

Access to Information

A Comparative Picture of Independent Appellate Mechanisms

Available Across the Commonwealth

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Background

Across the Commonwealth only 13 of the 53 member countries have laws that guarantee citizens access to information, documents and records held by public authorities. Australia's law passed in 1982 is the oldest followed by those of Canada, Belize and New Zealand, which instituted information access regimes during the same decade. Trinidad and Tobago passed its law in 1999 – being the only Commonwealth country to take such a step during the 1990s. Eight more countries namely, the UK, South Africa, Pakistan, Jamaica, Antigua and Barbuda, Uganda, St. Vincent and the Grenadines and India have adopted and implemented transparency laws during the first decade of the new millennium.

A good information access law provides for an independent appellate mechanism that a citizen can access in order to seek redress of his/her grievances in matters relating to disclosure of information by public authorities. Generally speaking, courts have been given the power to adjudicate in such matters. However most access laws in Commonwealth countries provide for an intermediate tier between the public authority and the courts – a body empowered to redress grievances of citizens in relation to access to information from public authorities. Uganda, St. Vincent and the Grenadines and South Africa are the only exceptions where appeals against the decisions of public authorities lie directly with the courts.

In countries like Australia, Belize, New Zealand, Pakistan, Trinidad and Tobago existing authorities such as the Ombudsmen or Administrative Tribunals have been given appellate jurisdiction on access to information related matters. In other countries such as Antigua and Barbuda, Canada, India and the UK the access to information statute creates a new authority namely- a single member or multi-member Information Commissioner with powers to adjudicate over matters relating to transparency in government. The independent appellate mechanisms set up under the access laws vary widely in terms of composition, powers and functions. This paper presents a comparative picture of these bodies functional in 10 of the 12 Commonwealth countries relying solely on the provisions of their constituting Acts. No claims are being made about their effectiveness as that is beyond the scope of this paper. The comparative picture is drawn on the basis of eleven parameters relating to their constitution, powers and functions.

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Relevant Countries and Respective Laws

<i>Antigua and Barbuda</i>	<u>The Freedom of Information Act, 2004</u> ¹
<i>Australia</i>	<u>Freedom of Information Act, 1982;</u> <u>The Administrative Appeals Tribunal Act, 1975</u> and <u>The Ombudsman Act, 1976</u> ²
<i>Belize</i>	<u>Freedom of Information Act, 1984</u> ³
<i>Canada</i>	<u>Access to Information Act, 1983</u> ⁴
<i>India</i>	<u>The Right to Information Act, 2005</u> ⁵
<i>Jamaica</i>	<u>The Access to Information Act, 2002</u> ⁶
<i>New Zealand</i>	<u>Local Government Official Information and Meetings Act, 1987</u> and <u>Ombudsmen Act, 1975</u> ⁷
<i>Pakistan</i>	<u>Freedom of Information Ordinance, 2002,</u> <u>Establishment of the Office of Wafaqi Mohtasib</u> <u>(Ombudsman) Order, 1983</u> and <u>Establishment of the Office of the Federal Tax</u> <u>Ombudsman, Ordinance 2000</u> ⁸
<i>Trinidad and Tobago</i>	<u>The Freedom of Information Act, 1999</u> and <u>The Constitution of the Republic of Trinidad and</u> <u>Tobago, 1980</u> ⁹
<i>United Kingdom</i>	<u>Freedom of Information Act, 2000</u> and <u>Data Protection Act, 1998</u> ¹⁰

I. What mechanism is available?

Four kinds of independent appellate mechanisms are available in the Commonwealth namely, parliamentary ombudsmen, information commissioners, multi-member information commissions and appeals or administrative tribunals. In the UK a second appeal is allowed before an independent tribunal specially constituted for the purpose of redressing grievances relating to disclosure of information.

- (i) **The Ombudsman** (Australia, Belize, New Zealand, Pakistan, Trinidad and Tobago)
- (ii) **The Information Commissioner** (functional in Antigua and Barbuda, Canada and the UK)

- (iii) **A Multi-Member Information Commission** (functional in India at the Central and State level)
- (iv) **An Appeals/Administrative/Information Tribunal** (Jamaica, Australia and the UK)

The country specific appellate mechanisms are mentioned below.

Antigua and Barbuda

1. One person is appointed as the Information Commissioner. [s35]
2. Staff is provided from the public service by the Government with the concurrence of the Information Commissioner. [s36]

Australia

1. The Ombudsman is appointed under the *Ombudsman Act, 1976* for reviewing the decisions of a public authority in almost all administrative matters. The FOI Act allows a person to file complaints with regard to access to documents held by public authorities.
2. The Ombudsman is provided with staff who are from the public service.
3. The Administrative Appeals Tribunal could be a three-member or single-member body which is part of the larger 75 member body empowered to hear appeals in matters arising from the implementation of more than 400 other legislations.
4. The Tribunal is provided with staff who may be public servants employed full time or intermittently.

Belize

1. One individual appointed as Ombudsman also functions as the appellate authority under the FOIA. [s35]
2. The Ombudsman can appoint staff upon the approval of the National Assembly. [Ombudsman Act (OA) s19(1)]
3. The Governor General or Public Service Commission may approve secondment of staff from public service. [OA s19(2)]

Canada

1. One person is appointed as the Information Commissioner. He is an officer of Parliament. [s54]
2. One or more Assistant Information Commissioners may be appointed to function under his general direction and supervision. [s56]
3. The Commissioner is assisted by investigative and administrative staff.

India

1. At the level of the Centre, one Chief Information Commissioner heads up a multi-member body with a maximum of 10 Information Commissioners. [s12]
2. States also have their own Chief Information Commissioners with similar a arrangement. [s15]
3. Staff is made available by Government (usually from the public service). [s15(6)]

Jamaica

1. Five-member Appeals Tribunal is constituted for the purpose of hearing appeals. One person is appointed Chairman. [s32, Sch.2]
2. The tribunal is assisted by an administrative staff.

New Zealand

1. Two members are appointed by the Governor General as Ombudsmen. One member is Chief Ombudsman. [Ombudsmen Act. s3 and LGOIMA s28]
2. The Ombudsmen are provided with investigative and administrative staff.

Trinidad and Tobago

1. One individual is appointed as the Ombudsman. [TT Constitution, s28A]
2. Staff for the Ombudsman is provided from the public service.

Pakistan

1. The Ombudsman (Wafaqi Mohtasib) is appointed for hearing appeals on all information access related matters barring those arising from the decisions of taxation and revenue authorities. The Federal Tax Ombudsman is appointed to adjudicate on second appeals relating to access to taxation and revenue records. [s19]
2. Staff for both Ombudsmen are made available from the public service.

