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# Information Disclosure Policy:

## A Toolkit for Pacific Governments

**July 2006**

*This key right [to information] is essential to empowering all members of society, including Parliamentarians, to strengthening parliamentary democracy, to reversing practices of government by the few and to improving the relationship between Parliament and the media.*

Commonwealth Parliamentary Association Study Group of MPs, 2004

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Ms Charmaine Rodrigues, former Coordinator of the CHRI's Right to Information Programme, is the author of the Information Disclosure Policy Toolkit.

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# Table of Contents

HOW TO USE THE TOOLKIT.....	4
EXECUTIVE SUMMARY.....	5

## PART 1: BACKGROUND

PACIFIC CHALLENGES AND OPPORTUNITIES.....	8
CURRENT STATE OF DISCLOSURE IN THE PACIFIC .....	10
Ad hoc information channels.....	10
Access to information laws and policies .....	11
THE VALUE OF INFORMATION DISCLOSURE .....	13
Supporting sustainable development.....	13
Encouraging equitable economic growth.....	14
Supporting decentralisation efforts.....	14
Improving efficiency of public administration .....	15
Entrenching participatory democracy.....	16
Strengthening responsible media reporting .....	16
Reducing conflict by cementing public trust.....	17
Supporting human rights .....	17
CORE PRINCIPLES.....	18
Maximum disclosure.....	18
Simple, cost-effective, timely access processes.....	19
Complaints.....	20
Monitoring, public education and training .....	20

## PART 2: MODEL INFORMATION DISCLOSURE POLICY

MODEL INFORMATION DISCLOSURE POLICY .....	23
EXPLANATORY NOTES .....	32
Introduction: A commitment to open government.....	32
Coverage of the policy.....	35
Responsible officers .....	36
Presumption of disclosure.....	39
Ensuring information is accessible by all .....	41
Proactive disclosure: by the Executive/bureaucracy .....	43
Proactive disclosure: by Parliament.....	45
Disclosing information upon request.....	46
Government-media relations.....	49
Complaints.....	50
Information management .....	51
Training and public education .....	53
Monitoring and reporting .....	55
GETTING STARTED IN PRACTICE.....	56

## HOW TO USE THE TOOLKIT

This Information Disclosure Policy Toolkit is a comprehensive set of materials designed to provide Pacific policy-makers with the tools to develop a strong, practical, effective Information Disclosure Policy (IDP).

Recognising that many policy-makers have limited time and resources, the Executive Summary has been developed both as a summary of the entire Toolkit, and to be used as a stand-alone briefing note which can be circulated to parliamentarians, officials and other key stakeholders as a general overview of the key issues.

Part 1 of the Toolkit provides more detailed background information. It identifies key challenges facing many Pacific island countries and discusses the value of information disclosure in dealing with many of these issues. This information can be used in support of more detailed Cabinet submissions and background papers. Part 1 also summarises the status of current information disclosure mechanisms, and sets out internationally recognised principles which will ideally underpin an effective access to information regime.

Part 2 of the Toolkit provides a generic Model Information Disclosure Policy (IDP) which can be used as an initial template for National IDPs throughout the Pacific. The Toolkit has been developed on the basis that the Model IDP will be contextualised to take account of local issues, resources and requirements. It is supported by detailed Explanatory Notes which provide explanations of key provision and guidance to officials on key areas which may need additional consideration when the Model IDP is being localised. The on-line version of the Toolkit provides hyperlinks from the Model IDP to the Explanatory Notes to assist readers to more easily access the issues.

## EXECUTIVE SUMMARY

In 2005, the Pacific Leaders Forum agreed on a Pacific Plan which committed the region to four key areas of work - good governance, sustainable development, economic growth and security. This set of objectives largely reflects the reform programmes being pursued domestically by many Pacific island countries. While a range of options have been canvassed in furtherance of these goals, one mechanism – information disclosure – could contribute significantly to the achievement of all four of these objectives, if innovatively implemented.

### **The fundamentals of information disclosure**

An effective access to information regime can be a vital tool in promoting more participatory development and more effective governance. Openness underpins the good governance principles of transparency and accountability. Information sharing also assists communities to more effectively engage in the design, implementation and evaluation of development projects and programmes. Information disclosure supports economic growth, in particular, because investors and markets are more likely to reward transparent, open economic environments. National stability and security are underpinned by policies of openness, which engender greater public trust in government officials.

