbabwe Act to journalists and mass media services. By contrast, the Oversight Commission is charged with, among other things, hearing complaints levied by third parties. Under Section 81 of the Model Law, the Oversight Commission, is required to field claims and inquiries that relate predominantly to instances of a third party (i) withholding or failing to provide information in response to a request for information or (ii) failing to transmit information appropriately to a third party. Provisions under the Model Law create a role for the Oversight Commission as an administrative judge, charged with determining whether the decision to withhold information by a relevant entity was proper. By contrast, the Zimbabwe Act seems to deputize the Commission and Council as media police. For example, Section 42D of the Zimbabwe Act enumerates the powers of the Council, which are nearly entirely punitive (as opposed to inducing the disclosure of information). Those powers are predominantly limited to (i) cautioning journalists, (ii) ordering journalists to pay fines, (iii) suspending a journalist's accreditation, (iv) deleting a journalist's name from the roll of journalists, (v) imposing certain conditions dictating how a certain journalist can practice journalism, (vi) cancelling the registration certificate of a mass media entity. This role is dramatically different from the one envisioned for the Oversight Commission under the Model Law. The Oversight Commission primarily determines the validity of decisions to withhold information, whereas the Council and Commission determine whether a journalist has engaged in behavior that warrants punishment and imposes such punishment.

17 Model Law §64

18 Zimbabwe Act §42B(4)

Section 42C of the Zimbabwe Act permits the taking of evidence for the purposes of investigating any inquiry under the Zimbabwe Act. Section 42C exceeds the reach of the Model Law in the punishments that it exacts to those uncooperative with the gathering of evidence. Both the Zimbabwe Act and the Model Law permit the summoning of witnesses and the examining of evidence. In fact, Section 92(c) of the Model Law permits the Oversight Commission to enter a premises to search for relevant evidence. However, Sections 42C(3)(b) and 42C(4) permit imprisonment for up to six months and up to two years, respectively, for violations relating to the evidence gathering process.

Section VIII: Media and Information Fund

Section 43 of the Zimbabwe Act contemplates a Media and Information Fund (the “Fund”). The Fund is established for the purposes of standardizing media services, maintaining high standards among the media, assisting in the training of persons who provide media services, promoting research and development of mass media services, and promoting public awareness of the right to access information. The Model Law does not contemplate any similar fund, though Section 77 of the Model Law charges the Oversight Commission with the promotion of education and awareness relating to the right to access information. The Fund will be maintained through levies imposed on mass media owners (other than a broadcast licensee), and the failure to pay such levies within seven days of their due date results in a doubling of the fees owed (Section 46(4)). All monies held in the Fund may be invested as the Minister charged with overseeing the Zimbabwe Act sees fit. The Fund lacks any meaningful regulation, maintains broad objectives, subjects mass media entities to steep fines, and is structured in a way that avoids any accountability.

Section IX: Further Powers of the Commission

Part IX of the Zimbabwe Act contemplates the power of the Commission to conduct investigations, audits and inquiries. The powers conferred upon the Commission to conduct inquiries are broad. During such inquiries, the Commission may decide all questions of law and fact. Further, the Commission may delegate to any person¹⁹ any duty, power or function under the Zimbabwe Act, except for its own power to delegate. And, among other capabilities, the Commission may require any record, including a record containing personal information held by a public body to be produced as evidence.²⁰ Although every person who has an interest in an inquiry has the opportunity to present representations to the Commission, the Commission has the power to decide whether representations are to be presented orally or in writing and whether persons without an interest in the matter are entitled to contribute during the presentation of representations made to the Commission. Upon the completion of an inquiry, the Commission makes a written determination. After such determination, any aggrieved person may appeal to the Administrative Court within 28 days of being notified of the determination.²¹

The Zimbabwe Act provides that the Commission and any person acting under its direction²² shall not disclose information obtained during investigations, save for enumerated exceptions, including disclosure necessary to conduct an investigation or audit or to establish the grounds for Commission findings and recommendations and disclosure to the Attorney-General relating to the commission of an offence (if the Commission determines that there is sufficient evidence to prove the

19 The ability of the Commission to delegate its powers allows for the possibility of interference, potentially running counter to Model Law §63 on oversight independence.

20 Zimbabwe Act §51.

21 Zimbabwe Act §52B.

22 The ability of the Commission to allow “any person under its direction” to obtain information through an inquiry potentially runs counter to Model Law §63 regarding oversight independence.

commission of an offence).²³

The Zimbabwe Act differs greatly from the Model Law's treatment of inquiries. As a threshold matter, the Model Law appears to aim to information holders while the Zimbabwe Act appears to focus on solidifying the Commission's power to compel the production of information. While the Zimbabwe Act details the formal process of inquiry that appears to resemble the hearing process, the Model Law provides for discretion as to the type of oversight mechanism employed, such as negotiation, conciliation or mediation.²⁴ Further the Model Law provides that the hearing process, if employed, should be as informal and expeditious as possible, while the Zimbabwe Act, conversely, appears to default to a very formal process, perhaps to the disadvantage of unsophisticated parties.