United Kingdom

1. One Information Commissioner is assisted by Deputy Information Commissioners.
2. The Information Commissioner is provided with investigative staff.
3. The Information Tribunal consists of one Chairman or a Deputy Chairman and two Lay members.
4. The Tribunal is supported by an administrative staff provided by the Secretary of State. [Data Prot. Act. Sch5]

II. Who appoints them and for how long?

An analysis of the processes of appointing independent appellate authorities in the Commonwealth indicates the existence of mainly three methods-

- (i) **Appointment by the executive head with parliamentary approval** (Antigua and Barbuda, Belize, Canada and New Zealand).
- (ii) **Appointment by the executive head without parliamentary approval** (UK, Pakistan and Australia. It is the prerogative of the executive to appoint the member/s of the appellate authority as it deems fit).
- (iii) **Appointment by political consensus** (India, Jamaica and Trinidad and Tobago. The Government and the Leader of the Opposition have to arrive at a consensus on the selection of the candidate/s.).

Members of the appellate authority enjoy a term of office between 5-7 years. Eligibility for reappointment is linked to a maximum age limit, which may vary from 65-70

years. The number of terms for which reappointment is possible varies from one-three terms. Pakistan is the only exception where reappointment is not allowed.

The appointments process and the term of office of the members of the appellate authority, peculiar to each Commonwealth country, are given below.

Antigua and Barbuda

1. The Governor General acting upon the recommendation of the PM with the approval of both Houses of Parliament through a resolution can appoint the Information Commissioner. [s35(1)]
2. The Information Commissioner gets a five-year term. Reappointment is possible only once. [s35(3)]

Australia

1. The Ombudsman is appointed by the Governor General [s21]
2. The Ombudsman enjoys a seven-year term. He/she is eligible for reappointment. [s22]
3. The Administrative Appeals Tribunal may consist of one or three presidential members appointed to hear the case by the Governor General. [AAT Act, s58B]
4. Members of the Tribunal enjoy a seven-year term. Members are eligible for reappointment. [AAT Act, s8]

Belize

1. The Ombudsman is appointed by the Governor General acting on the recommendations of both Houses of the National Assembly, which passes a resolution to that effect. [Ombudsman Act (OA) s3]
2. The Ombudsman is appointed for 3 years. He/she is eligible for reappointment until the age of 65. [OA s(4)]

Canada

1. The Governor-in-Council appoints the Information Commissioner after approval through a resolution of Canadian Parliament. [s54]
2. The Information Commissioner has a seven-year term. He/she is eligible for reappointment for one term. [s54(2)]
3. The Governor in Council appoints an Assistant Information Commissioner upon the recommendation of the Information Commissioner. [s56]
4. Assistant Information Commissioners serve for five years. They are eligible for reappointment for a second term. [s56]

India

1. The President appoints the Chief Information Commissioner and the Information Commissioner at the Centre upon the recommendations of the appointment committee. This committee is headed by the Prime Minister (PM) and includes the Leader of the Opposition and one Cabinet Minister nominated by the PM. [s12]
2. In the States, the Governor appoints the Chief Information Commissioner and the Information Commissioners upon the recommendations of the appointment committee. This committee is headed by the Chief Minister (CM) of the State

and includes the Leader of the Opposition and one Cabinet Minister nominated by the CM. [s15]

3. The Chief Information Commissioner and the Information Commissioners are appointed for one five year term. Information Commissioners are eligible for appointment as CIC. No reappointments are possible to the same post. [s13 & 16]

Jamaica

1. The Governor General appoints the Appeals Tribunal in consultation with the Prime Minister and the Leader of the Opposition. The Governor General appoints one of the members as Chairman of the Tribunal. [s32, Sch. 2]
2. All members serve for a term of five years. They are eligible for reappointment. [s32, Sch. 2]

New Zealand

1. The Ombudsmen is appointed by Governor General on the recommendation of the House of Representatives. [Ombudsmen Act, 1975. s3]
2. Each Ombudsman is eligible for a term of five years. Reappointment to the same post is possible up to the age of 72 years with no limits on the number of times one may be reappointed. [s5]

Pakistan

1. The President appoints the Ombudsman for a period of four years. [Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, (EOWMO) 1983 s3, 4]
2. The Federal Tax Ombudsman (FTO) is appointed by the President for a term of four years. [Establishment of the Office of the Federal Tax Ombudsman Ordinance, (EOFTOO) 2000, s4]
3. Both Ombudsmen are not eligible for reappointment. [EOWMO and EOFTOO s4]

Trinidad and Tobago

1. The Governor General appoints the Ombudsman in consultation with the Prime Minister and Leader of the Opposition. [TT Constitution, 1980, s91]
2. The Ombudsman is appointed for a term of five years. He/she is eligible for reappointment. [TT Constitution, 1980, s91]

United Kingdom

1. The Information Commissioner is appointed by the Government. The term of the Information Commissioner is five years. The Commissioner is eligible for reappointment for one term. A third term may be given in special circumstances in public interest [s6. and Sch.5 Data Prot. Act]
2. The Information Tribunal consists of a Chairman appointed by the Lord Chancellor in consultation with the Lord Advocate. Deputy Chairmen can be appointed by the Lord Chancellor. Other members of the Tribunal may be appointed by the Secretary of State.
3. A member of the Tribunal is eligible for reappointment up to the age of seventy years. The executive may authorise continuance up to the age of seventy-five years in certain cases. [Data Prot. Act, Sch.6.]

III. Who removes them?

The procedure for removal of members of the appellate authority may be grouped into four types –

- (i) **Removal by order of the executive head with the approval of Parliament** (Antigua and Barbuda, Australia, Belize, Canada, New Zealand and the UK)
- (ii) **Removal by political consensus** (Jamaica)
- (iii) **Removal through a process involving the executive and the judiciary** (India and Pakistan)
- (iv) **Removal by order of the executive after investigation by a special Tribunal** (Trinidad and Tobago)

The specific method of removing members of appellate mechanisms peculiar to each Commonwealth country is given below -

Antigua and Barbuda

The Governor General acting upon the recommendation of the PM with the approval of both Houses of Parliament through a resolution can remove the Information Commissioner. [s35(4)]

Australia

1. The Ombudsman may be removed by the Governor General upon an address praying for removal presented by both Houses of Parliament. [OA, s28]
2. The Governor General can suspend an Ombudsman on grounds of misbehaviour or physical or mental incapacity. Subsequently both Houses of Parliament must approve a statement regarding the grounds for suspension presented by the Governor General. [OA, s28]
3. The Governor General sends a statement to Parliament seeking removal of a member of the Administrative Appeals Tribunal. Parliament has to approve removal by resolution within 15 days. Armed with this resolution Governor General can remove the member. [AT Act]
4. The Governor General can suspend a member pending parliamentary approval for his removal. [AT Act]

Belize

1. The National Assembly causes an investigation by passing a resolution and gets the Belize Advisory Council to recommend removal.
2. The Governor General removes the Ombudsman from office based on such a recommendation. The Governor General can also suspend him/her from duties pending investigation. [OA s4(7)]

Canada

The Governor in Council can remove the Information Commissioner upon address of the Canadian Parliament. [s54(2)]

India

The President removes the Chief Information Commissioner and the Information Commissioners in two ways –

- 1) First make a reference to the Supreme Court to conduct an inquiry on grounds of misbehaviour. If the recommendation of the Supreme Court is for removal then the President may issue such order.
- 2) The President can order removal of an Information Commissioner directly on grounds of moral turpitude, infirmity of mind, engagement in paid employment or acquisition of financial or other interest that would prejudicially affect functioning as IC. [s14]
- 3) Similar procedures may be followed by the Governor of a State to remove Information Commissioners at the State level.

