

## **Presentation on Access to Information October 7, 2014**

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As governments worldwide “claim” to be moving towards openness and transparency, the development of legislation to facilitate access to information is an essential requirement for modernisation of the public sector and for effective governance.

Access to information legislation is one way to ensure integrity in public life. Without it, bad government gets the secrecy needed to survive as this allows inefficiency, wastefulness and corruption to thrive.

Too often governments treat official information as their property, rather than something they hold and maintain on behalf of the people.

Globally, the move to openness is supported by statements aimed at ensuring universal and equitable access to information as a basic human right.

Factors influencing the approval of “freedom of” or “access to” information legislation have included internal and external pressures from civil society, local and international press associations, and regional and international organisations.

Many of you here today are aware that Antigua & Barbuda has a Freedom of Information Act which was enacted in 2004.

The passage of the legislation can be considered the first step in achieving openness and reducing the gap between government and civil society.

The related question is how far reaching is this 10-year-old legislation?

While the answer to that question may vary depending on who is asked, one thing is clear - 10 years on from passing the Freedom of Information Act, our country has shown no evidence of having gone beyond the passage of the legislation and the establishment of the legal framework for the acts.

Public awareness and education campaigns have been very limited. Media houses, and as a media worker I speak from experience and knowledge, newsrooms have had no success of obtaining information via this media - at least not the journalists I know and with whom I communicated ahead of today’s event.

I dare say though, the media, individuals or citizen action groups have to be more pro-active in seeking information on the decision-making process which they require. Without pressure being brought to bear on authorities, the barriers will remain.

But how can individuals be proactive when they are uncertain of the rights that exist under the Act?

It is for that reason I believe there's need for sensitizing the public and creating an awareness of the existence of the act; providing locations where the public can learn what the act offers; and providing access points for receiving requests and for delivering documents.

These can be done through public library systems and community centres which would serve as buffers for the services offered at the office of the Information Commissioner, which I should add, is understaffed as indicated by the Information Commissioner Mr Alister Thomas (who is here with us today).

The general presumption is that citizens can utilise material published in the media and on the Internet. But, there is again, the need to examine more carefully, the requirements of citizens who may be illiterate or whose first language may be other than the official language.

In other words, the practical measures to provide access to information should be more integrated into national information systems and to be tailored to match the information-seeking characteristics of the citizenry.

And, with regards to exemptions, under the area of national security matters, policies are needed to make these exempt categories clear.

The awareness by citizens of the processes of decision-making is the second dimension of transparency.

The act – as it exists – does not overtly contribute to citizens' understanding of the decision-making process.

And, as we know, information is needed to provide clarity on how and why decisions were made; and, empowerment of individuals to contribute to decision-making.

AS I conclude my presentation today, I've outlined the principles that establish the standard against which anyone can measure whether domestic laws genuinely permit access to official information.

These principles were endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, and by the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression in his 1999 Report.

#### **PRINCIPLE 1 MAXIMUM DISCLOSURE**

1. The overriding goal of legislation should be to implement maximum disclosure in practice.
2. All information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances (see Principle 4).

#### **PRINCIPLE 2 OBLIGATION TO PUBLISH**

1. Public bodies are under an obligation to publish key information.
2. They must accede to requests for information.
3. They must publish and disseminate widely documents of significant public interest.

#### **PRINCIPLE 3 PUBLIC BODIES MUST ACTIVELY PROMOTE OPEN GOVERNMENT.**

1. Informing the public of their rights and promoting a culture of openness within government are essential if the goals of freedom of information legislation are to be realised.
2. The law should make provision for public education and the dissemination of information regarding the right to access information, the scope of information which is available and the manner in which such rights may be exercised.
3. Public bodies must provide freedom of information training for their employees.
4. Public bodies should be encouraged to adopt internal codes on access and openness.

#### **PRINCIPLE 4. LIMITED SCOPE OF EXCEPTIONS**

1. Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests.
2. All individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions.
3. A complete list of the legitimate aims which may justify non-disclosure should be provided in the law.
4. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test.
5. The three-part test
  - the information must relate to a legitimate aim listed in the law;
  - disclosure must threaten to cause substantial harm to that aim; and
  - the harm to the aim must be greater than the public interest in having the information.
6. No public bodies should be completely excluded from the ambit of the law, even if the majority of their functions fall within the zone of exceptions.

## **PRINCIPLE 5**

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

1. A process for deciding upon requests for information should be specified at three different levels: within the public body; appeals to an independent administrative body; and appeals to the courts.
2. Provision should be made for people with disabilities - reading, writing, language, visual or aural impairment.
3. There should be strict time limits for the processing of requests and a requirement that any refusals be accompanied by substantive written reasons.
4. An internal appeal to a designated higher authority within the public authority and for an individual right of appeal to an independent administrative body from a refusal by a public body to disclose information.
5. The administrative body should be granted full powers to investigate any appeal, including the ability to compel witnesses and, importantly, to require the public body to provide it with any information or record for its consideration, in camera where necessary and justified.
6. The administrative body should also have the power to refer to the courts cases which disclose evidence of criminal obstruction of access to or willful destruction of records.

## **PRINCIPLE 6. COSTS**

Individuals should not be deterred from making requests for information by excessive costs.

## **PRINCIPLE 7. OPEN MEETINGS**

Freedom of information legislation should therefore establish a presumption that all meetings of governing bodies are open to the public.

## **PRINCIPLE 8. DISCLOSURE TAKES PRECEDENCE**

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

## **PRINCIPLE 9. PROTECTION FOR WHISTLEBLOWERS**

Individuals who release information on wrongdoing - whistleblowers - must be protected.

These laws mainly have an overall objective of mitigating corruption and provide the general public with the ability to request documents and other materials held by all government agencies and other agencies receiving public funds. The exemptions identified under the laws are usually based on ensuring national security.

In addition to Antigua and Barbuda, in the English-speaking Caribbean, Belize, Jamaica, and Trinidad and Tobago among others, have passed access legislation.