Different terminology has been used to describe information disclosure regimes – freedom of information, access to information, the right to know – but fundamentally, the concept remains the same. At the heart of any information disclosure regime are four key principles:

- The duty of the government to provide maximum information disclosure to the public - both in response to requests and by regularly publishing key information - unless specific, defined exemptions apply;
- The need to ensure that access processes are user-friendly, timely, affordable and promote maximum accessibility for people throughout the country, including people in rural areas and from marginalised groups of the community;
- The need to ensure that requesters have access to a complaints process if access is not being properly provided, which will permit investigations by an independent review mechanism with strong powers to promote access and to ensure that any non-compliance or wrongdoing is dealt with appropriately;
- The need to ensure implementation of an access policy is effective, most notably by monitoring and reporting on access in practice, providing training to officials and undertaking public education programmes to ensure people are aware of their right to access information.

Government information includes: international accords; negotiating briefs; policy statements; minutes of discussions with investors, donors and debtors; cabinet decisions; parliamentary papers; judicial proceedings; details of government functioning and structure; intra-governmental memos; executive orders; budget estimates and accounts; evaluations of public expenditure; expert advice; recommendations and guidelines; transcripts of departmental meetings; statistical data; reports of task forces, commissions and working groups; social surveys and analyses of health, education and food availability; assessments of demographic and employment trends; analysis of defence preparedness and purchases; maps; studies on natural resource locations and availability; proof of the quality of the environment, water and air pollution; and so on.

### **Information Disclosure Policy Toolkit**

The Information Disclosure Policy Toolkit has been specifically developed for Pacific island governments, to provide practical resources for implementing an information disclosure regime. The Toolkit includes a generic Model Information Disclosure Policy (IDP) which can be used as a template for National IDPs throughout the Pacific.

The Model IDP recognises that all Pacific countries face different operating contexts, such that it is not possible to develop a one-size-fits-all policy. Such an approach will only result in an IDP that cannot be implemented or used in practice. It is envisaged that the Model IDP will be contextualised to take account of local issues, resources and challenges.

The Model IDP sets in place a framework which commits governments to more regularly publishing information of importance to the public. Regular information disclosure and dissemination can be a useful way for governments to empower their constituents to engage more effectively with public programmes, and it is also a key means of ensuring that the public is aware of the services and policies being implemented by the government. The Model IDP also sets out a process to enable members of the public to access information by request.

The Model IDP is designed to be practical, user-friendly and capable of implementation by Pacific governments with limited personnel and budget resources. Key implementation strategies which are incorporated into the Model IDP include:

- A phased approach to implementation, which will allow governments to maximise limited resources, by focussing attention on key organisations first and then using lessons learned to ensure more effective implementation across the whole of government over an agreed period of time;
- Ensuring the implementation process stays on track and on time by establishing an IDP Implementation Unit to develop and implement an Action Plan for Implementation. The Unit can be supported by an IDP Advisory Group of officials and an IDP Stakeholders Group of civil society groups, who can provide advice and support with implementation;
- Identifying existing government and community resources and networks which could be better utilised to promote information disclosure in order to maximise the effectiveness of limited resources;
- Targeting resources towards training for public officials and public education programmes for the public, to ensure that all stakeholders understand the new Policy and their duties under it.

The Information Disclosure Policy Toolkit includes a set of practical next steps which Pacific governments can take to pursue the goal of greater information disclosure. These suggestions are directed at national governments, as well as regional bodies and donors. Considering that the importance of access to information has been recognised regionally in the Pacific Plan, adopting regional strategies could ensure that scarce human and financial resources are pooled together for maximum effect. Information disclosure will have government and development benefits throughout the region and needs to be prioritised accordingly.

# **PART 1**

## **BACKGROUND**

## PACIFIC CHALLENGES AND OPPORTUNITIES

The Pacific, with its diverse cultures and traditions, draws its strength from its people. The different island communities scattered throughout the Pacific's sub-regions are rich in **cultural heritage**. More tangibly, many Pacific island countries have a wealth of natural resources which, if efficiently harnessed, provide a strong economic base to be used to further the social development agendas of the region. There are some success stories already in the Pacific, with some countries beginning to move forward in implementing progressive **reform programmes** designed to promote more equitable and sustainable development.

Nonetheless, many Pacific island countries continue to struggle to convert their natural wealth into **sustainable economic growth** and development outcomes. Today, five countries in the Pacific are still characterised as Least Developed Countries by the United Nations, namely, Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu.<sup>1</sup> This classification stems partly from issues related to the small size and consequent **vulnerability** of many Pacific countries to external shocks. However, although there is very limited statistical information available in the Pacific, it is generally agreed that human development indicators in the Pacific are lagging.

The majority of Pacific island countries were decolonised less than 30 years ago, such that it is often difficult to draw conclusions about the success of reform efforts. However, it is widely accepted that home-grown **democratic institutions** are sometimes weak and not yet deeply embedded in Pacific cultures. Westminster parliamentary systems were often imposed over entrenched **traditional political systems** of tribal elders, chiefs and "big men". Consequently, the concept of representative governance, underpinned by principles such as **transparency** and **personal accountability**, sometimes clashes with local traditions that prioritise community obligations over individual rights, accept secrecy on the part of elites as a sign of respect and view the Western concept of "nepotism" as a legitimate social duty. In practice, aligning these sometimes conflicting, but nonetheless valuable, principles continues to be a challenge.