Jamaica

The Governor General may revoke the appointment of a member of the Appeals Tribunal in consultation with the Prime Minister or Leader of the Opposition. [s32, Sch.2]

New Zealand

Governor General can remove or suspend an Ombudsman from office upon an address from the House of Representatives. [s6]

Pakistan

1. The President may remove the Ombudsman on grounds of misconduct or physical or mental incapacity. However the FTO may seek an open public evidentiary hearing before the Supreme Judicial Council to refute the charges. [EOWMO, 1983 s6]
2. The President may remove the Federal Tax Ombudsman on grounds of misconduct or physical or mental incapacity. However the FTO may seek an open public evidentiary hearing before the Supreme Judicial Council to refute the charges. [EOFTOO, 2000 s6]

Trinidad and Tobago

1. The House of Representatives passes a resolution that the question of removing the Ombudsman be investigated by a special Tribunal appointed by the President.
2. Members of this Tribunal are appointed by the President upon the advice of the Judicial and Legal Services Commission.
3. The President removes the Ombudsman upon the advice of this Tribunal.
4. The President may suspend the Ombudsman from duty upon the advice of the Judicial and Legal Services Commission until the Tribunal gives its recommendation. [TT Constitution, s136]

United Kingdom

1. The Information Commissioner may be removed by the Government upon an address from both Houses of Parliament. [Data Prot. Act, Sch. 5]

2. There is no clear mention of the procedure for removing members of the Tribunal.

IV. Who funds them?

All countries reviewed here have adopted a Westminster style of government where all institutions are dependent upon Parliament for funding. The funding of these independent appellate mechanisms is also dependent on the legislature. However in countries like Belize, Canada and Jamaica the budget of the appellate body has to pass muster before the administrative Ministry or the Treasury Board before receiving parliamentary approval. In Pakistan, the expenses incurred on the appellate body are charged on the Consolidated Fund which implies the legislature does not have the power to secure reductions in the budget.

The country specific measures for financing the independent appellate mechanisms are given below -

Antigua and Barbuda

Parliament approves the funding for the Information Commissioner's office.

Australia

1. The salary and allowances payable to the Ombudsman are determined by the Remuneration Tribunal set up under the *Remuneration Tribunal Act, 1973*.
2. Parliament approves the budget of the Ombudsman's office and that of the Administrative Appeals Tribunal.

Belize

Parliament approves the budget of the Ombudsman's office.

Canada

Canadian Parliament approves the budget for the office of the Information Commissioner after it has been cleared by the Treasury Board of Ministers.

India

The budget of the Information Commission at the Central level is approved by Parliament and at the State level by the respective state legislatures.

Jamaica

Parliament funds the Appeals Tribunal through the administrative Ministry.

New Zealand

1. The salary and allowances payable to the Ombudsmen is determined by the Remuneration Authority.
2. The House of Representatives approves the budget of the office of the Ombudsmen.

Trinidad and Tobago

Parliament approves the budget of the office of the Ombudsman.

Pakistan

1. The remuneration payable to the Ombudsman and his/her staff, the administrative expenses and all other expenditure incurred in the course of work are charged on the Federal Consolidated Fund.
2. The remuneration payable to the Federal Tax Ombudsman and his/her staff, the administrative expenses and all other expenditure incurred in the course of work are charged on the Federal Consolidated Fund.

United Kingdom

Parliament approves the expenditure incurred on account of the office of the Information Commissioner.

V. Functions of the Appellate Body

In all countries under review, the independent appellate body receives appeals against the decisions of the public authority regarding non-disclosure of information. Additionally, this body may be empowered to decide upon the reasonableness of the fees charged for providing information. While exhaustion of the internal review/appeals mechanism set up by the public authority is a requirement for filing an appeal with the independent appellate body, in India the law allows an aggrieved citizen to file complaints directly bypassing the internal appellate authority.

Apart from the duty to receive and adjudicate on appeals some of these appellate bodies are statutorily required to perform a variety of functions aimed at promoting the core objectives of the information access legislation. For example, in the UK the Information Commissioner is required to prepare model publication schemes for public authorities to comply with their proactive disclosure obligations and also promote certain codes of practice related to smooth disposal of information requests. In addition to these functions the UK Information Commissioner has a duty to promote better records management practices in all public authorities covered by the FOI Act. The Information Commissioner in Antigua and Barbuda has a statutory obligation to undertake or promote training of officers for implementing the access legislation. He/she also has a duty to publish and disseminate a simple practical guide to enable citizens to exercise their rights under the FOI Act. In some countries these appellate mechanisms also have monitoring, reporting training and public education obligations. These functions are dealt with in separate sections below.

The various statutory functions of the independent appellate bodies are listed below -

Antigua and Barbuda

1. The Information Commissioner can receive complaints from citizens regarding non-disclosure or partial disclosure of information and non-disclosure within the time limits specified in the FOI Act. [s41]
2. The Information Commissioner can receive appeals for fee review. [s35]

3. The Minister is required to make regulations regarding fee payment (how much, mode, waiver etc) after consultation with the Information Commissioner. [s20(3)]
4. The Information Commissioner is required to monitor and report upon compliance of public bodies to Minister for Public Information along with recommendations for reform to facilitate better compliance. [s37]
5. The Information Commissioner is required to undertake or promote training of officers of public bodies. [s37(c)]
6. The Information Commissioner is required to report to the appropriate authorities cases which disclose evidence of criminal offences under the FOI Act. [s37(d)]
7. The Information Commissioner is required to publicise the requirements of the Act and the obligations of public authorities covered by the FOI Act. [s37(e)]
8. The Information Commissioner is required to publish and disseminate a simple guide containing practical information to enable people to exercise their rights under the FOI Act. This guide must be updated regularly.[s8]

Australia

1. The Ombudsman is competent to entertain complaints from citizens and conduct an investigation into matters such as the rejection of any information request, non-disclosure of information within the time limit, exorbitant fees charged by the public authority and other related matters. [s57]
2. The Administrative Appeals Tribunal is the designated body to hear appeals for review of the decision of a public authority in relation to an information request made by a person. [s55]

Belize

1. The Ombudsman can hear appeals against denial of information. [s35(2)]
2. The Ombudsman can make regulations for carrying out his functions under the Act with the approval of the concerned Minister. [s47]

Canada

The Information Commissioner can receive and investigate complaints from citizens about the decision of a public authority in relation to an information request. [s30]

India

1. The Information Commissions receive and investigate complaints. [s18]
2. The Information Commissions receive and hear second appeals. [s19]
3. The Information Commissions can secure compliance reports relating to the proactive disclosure obligations of public authorities covered by the RTI Act. [s19 and 25]

Jamaica

The Appeals Tribunal hears second appeals on refusal to disclose information and related matters.