The powers of the oversight mechanism contemplated by the Model Law also differ greatly from the powers bestowed upon the Commission by the Zimbabwe Act. Under the Model Law, the oversight mechanism has the power and duty to: allow interested persons to join hearings, allow relevant persons to participate in hearing through their choice of medium, provide assistance to applicants where appropriate.²⁵ Conversely, the Zimbabwe Act enumerates, among other things, the methods by which joining a proceeding or presenting evidence can be restricted and makes no mention of assisting applicants.

Section X: Reviews by the Commission

The Zimbabwe Act provides that a person who makes a request to a head of a public body, other than the Commission, for access to a record or for correction of personal information may request the Commission to review any decision or act of the head of that public body. A third party notified of a decision to give access may request the Commission to review any decision made by the head of the public body.²⁶ The Zimbabwe Act does not elaborate as to who qualifies as a third party capable of calling for a review of a public body decision to grant access to records or correct personal information. This presents an opportunity for non-interested parties to create roadblocks to the release of information. By contrast, the Model Law provides standards for which a third party must meet in order to challenge a public body's decision to release information.²⁷

The Zimbabwe Act provides that the failure by a head of a public body to respond within the time limit to a request for access to a record will be deemed a decision to refuse access to the record.²⁸ The head of the public body bears the burden of proving that the applicant has no right of access to the record. If the record for which the applicant is refused access pertains to a third party, the applicant seeking access bears the onus of proving that the disclosure of information would not be an unreasonable invasion of the third party's personal privacy. Conversely, during an inquiry regarding a decision to grant an applicant access to a record containing information related to a third party, the third party bears the onus of proving that the applicant has not right of access to the record.²⁹

23 Zimbabwe Act §51.

24 Model Law§79.

25 Model Law§79(5).

26 Zimbabwe Act §53.

27 Model Law§§88, 90.

28 Zimbabwe Act §54.

29 Zimbabwe Act §57.

The Zimbabwe Act somewhat comports with the Model Law regarding the failure of a public body to respond to records. However, the Zimbabwe Act does not address issues such as the providing of inadequate or incomplete information by public bodies, the failure to respond in writing or the levying of excessive reproduction fees—all significant issues addressed by the Model Act.³⁰

Section XI: Regulation of Mass Media Services and Journalists

Mass media owners must register under The Zimbabwe Act by way of an application to the Commission. Successful applicants are registered upon receiving a certificate of registration from the Commission, which is valid for five years.³¹ Registrants may apply for a renewal before the expiration of a certificate. Renewals will not be refused unless applicants are found to have abused the freedom of expression under The Zimbabwe Act, the applicants failed to notify the Commission of enumerated changes to the mass media service, or if the mass media owner fails to publish a correction of untruthful information upon the receipt of a request to do so. Persons operating a mass media service without a license shall be liable and subject to a fine and up to eighteen months imprisonment.³² News agencies must register under the same regime, and agencies that operate without registration may be subject to a fine and up to two years imprisonment. Also, news agencies may be forced to forfeit any news equipment or apparatus to the state.

Mass media owners, or owners of shares in a mass media service, must be citizens of Zimbabwe or corporate bodies of which a controlling interest is held by one or more citizens of Zimbabwe.³³

Certain mass media services are exempted from registration, such as services founded under an Act of the Parliament of Zimbabwe, a representative office of a foreign mass media service permitted to operate in Zimbabwe, producers of publications disseminated exclusively amongst members or employees of the given organization (provided that the Commission may require the organization to register as a mass media service).³⁴

Under The Zimbabwe Act, the Commission shall not refuse to register a mass media service unless it fails to meet the Commission's criteria for registration, fails to register, the registration application was false or materially misrepresented, it seeks registration under the name of a currently registered mass media service or it fails to pay the prescribed registration fee.³⁵

A registered person who makes use of a mass media service to intentionally or recklessly publish falsified information which threatens the interests of defense, public safety, public order, the economic interests of the state, public morality or public health, or is injurious to the reputation, rights and freedoms of other persons, among other things, shall be guilty of an offence and liable to a fine or imprisonment for up to three years.³⁶

30 Model Law§81.
31 Zimbabwe Act §66.
32 Zimbabwe Act §72.
33 Zimbabwe Act §65.
34 Zimbabwe Act §68.
35 Zimbabwe Act §69.
36 Zimbabwe Act §64.