### UNDP: Core characteristics of good governance<sup>2</sup>

- **Participation** — All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capabilities to participate constructively.
- **Rule of law** — Legal frameworks should be fair and enforced impartially, particularly laws on human rights.
- **Transparency** — Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.
- **Responsiveness** — Institutions and processes try to serve all stakeholders.
- **Consensus orientation** — Good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group, and where possible, on policies and procedures.
- **Equity** — All men and women have opportunities to improve or maintain their well-being.
- **Effectiveness and efficiency** — Processes and institutions produce results that meet needs while making the best use of resources.
- **Accountability** — Decision makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organisation.



- **Strategic vision** — Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

Service provision to outlying areas continues to pose a major challenge. The so-called “**tyranny of distance**” has been a major obstacle to maximising the **participation** of constituents who can be more than 1000km from the capital city. Poor participation from women and other marginalised groups is often a particular issue. The advent of community radio offers a new tool for promoting local community empowerment, particularly as Pacific island countries try to address the “**digital divide**” caused by the lack of access by most citizens to basic telecommunications infrastructure.

Some countries, such as Papua New Guinea, Vanuatu and Solomon Islands, have attempted to bridge the rural-urban divide in infrastructure, service-delivery and access to governance mechanisms by implementing **decentralisation** strategies. However, experiments with local government have generally been characterised by **poor administration**, little improvement in services and substantial leakage of funds at the different levels of government.

Existing power structures continue to contain embedded **gender inequalities**. To date, nine Pacific countries are party to both the UN Convention on the Elimination of all Forms of Discrimination Against Women<sup>3</sup> and the Commonwealth Plan of Action for Gender Equality, and all have committed to the 1994 Pacific Platform for Action for the Advancement for Women and the 1995 UN Beijing Platform for Action. All these international commitments highlight the need to improve equal access and full participation of women in power structures. However, women remain marginalised in many Pacific countries and continue to struggle for equality.

**Law and order** issues pose complex challenges for many Pacific governments. Solomon Islands and Papua New Guinea continue to face serious security problems, while Fiji has had to deal with two coups and Vanuatu has been on the verge of police revolt in the recent past. These conflicts have had complex and multiple causes, but a lack of **trust in government** and a perceived sense of alienation from power structures have played a part. Regional responses may be of value, with the Pacific Islands Forum now mandated to tackle issues of security in accordance with the 2000 Biketawa Declaration, which highlights that the Forum must constructively address the underlying causes of tensions and conflict.

The economies of the Pacific are also relatively weak. For example, while the GDP of Fiji was around \$5.4 billion in 2005, the output of Niue was as small as \$7.6 million.<sup>4</sup> **Limited budgets**, coupled with unstable resource bases reliant on finite forestry and mining pose a problem for many governments. In this context, many Pacific islands continue to attempt to develop and implement strategies to sustainably harness their natural resources, while at the same time working on developing more **sustainable industries**. Economic development strategies are hindered by geography, as the size of many Pacific countries and their distance from key markets can make the cost of doing business very high. Pacific island countries are also beginning to integrate into the global economy as the push towards **globalisation** becomes irresistible. In furtherance of the objective of better economic outcomes, many Pacific countries are putting considerable effort into developing better judicial systems, legislative frameworks and regulatory regimes.

## CURRENT STATE OF DISCLOSURE IN THE PACIFIC

The right of people to access information from government has long been recognised as one of the fundamental principles of democratic governance and participatory development. In order to participate effectively, people need information – so that they can develop informed opinions, argue on the basis of evidence and justify their views without relying on suppositions and rumours. Internationally, more and more governments have accepted the central role that information disclosure plays in promoting more participatory and accountable governance.

### **Ad hoc information channels**

In 2005, the Pacific Media and Communication Facility (PMCF) reported that, with a few exceptions, access to government information in the Pacific ranged from ad hoc to difficult, and that the quality and timeliness of the information supplied varied significantly.<sup>5</sup> There is a limited amount of useful, up-to-date information available about Pacific governments.

Only a very small number of Pacific governments have websites which capture information about all government departments, for example, Fiji. More commonly, one or two departments may set up a website on their own, but these usually highlight only their own work and the websites are often not updated. This makes it difficult even for citizens in the capital city to engage effectively with their government, while the large numbers of Pacific islanders living and working in other countries and those in rural areas find it even more difficult. It can be hard for people to find out about services and benefits to which they are entitled. Identifying who is responsible for what service or policy is not easy, and it can be hard to track down officials' current contact details.