New Zealand

The Ombudsmen investigate and review decision of a Department or Ministry with regard to refusal to disclose information. [s28]

Pakistan

Both Ombudsmen investigate cases of refusal to disclose information. [s19]

Trinidad and Tobago

The Ombudsman hears appeals from citizens who are denied access to records. [s38A]

United Kingdom

1. The Information Commissioner is required to approve a scheme of proactive disclosure for public authorities. [s19(1)(a)]
2. The Information Commissioner is required to prepare and approve model publication schemes for public authorities from time to time. [s20]
3. The Information Commissioner has a duty to promote observance of the requirements of the Act by public authorities. [s47]
4. The Information Commissioner has a duty to promote observance of the code of practice relating to access rights of applicants (such as providing advice to applicants, transfer of applications, third party consultation, including information disclosure provisions entered into contracts initiated by public authorities) issued by the Secretary of State. [s45/47]
5. The Information Commissioner has a duty to promote observance of code of practice relating to maintenance, management and destruction of records issued by the Lord Chancellor. [s46/47]

VI. Investigation into appeals and complaints:

All independent appellate mechanisms reviewed here are empowered to conduct investigations/inquiries into appeals and complaints received from aggrieved requesters. Often the public authority has the burden of proving before the appellate body that its decision, not to disclose information requested by the citizen, was justified. In countries like Canada and India, the appellate body is empowered to investigate complaints, where a public authority has failed to disclose information proactively as required by law. In Canada the Information Commissioner has the power to conduct investigations *suo motu*, if a public authority has failed to perform its obligations under the ATI Act.

The specific role of the appellate mechanism in conducting investigations into appeals and complaints in each country is given below -

Antigua and Barbuda

1. The Information Commissioner investigates complaints about - deemed refusal; whether a record is held by a public authority or not; non-adherence to time limits for disclosure; excessive fees charged by the public authority; failure to give information and failure to give information in the requested format. [s41]
2. Before giving his/her decision in a case the Information Commissioner is required to give an opportunity to both parties to make written submissions. [s42(1)]
3. The burden of proof is on the public authority. [s42(3)].

Australia

1. The Ombudsman is required to investigate complaints from citizens relating to any decision taken by public authorities under the Act. [s57]
2. A person cannot file a review appeal with the Administrative Appeals Tribunal when a decision in the same matter is pending before the Ombudsman. [s57]
3. The Administrative Appeals Tribunal investigates applications from persons regarding refusal of an information request by a public authority; incomplete access provided by it; decision to defer access to a document; decisions relating to fee charged for providing access to a document; against deemed refusal; the failure of a public authority to disclose information within the specified time limit and matters relating to annotation or amendment of the contents of a record relating to the personal information of an individual. [s55 & 56]
4. The burden of proof is on the Minister or the agency holding the record. [s61]

Belize

1. The Ombudsman hears appeals only after the citizen has gone through the internal appeal process set up within the concerned Ministry. [s37(1)]
2. The burden of proof is on the Ministry or the prescribed authority. [s38]

Canada

1. The Information Commissioner investigates complaints about refusal to disclose information; non-adherence to time limits; unreasonable fees being charged; refusal to give information in the official language requested and non-adherence to proactive publication of information. [s30]
2. Complaints made on behalf of a person with his/her authorization will also be investigated. [s30(2)]
3. The Information Commissioner has powers to conduct investigation *suo motu* for non-compliance [s30(3)]

India

1. The Information Commission conducts inquiries into complaints and appeals about - refusal to accept information requests; rejection of information requests; no response whatsoever received from the public authority; unreasonable fees charged; unreasonable delay in disclosure; furnishing of misleading, false and incomplete information and failure to publish information proactively as required by the RTI Act. [s18, 19]
2. Direct complaint to the Information Commission bypassing the internal appeals mechanism is possible. [s18]
3. The burden of proof regarding one's decision or action on an information request lies on the concerned officers of the public authority. [s19 & 20]

Jamaica

1. The Appeals Tribunal hears second appeals. [s32]
2. The burden of proof is on the public authority. [s32(5)]

New Zealand

1. The Ombudsman can conduct an investigation into non-disclosure based on a complaint from an aggrieved party. [s28]

2. The Ombudsman is required to consult with the Privacy Commissioner before forming a final opinion in a case after investigation. [s29B]

Pakistan

1. The Ombudsmen hear second appeals and conduct investigations if necessary. [s19]
2. The Ombudsman issue notices to the principal officer of the public authority concerned if he intends to start an investigation into an appeal. Response to the notice must be sent within 30 days failing which the Ombudsmen are free to launch the investigation. [EOWMO, 1983, s10]
3. Investigations are conducted in private. [EOWMO, 1983, s10]

Trinidad and Tobago

The Ombudsman is empowered to hear appeals against the decision of a public authority not to disclose a requested document. [s38A]

United Kingdom

1. The Information Commissioner receives complaints from citizens regarding non-disclosure of information by a public body. [s50(1)]
2. However he may refuse to give a decision if the complainant has not exhausted the internal review mechanism set up within the public body. [s50(2)(a)]
3. Either party to case where a decision has been given by the Information Commissioner may appeal to the Information Tribunal. [s50]

VII. Powers of the Appellate Body

In almost all countries the independent appellate mechanisms have wide powers to investigate a case arising from a decision made by a public authority in response to an information request. To start with the status of these bodies is defined at a sufficiently high level so as to command respect from the public authorities they have the authority to investigate. In Canada the Information Commissioner is equal in rank to a deputy head of a department and receives a salary equivalent to a Federal Judge. In India the Chief Information Commissioner at the Central level is equal in rank to the judge of the Supreme Court and other Information Commissioners are higher or at least equal in rank to the seniormost civil servant.

These appellate bodies are insulated from any control or direction exercisable by the executive. Often these bodies are allowed to operate without intervention from the judiciary in the middle of a case. These bodies have the power to summon any document under question, summon and examine witnesses, take oaths and require affidavits to be filed. The Belizean Ombudsman has the powers of a Magistrate and his/her counterpart in Trinidad and Tobago is granted the powers of the High Court for conducting investigations. In countries like Canada and Trinidad and Tobago the appellate body has the power to enter any premises and conduct searches and interviews of persons in relation to an ongoing case. In the UK the Information Commissioner can use these powers only with a warrant from an appropriate court. Additionally all these appellate bodies are granted immunity from prosecution taken in good faith.

However not all appellate bodies have the power to compel a public authority to implement their decisions/recommendations in a case. In Trinidad and Tobago the public authority is empowered to accept or reject the recommendation of the Ombudsman at its discretion. In countries like Belize and Australia the Ombudsman does not have the power to revoke an exemption certificate granted to a document by the concerned Minister if he/she finds it unjustifiable. In the UK the Information Commissioner is required to approach the appropriate court to secure enforcement of his/her decision if the public body fails to comply. However in New Zealand a public duty is placed on the public authority and all its officers to comply with the recommendations of the Ombudsman.