Section 71 of the Zimbabwe Act provides that the Commission may, upon its own initiative, or upon receipt of a complaint, suspend or cancel a mass media service's registration if it finds that (i) the registration certificate was issued through fraud or there was a fraudulent misrepresentations by the mass media concerned, (ii) the registration certificate was issued through a material misrepresentation and the Commission has obtained a court order confirming the suspension or cancellation of the registration certificate of a mass mode service, (iii) a mass media service does not publish any mass media products within 24 months from the date of registration, or (iv) the mass media service concerned has been convicted of a repeated contravention of section 76³⁷, 77³⁸, 78(2)³⁹ or 89⁴⁰ of the Zimbabwe Act.

Mass media services suspended for any reason other than failure to publish within 24 months, may not operate or reapply for registration until the expiry of a period of one year.

Similar to the requirements established by the Zimbabwe Act for mass media services, accredited journalists must be citizens of Zimbabwe. However, non-citizens may be accredited for a period not to exceed 60 days.⁴¹ Accredited journalists shall receive a press card, valid for 12 months ending on December 31 yearly.⁴² No news agency that operates in Zimbabwe, whether domiciled inside or outside Zimbabwe, shall employ a non-accredited journalist with respect to local operations.⁴³

The Zimbabwe Act provides that accredited journalists may visit Parliament, other public bodies and national and public events to carry out journalist duties, obtain privileged access to otherwise restricted records and make recordings of such events and records.⁴⁴

Any person who holds herself out as an accredited journalist without being so accredited may be subject to a fine or up to two years imprisonment. No mass media service may employ a full-time journalist unless such journalist is accredited.⁴⁵ Any news agency that employs non-accredited journalists may be subject to a fine or imprisonment of up to two years.⁴⁶

Any person who abuses her journalistic privilege by publishing intentionally or recklessly falsified information or any statement which threatens the interests of defense, public safety, public order, the economic interests of the State, public morality or public health; or is injurious to the reputation, rights and freedoms of other persons may be subject to a fine and up to two years imprisonment.⁴⁷

37 Section 76 covers the mass media service's obligation to contain the publisher's imprint in publications.

38 Section 77 covers the requirement of a mass media service to send free deposit copies to the Commission and the National Archives.

39 Section 78(2) covers unregistered mass media services holding themselves out as registered.

40 Section 89 covers a mass media services obligation to publish replies regarding previously published untruthful or impinging information.

41 Zimbabwe Act §79.

42 Zimbabwe Act §85.

43 Zimbabwe Act §79.

44 Zimbabwe Act §78.

45 Zimbabwe Act §78.

46 Zimbabwe Act §79.

47 Zimbabwe Act §80.

A person or her legal representative shall have the right, at no cost, to demand the publishing of a correction from a mass media service which has published untruthful information that denigrates her honor and dignity.⁴⁸ The correction shall be published in the same manner as the refuted report and must indicate the information at controversy and when it was originally published.⁴⁹ A correction may be refused if the demand of correction represents an abuse of the freedom of expression, contradicts a decision of a court, is anonymous or was received by the mass media service after the expiration of one year since the date of publication of the information to be corrected by the mass media service.⁵⁰

The Model Law does not address the subject of regulation of mass media services. This reflects the Model Law's goal of ensuring the free flow and maximum accessibility of information vis-à-vis the Zimbabwe Act's dual goals of addressing the parameters of the freedom of information in Zimbabwe while simultaneously establishing the framework by which the Commission can regulate the release of information. The Declaration addresses the regulation of broadcasting and print media by stressing the importance of non-interference by the government and regulation by independent organizations⁵¹. While the Zimbabwe Act seemingly employs a transparent and accessible registration process, there are many requirements and penalties established that can be interpreted as onerous. Further, the Commission's involvement does not ensure the objectivity of regulation that the Declaration contemplates.

Section XII: Conclusion

As the preceding analysis demonstrates, the Zimbabwe Act differs considerably from the Model Law and Declaration. A large part of the Zimbabwe Act addresses the means by which media services and journalists become registered and are regulated, while the Model Law focuses on the means by which citizens may access key information.

Whether the Zimbabwe Act places an intermediary, between Zimbabwean citizens and the access to information or takes a different approach to the regulation of information sharing and disclosure is debatable. It is recommended that an amendment of the Zimbabwe Act along the lines of the Model Law be considered to provide for citizens realization of the right to information.

48 Zimbabwe Act §86.

49 Zimbabwe Act §87.

50 Zimbabwe Act §88.

51 Declaration §§V, VI and VII.