Generally, appellate bodies do not have the power to penalize officers or a public authority for violation of any provisions of the access legislation. But recent laws in India and Antigua and Barbuda have vested their appellate bodies with the power to impose penalties for non-compliance. In Antigua and Barbuda, the Information Commissioner may impose penalty on a public body for failing to comply with proactive disclosure requirements. The Commissioner may also recommend launching of criminal proceedings against guilty persons for violation of the provisions of the FOI Act in the appropriate court. In Canada the Information Commissioner has a duty to report to the Attorney General evidence of any criminal offence committed by an official that may surface in the course of the investigation into any case.

Few FOI laws in the Commonwealth make provisions for punishing public authorities or officers for violating the provisions of the FOI law. This is more a recent development noticed in the enactments of countries like Antigua and Barbuda, Jamaica and India. Punishments may vary from monetary fines to a prison sentence depending upon the gravity of the offence committed. In India the Information Commission has the power to impose monetary fine on erring officers (on grounds of unreasonableness or *mala fide* action) and even recommend disciplinary action against them in extreme cases. Almost all appellate bodies in the Commonwealth have the power to order costs in an appeal proceedings and compensation for loss suffered by citizens as a result of the decision of the public authority to withhold information in an unreasonable manner.

The specific powers of the appellate bodies in each country under review are listed below -

Antigua and Barbuda

1. The Information Commissioner is not subject to the direction or control of any person or authority. [s38(1)]
2. The Information Commission's staff also has the same immunity from interference in its work. [s38(2)]
3. The Information Commissioner has the power to investigate cases, issue orders requiring production of records and compel witnesses to testify [s44]
4. The Information Commission has the power to secure compliance of a public authority to its obligations of proactive disclosure, annual reporting, improving records management and maintenance practices and training of officers for implementing the FOI Act. [s43]
5. The Information Commissioner's decision in a case is binding. [s46]

6. Because of the provision for harm test and public interest override Information Commissioner has the power to order release of exempt records after investigation into a case. [s24]
7. The Information Commissioner can impose penalty on a public authority for failing to comply with the obligations of proactive disclosure, records management, training of officers and annual reporting.[s42(4)(d)] (However the Information Commissioner does not have the power to penalise officers for violation of the Act)
8. The Information Commissioner may order the public authority to compensate the applicant for any loss suffered due to its actions/decisions under the Act. [s42(4)(c)]
9. The Information Commissioner can reject frivolous and vexatious applications. [s42]
10. The FOI Act grants the Information Commissioner and his staff exemption from personal liability for action taken in good faith. [s40]

Australia

1. A person aggrieved by the decision of a public authority regarding his/her information request may file a complaint with the Ombudsman under the *Ombudsman Act, 1976*. [s57]
2. The Ombudsman has the power to require the principal officers of public authorities to furnish documents and records; summon officers to answer specific questions; in the course of conducting an investigation into a complaint. [OA, s9]
3. The Ombudsman has the power to summon witnesses, record evidence on oath and enter the premises of a public authority to conduct investigation in relation to a complaint. [OA, s13 & 14]
4. The Ombudsman is empowered to approach the Federal Court of Australia for issuing appropriate directives to an officer who fails to comply by a notice issued in relation to the investigation of a complaint such as furnishing of documents, appearing in person to answer questions etc. [OA, s9 & 12]
5. The Ombudsman does not have the power to demand the furnishing of a document if the Attorney General furnishes a certificate stating that disclosure would be contrary to public interest. [OA, s9]
6. The Ombudsman may make an arrangement with a public authority to inform him/her of action taken with regard to the complaint that is being investigated. [OA, s12]
7. The Ombudsman can only send a report to the public authority regarding the findings of his/her investigation of a complaint. If the public authority fails to take action then the Ombudsman has the power to provide the complainant with a copy of his recommendations and any other comments necessary. [OA, s12(5)] (This procedure enables the aggrieved person to pursue other courses of action such as approaching the Administrative Appellate Tribunal or the Federal Court of Australia.)
8. The Ombudsman cannot be sued in a court for action taken in good faith. [OA, s33]
9. A person may approach the Administrative Appeals Tribunal if he/she is not satisfied with the decision of the Ombudsman. [s57(3)]

10. The Administrative Appeals Tribunal has the power to require an agency or Minister to conduct further searches for a document that is the subject of a request. [s55(5A)]
11. The Administrative Appeals Tribunal does not have the power to order disclosure of exempt documents if it is proven that they are covered by exemptions. [s58(2)]
12. Where a document is given a certificate by a Minister that it is exempt from disclosure the Administrative Appeals Tribunal upon an appeal can review that claim. [s58(4)]
13. The Administrative Appeals Tribunal cannot revoke such a certificate on its own but can recommend revocation to the Minister. If Minister refuses to revoke the certificate he may give a notice to that effect and place it before both Houses of Parliament. [s58A(4)]
14. The Administrative Appeals Tribunal can review charges levied by the public authority for disclosure of records. [s58(6)]
15. The Administrative Appeals Tribunal has powers to summon persons and records including exempt records and conduct proceedings in private. [s58C]
16. The Administrative Appeals Tribunal can recommend to the Attorney General payment of costs to a successful litigant. [s66]

Belize

1. The Ombudsman has the powers of a Magistrate in the conduct of inquiry proceedings. [s42]
2. The Ombudsman can entertain an appeal even if no decision has been given by the public authority on the first appeal filed within that body. [s37(2)]
3. In ordinary cases the Ombudsman can review the decision of a Ministry or prescribed authority in relation to an information request. Ombudsman's decision has the same effect as the decision of the Ministry. [s35(2)]
4. The Ombudsman does not have the power to order release of exempt documents. [s35(2)]
5. The Ombudsman does not have the power to review the decision or the grounds of an exemption certificate granted by a Ministry for a document. [s35(4)]
6. If Ministry or prescribed authority requires extra time for meeting an information request, the Ombudsman can grant an extension. [s37(3)]
7. The Ombudsman can order production of exempt records while hearing a case.
8. But if a Ministry issues a certificate of exemption for a certain document the Ombudsman cannot order its production. Mere statement on affidavit about the existence of the exemption certificate filed by the public authority is adequate for the purposes of the case. Production of the certificate is not compulsory. [s41]
9. But the Ombudsman can order furnishing of a copy of non-exempt portions of the record covered by such certificate to the requester. [s41]

Canada

1. The Information Commissioner is equal in rank to deputy head of a department. [s55]
2. The Information Commissioner is paid a salary equal to that of a judge of the Federal Court. [s56]

3. The Information Commissioner has the power to conduct an investigation based on written complaints filed by a person aggrieved by the decision of a public authority. [s30 & 31]
4. the Information Commissioner determines the procedure to be followed in investigations. [s34]
5. The investigation is to be conducted in private. [s35(1)]
6. The Information Commissioner can summon records and witnesses, collect evidence on oath, enter the premises of any government institution and converse in private with any person on such premises. [s36]
7. The investigation report is handed over to the head of the department and a request for action to be taken within a time limit is made. Copies of report must be given to the complainant and a third party in that case, if any. [s37]
8. The Information Commissioner can order payment of fees and such other expenses to witnesses summoned in a case under investigation. [s36(4)]
9. Information Commissioner cannot order disclosure of records. Upon receiving his notice, the department issues notice of providing access to the record, [s37(4)]
10. If the Department does not give notice of access Information Commissioner can give written advice to the complainant or third party to approach the Federal Court (Trial Division). [s37(5)]
11. The Information Commissioner is granted immunity from prosecution for action taken in good faith under the Act. [s66]
12. The Information Commissioner can disclose to the Attorney General of Canada information relating to commission of any offence by a public servant that may surface during the investigation. [s63(2)]

India

1. The Chief Central Information Commissioner is equal in rank and pay to Chief Election Commissioner (=Supreme Court Judge) and the Information Commissioners are equal to Election Commissioners (just above the level of Ministers). [s13]
2. The Information Commissions have immunity from interference from any authority including courts. [s22]
3. The Information Commission's decisions are final and binding. [s19(7)]
4. The Information Commissions have a duty to inquire into written complaints and second appeals filed by citizens. [s18(1)]
5. The Information Commissions have the powers of a civil court to conduct an inquiry into a complaint. [s18(2)]
6. The Information Commissions can summon records, witnesses and take evidence on oath. [s18(2)]
7. The Information Commissions may order disclosure of exempt information if the larger public interest outweighs the harm to the protected interests. [s8(2)]
8. The Information Commissions can impose monetary penalty on erring public information officers. [s20]
9. The Information Commissions can recommend disciplinary action against Public Information Officers for persistent violation of the Act. [s21]
10. The Information Commissions can order public authority to compensate for loss or detriment suffered. [s19(8)]

11. The Information Commissions can order exempt bodies such as security and intelligence agencies controlled by the governments to release information in relation to allegations of human rights violation. [s24]

Jamaica

1. The salary and perks of the members of the Appeals Tribunal are fixed by the Minister responsible for public service. [s32, Sch. 2]
2. The Tribunal can call for documents for examination while hearing a case. [s32, Sch. 2]
3. The Tribunal will make its own regulations for conducting its proceedings. [s32, Sch. 2]

New Zealand

1. The Ombudsmen are officers of Parliament. [OA, s3]
2. The Ombudsman has the power to require the production of documents, papers or things in relation to an investigation into a case. [OA, s19]
3. The Ombudsman has the power to summon witnesses and record evidence on oath. [OA, s19]
4. The Ombudsman has the power to enter any premises and inspect it during the course of an investigation. [OA, s27]
5. The Departments and Ministers are required to cooperate with Ombudsmen during investigation by providing papers and documents requested. [s29A]
6. The Ombudsman sends a report to the concerned department with his recommendations after investigation and gives a copy to the complainant. [s30]
7. A public duty is imposed on the concerned Department or Ministry to comply with the recommendation of the Ombudsman unless the Governor General makes an Order in Council requiring the Department to act otherwise. Every officer of the Department or Ministry is bound by this public duty. [s32]
8. The Ombudsman is required to consult the Privacy Commissioner before giving a decision in a case that is being investigated. [OA, s21A] However this requirement has not led to conflict of views as the Chief Ombudsman is also the Privacy Commissioner in New Zealand.

Pakistan

1. The Ombudsman and the Federal Tax Ombudsman (FTO) entertain only written appeals from aggrieved persons. [EOWMO, 1983 s10, EOFTOO, 2000 s10]
2. The Ombudsman has the powers of a Civil Court while conducting investigations namely, summoning and enforcing attendance of officers including examination on oath; compelling production of documents; receiving evidence on affidavits; entering any premises and conducting searches necessary during an ongoing investigation. [EOWMO, 1983 s14]
3. The Ombudsman can compel any officer to reveal information in relation to an ongoing investigation. The Ombudsmen can order the designated official to disclose information or reject the information request. [FOIO s19]
4. But the President may on his discretion, on grounds of it being a State secret allow claim of privilege with respect to any information or document. [EOWMO, 1983 s10]
5. The FTO and his/her staff are treated as public servants. [EOFTOO s27]

6. Both Ombudsmen are granted immunity from interference in a case by any court of law. [EOWMO, 1983 s29 and EOFTOO, 2000 s29]
7. The FTO has the power to summon records, witnesses, record evidence on oath and examine witnesses. [EOFTOO s14]
8. The FTO has the power to enter and search any premises as part of an ongoing investigation and impound documents and articles. [EOFTOO s15]
9. The Ombudsmen have the power to mediate an informal solution without launching formal proceedings in a complaints case. [EOWMO 1983, s33 and EOFTOO s33]
10. The FTO has the power to order the public authority to pay compensation to the aggrieved citizen for any loss suffered. [EOFTOO s22]
11. The Ombudsmen have the power to make a report to the President regarding defiance of its recommendations by a public authority. [EOWMO, 1983 s12 and EOFTOO s11 & 12]
12. The FTO has the power to review any finding conveyed, recommendation made or order passed by him/her in any case. [EOFTOO s14(8)]
13. The Ombudsmen have the power to punish persons for contempt of their office in the manner of the Supreme Court. [EOWMO, 1983 s16 and EOFTOO s16]

Trinidad and Tobago

1. The powers of investigation/inquiry granted to the Ombudsman are not specified in FOI Act. But the Ombudsman is granted powers of High Court for conducting investigation by the country's Constitution. He/she can compel witnesses to testify and require production of records in question. [TT Constitution, 1980, s97]
2. The Ombudsman has the power to enter any premises to conduct investigation. [TT Constitution, 1980, s97]
3. The Ombudsman has recommendatory powers in any appeals case. The Ombudsman can make a recommendation to the Ministry about granting access to a record. The Ministry is free to choose to comply or refuse at its discretion. [s38A]
4. The staff of the Ombudsman are treated as public officers. [TT Constitution, 1980, s92(2)]
5. The Ombudsman is provided with immunity from legal interference and cannot be prosecuted for actions except those not taken in good faith. [TT Constitution, 1980, s98(4&5)]

United Kingdom

1. The Information Commissioner receives complaints from any person regarding access to information held by public authorities. [s50]
2. The Information Commissioner and staff are not to be regarded as servants or agents of the Crown. [Data Prot. Act, Sch. 5]
3. The Information Commissioner has powers of entry and inspection when armed with a warrant from a judge of the circuit court. The judge may issue a warrant based on the merits of an affidavit filed by the Information Commissioner. [Data Prot. Act, Sch. 9]
4. The Information Commissioner has the power to issue information notice on a public authority if the Information Commissioner requires any information from that authority while deciding a complaint. [FOIA, s51]

5. The Information Commissioner has the power to issue a decision notice if he/she believes that information was denied wrongly. This includes the steps that the public authority must take and the time limit for the same. [FOIA, s50(4/5)]
6. The Information Commissioner has the power to issue an enforcement notice on the public authority requiring it to take specific action within a specific period. This notice can be appealed against. [FOIA, s52]
7. The Information Commissioner has the power to approach the High Court in England or the Court of Session in Scotland to enforce a decision notice, information notice or enforcement notice if the public authority fails to comply. [FOIA, s54]

VIII. Appeal against orders of the Appellate Body

Antigua and Barbuda

An appeal against the decision of the Information Commissioner lies in the High Court. [s45(1)]

Australia

1. A person not satisfied by the action taken by the Ombudsman may file an appeal with the Administrative Appeals Tribunal but only after the former gives a decision. [s57]
2. Any party to a case in which the Administrative Appeals Tribunal has given a decision may appeal against such decision before the Federal Court of Australia. [AAT Act, s44]

Belize

An appeal against the decision of the Ombudsman lies in the Supreme Court. [s43]

Canada

An appeal against the decision of the Information Commissioner lies in the Federal Court (Trial Division) [s37(5)]

India

The RTI Act does not indicate where an appeal against the decision of the Information Commission may lie even though it refers to the possibility of an appeal. But an appeal is possible in the High Court and the Supreme Court through their writ jurisdiction recognized in the Constitution.

Jamaica

There is no mention of an appeal against the decision of the Appeals Tribunal. But the Resident Magistrate can impose punishment on any person for destroying, altering, blocking or concealing a document to prevent disclosure when moved by the Appeals Tribunal. [s34]

New Zealand

1. Citizen can file an application against the Governor General's Order in Council made against a recommendation of the Ombudsmen seeking review before the High court. [s32B]

2. High court may confirm the Order in Council or declare it beyond the powers of the Governor General. [s32B]
3. An aggrieved party may appeal against the order of the High Court before the Court of Appeal. [s32C]

Trinidad and Tobago

An appeal against the decision of the Ombudsman lies in the High Court. [s38A]

Pakistan

The statutes governing the office of the two Ombudsmen state that no court will have the power to question the validity of action taken under this Ordinance or grant a stay or interim injunction on the proceedings of the Ombudsman. But an appeal against the decisions of the Ombudsmen can be made to the President within thirty days of the order of the Ombudsmen. The President may pass an order on the matter as he deems fit. [EOWMO, 1983 s32 and EOFTOO 2000 s32]

United Kingdom

1. The public authority may file an appeal against the decision notice or information notice of the Information Commissioner before the Information Tribunal. [s57]
2. Any party to a case where a decision has been given by the Tribunal can file an appeal against that decision before the High Court in England or the Court of Session in Scotland or the High Court in Northern Ireland. [s59]
3. Any person or the Information Commissioner may file an appeal with the Information tribunal against the exemption certificate given to national security related information and records. [s60]

IX. Power to monitor compliance of public authorities:

Not all appellate bodies have uniform powers to monitor compliance directly under these FOI Acts. The Information Commissioners of Antigua and Barbuda and the UK can directly monitor the performance of public authorities and assess the steps taken for implementing the respective laws. In India Information Commissions can *suo motu* monitor compliance with the proactive disclosure provisions. But in all other cases they can only act on the basis of a complaint filed with them by aggrieved citizens. In almost all countries reviewed here the Administrative Ministry concerned has the power to monitor compliance. Often the reports received from the public authorities covered under the Act forms the basis for taking action.

Antigua and Barbuda

1. The Information Commissioner can monitor *suo motu* compliance of public authorities with the provisions of the FOI Act. [s37]

Australia

The relevant laws do not clearly lay down the powers of the Ombudsman and the Administrative Appeals tribunal regarding monitoring compliance of public authorities.

Belize

The Ombudsman does not have the power to monitor compliance of public authorities with the provisions of the FOI Act. The Administrative Ministry monitors compliance of public authorities. It receives annual reports from public authorities regarding action taken to implement the FOI Act and makes a combined report to the National Assembly. [s46]

Canada

The Information Commissioner's powers regarding monitoring of compliance is not clear. But the implementation record of every public authority is subject to scrutiny by Parliament as they are required to submit an annual report of compliance. [s 71]

India

The Information Commissions can *suo motu* monitor public authorities for compliance with proactive disclosure obligations. [s19(8)]

Jamaica

The powers of the Appeals Tribunal regarding monitoring compliance of public authorities are not clearly mentioned in the Act. The Ministry is required to submit an annual report of compliance before Parliament. [s36]

New Zealand

The powers of the Ombudsmen regarding monitoring of compliance with the Act are not clear.

Pakistan

The role of the Ombudsmen regarding monitoring of compliance with the provisions of the FOI Ordinance is not clearly spelt out.

Trinidad and Tobago

The role of the Ombudsman vis-à-vis monitoring compliance of public authorities with the Act is not clear.

United Kingdom

1. Information Commissioner can, with the consent of the public authority assess whether it is following good practice relating to the codes of practice issued by the Secretary of State and the Lord Chancellor. [s47(3)]
2. Information Commissioner can make written recommendations to a public authority if it does not conform to good practice. [s48]

X. Duty of Presenting Reports:

The obligation to report on compliance with the FOI laws is also not uniformly recognized as a role that independent appellate bodies can play. While in Antigua and Barbuda, Canada, India and the UK the appellate authority is responsible for presenting compliance reports, in others such as Australia, Belize and Jamaica the Administrative Ministry performs the reporting obligation. In New Zealand the Ombudsman may submit a report to Parliament through the Government.

Antigua and Barbuda

1. The designated Information Officer reports on the implementation of the Act to the Information Commissioner every financial year:- number of requests received, number of times rejection or partial disclosure was ordered (including sections invoked), number of appeals, amount of fees collected and action taken regarding proactive disclosure and records maintenance and management. [s14]
2. Report submitted annually (within the first 3 months of the financial year) to the Minister responsible for public information. [s37]

Australia

1. The Minister reports to Parliament about the implementation of the Act. [s93]
2. Each agency in turn will file reports regarding action taken to implement the Act within their jurisdiction. [s93]

Belize

The Administrative Ministry files an annual report before the National Assembly. [s46(1)]

Canada

1. The Information Commissioner submits an annual report on activities of his office to Parliament directly. [s38]
2. The Information Commissioner can make special reports to Parliament on urgent matters that cannot be deferred to the time of submission of the annual report. [s39]
3. Parliament refers relevant sections of the Information Commissioner's report to the appropriate Standing Committee. [s40]
4. All heads of government institutions also send annual reports to Parliament about implementation of the Act. [s72]

India

1. Every Ministry and Department compiles compliance report collected from public authorities under it and sends an annual report to IC. [s25]
2. The Information Commission compiles a report on implementation of the Act annually and submits it to the respective government. The respective government lays the report on the table of Parliament at the Centre or before the legislatures in the States, as the case may be. [s.25]

Jamaica

1. The Minister responsible submits annual report to House of Representatives and the Senate on the implementation of the Act. [s36]
2. Every public authority submits to the Minister quarterly reports on compliance with the provisions of the Act. [s36]

New Zealand

The Ombudsman sends to the Prime Minister a copy of the report sent to the Department along with his recommendations. This report will then be laid before the House of Representatives. The Ombudsman may attach any comments to this report. [s35]

Trinidad and Tobago

There is no mention of separate report submitted to the legislature under the FOI Act. But it may be part of the Ombudsman's annual report to the legislature.

Pakistan

Both Ombudsmen present a report to the President every financial year as part of their general duties. Action taken for implementing the FOI Ordinance forms a part of this report. [EOWMO, 1983 s28]

United Kingdom

1. The Information Commissioner files a general report every year before both Houses of Parliament. [s49]
2. Information Commissioner can file more reports from time to time in relation to any of his functions. [s49]

XI. Role in educating and training officers for better implementation

Some of the appellate authorities such as the Information Commissioner of Antigua and Barbuda are mandated by law to carry out training of officers and spreading awareness about the law amongst citizens. In India the Information Commissions can in their decisions order public authorities to enhance the training provisions for their officials. However Commonwealth countries with older laws do not place such an obligation upon the appellate authorities. Training and public education are the responsibility of the Administrative Ministry concerned.

Antigua and Barbuda

1. The Information Commissioner as on obligation to compile a User Guide and disseminate it in an accessible form. [s(81)]
2. The Information Commissioner is required to publish a guide for public authorities containing minimum standards and best practices for proactive disclosure. [s11]
3. The Information Commissioner is required to prepare and update Code of Practice with regard to record keeping, management and disposal and archivisation. [s12]
4. The Information Commissioner is required to undertake or promote the training of officers of public bodies to implement the FOI Act [s37(c)]

Australia

No training or public education responsibilities vested in the Administrative Appeals tribunal.

Belize

There is no special role regarding training or public education expected of the Ombudsman in the FOI Act.

Canada

No mandatory training role for the Information Commissioner.

India

1. The Information Commissions can recommend enhancement of training of officers in their orders. [s19(8)]
2. The main responsibility for training lies with government through the Administrative Ministry and the appropriate governments. [s26]

Jamaica

No role specified in the Act.

New Zealand

No role specified in the Act.

Trinidad and Tobago

No role specified in the Act.

Pakistan

No role specified in the Ordinance.

United Kingdom

No role specified in the Act.

Conclusion:

The appellate bodies created or recognized under the FOI laws reviewed here seem to fall neatly into an evolutionary trajectory. From the older laws which placed FOI responsibilities in the hands of existing public authorities such as the newer laws provide for the creation of specialist bodies tasked with a variety of responsibilities. The appellate bodies created by more recent FOI laws are not just adjudicators. They are designed to be champions of openness. They are mandated not merely to resolve grievances of individuals regarding non-disclosure of information but also to inculcate in the administrative machinery values of transparency and accountability. They are also tasked with organising public education programmes for the benefit of the people whose rights they are mandated to protect.

Often, statistics regarding the financial implications of an open and transparent administration are hard to come by. However some information from Canada is available. The Federal Government of Canada reported that during the first 20 years of the operation of their Access to Information Act more than 230,000 information

requests were received. A total of Can.\$ 212,580,762 (2003 figures) was spent to process these requests. In other words an average of Can.\$ 948 was spent on processing each information request.¹¹ This might seem like a large amount for developing countries which are struggling to cut down public expenditure in order to keep budgetary deficits and the accompanying inflation at bay. However, transparency is a desirable end in itself. In developing countries the socio-economic and political costs of implementing RTI leading to reduction in levels of corruption and entrenching of democratic governance far outweighs the cost of the extra burden placed on the exchequer for implementing access to information laws.

Notes

¹ The text of all FOI laws cited above is accessible on CHRI's website – http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm

The complete text of the FOI Act in Antigua and Barbuda is also available at:- http://www.ab.gov.ag/gov_v2/government/parliament/laws/freedom_of_info.pdf (as on 22nd May 2006)

² For the Australian FOI Act, 1982 please visit:- <http://www.scaleplus.law.gov.au/html/pasteact/0/58/top.htm> ; for the AAT Act, 1975 (as amended in 2005) please visit:- <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/BC5C38FDAEB0C809CA257035001971B5?OpenDocument> ; for the Ombudsman Act, 1976(as amended in 2005) please visit:- <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/366187295D5A8EEFCA25702E000482FE?OpenDocument> (as on 22nd May 2006)

³ The complete text of the Belizean FOI Act, 1984 is available at:- <http://infolac.ucol.mx/documentos/politicas/23.pdf> (as on 22nd May 2006)

⁴ The complete text of the Canadian ATI Act, 1983 is available at:- <http://www.infocom.gc.ca/acts/sections-e.asp> (as on 22nd May 2006)

⁵ The complete text of the Indian RTI Act, 2005 is available at:- <http://rti.gov.in/Members/aboutrti> (as on 22nd May 2006)

⁶ The complete text of the Jamaican ATI Act, 2002 is available at:- http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf (as on 22nd May 2006)

⁷ For the LGOIMA, 1987 in New Zealand please visit:- http://www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=1335546793&hitsperheading=on&infobase=pal_statutes.nfo&jump=a1982-156&softpage=DOC; for the Ombudsmen Act, 1975 please visit:- http://www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=1335546796&infobase=pal_statutes.nfo&jump=a1975-009&softpage=DOC (as on 22nd May 2006)

⁸ The complete text of Pakistan's FOI Ordinance, 2002 is available at:- http://www.crcp.sdnpc.org/ordinance_of_2002.htm; for the EOFTOO, 2000 please visit:- http://www.vakilno1.com/saarclaw/pakistan/federal_tax_ombudsman_ordinance/establishment_of_the_office_of_f.htm (as on 22nd May 2006) The text of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 has been sourced from scanned copies of the instrument made available by the Centre for Peace and Development Initiatives, Pakistan.

⁹ For the FOI Act, 1999 of Trinidad and Tobago please visit:- <http://www.foia.gov.tt/downloads/FOIA1999.pdf>; for the Trinidad and Tobago Constitution Act, 1976 please visit:- <http://www.nalis.gov.tt/AdministrationGov/Constitution.htm> (as on 22nd May 2006)

¹⁰ For the UK FOI Act, 2000 please visit:- <http://www.opsi.gov.uk/acts/acts2000/20000036.htm>; for the Data Protection Act, 1998 please visit:- <http://www.opsi.gov.uk/acts/acts1998/19980029.htm> (as on 22nd May 2006)

¹¹ Canada, Treasury Board Secretariat, *Info Source Bulletin* No. 26, (Ottawa: Public Works and Government Services Canada, 2003) at 25-26, online: http://www.infosource.gc.ca/bulletin/2003/bulletin_e.pdf (as on 22nd May 2006).