Parliamentary and ministerial information can be difficult to obtain, even for some parliamentarians. Parliament is broadcast live in most Pacific countries, and Hansard is also available in most places. However, in some countries, Hansard, copies of legislation and court judgments need to be purchased. In Papua New Guinea, it was reported that parliament had kept no published Hansard since 1997.<sup>6</sup> Even where final laws and rules are published, lack of publishing facilities mean that MPs and the public have reported difficulty in accessing draft legislation and rules so they can provide comments and meaningful input into the law-making process. Where parliamentary committees are functional, it is still often difficult to access their terms of reference, find out when they sit, obtain copies of submissions from the public and access draft and final committee reports. Very few countries have government speeches, policies and legislation available via a government website.

Government access to email in some countries is very limited due to cost and availability. Even in countries that have better access to the internet and email, internet connectivity is not necessarily available to all government officers working with the media or the public — access may be restricted to the departmental chief executive officer, for example. This can make it hard for officials to communicate with each other, share information and disseminate it quickly and cheaply to the public and the media.

The technical limitations on government-public/media communications are exacerbated by the lack of whole-of-government communication and information policies that establish dissemination protocols. Often, officials are genuinely unsure about whether they can release information into the public domain because they have no clear guidelines on what can legitimately be disclosed. In the context of the media specifically, at times there is also a view in some countries and in individual departments that media coverage of government information is not a priority and/or is an intrusion. Government information in these instances is not made available to the media and/or the flow of information is carefully controlled by government.<sup>7</sup>

The 2005 PMCF survey of 14 Pacific governments specifically examined existing government information disclosure mechanisms, with a particular focus on information channels for the media. The PMCF survey found a mix of some or all of the following in the Pacific island countries that were reviewed:<sup>8</sup>

- A central government media or information unit, usually located within the prime minister's or president's office, that may or may not liaise with other government departments (FSM, Kiribati, Samoa, the Solomon Islands and Tonga). Fiji and PNG have Information Divisions set up within other Ministries;
- A press secretary for the prime minister or president and/or a senior departmental officer who acts in this role. In some countries this officer will have journalism experience (Kiribati, Fiji, FSM, PNG, Samoa, Solomon Islands and Vanuatu).
- A quasi-information unit through a government radio station (FSM, Nauru, Palau and RMI).
- Information or media officers within individual departments (mostly these were found in PNG departments). Government departments in other countries may have an officer who is authorised to work with the media, and/or a CEO who deals with any media enquiries.
- Media units with at least two full-time media officers in individual government departments. These units tend to be in a few particularly media-active departments, such as health, agriculture and education, and focus on community education rather than policy issues. These are usually handled by the minister and/or departmental head.

#### **Innovative government-community information partnerships**

Although many governments have not yet taken up information disclosure as a key priority, there are some early signs that governments are beginning to take action to develop innovative strategies for promoting information dissemination to the public. For example, in early 2006, the Solomon Islands Government signed a memorandum of understanding with the People First Network (PFNet), which operates 20 rural email stations across the country, to use their network to disseminate government information. The Government Communication Unit, with assistance under the RAMSI Machinery of Government Programme, has started emailing a weekly government e-bulletin to the rural villages serviced by PFNet. The project also feeds back comments from villagers back to the government in the capital, Honiara, using the same arrangement. The Director of the Government Communications Unit specifically noted the dissemination strategy was intended to empower the rural population by keeping them informed and giving them a means to communicate with the Government. Papua New Guinea is also experimenting with "telephone cafes" (akin to internet cafes, but using telephones), which provide a similar opportunity to harness community communications resources to disseminate government information.

#### **Access to information laws and policies**

Up until the early 1980s, only a handful of governments had implemented access to information policies or laws. Australia and New Zealand<sup>9</sup> were part of this pioneering group, both passing their access laws in 1982. Today however, almost 70 countries around the world have passed freedom of information legislation and/or enshrined the right to information in their constitutions. However, none of the Pacific island countries have yet passed a freedom of information law.

At the regional level, the 2005 Pacific Plan for Strengthening Regional Cooperation and Integration, endorsed by Pacific Leaders at the Forum Leaders Meeting, specifically references freedom of information. Under the general objective of "Good Governance: Strategic Objective 12" (improved transparency, accountability, equity and efficiency in the management and use of resources in the Pacific), there is a mention of work on "freedom of information". The Forum

Secretariat has also been working on information disclosure issues internally, and it is understood to be developing an internal Information Disclosure Policy to guide ForSec officials and the public.

At the national level, there is already some constitutional protection for freedom of information in place.<sup>10</sup> Section 51 of the Papua New Guinea Constitution explicitly recognises “*the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society*”. The draft Federal Solomon Islands Constitution also includes a specific right to access information. The Constitutions of the Federated States of Micronesia, Fiji, Kiribati, Solomon Islands and Tuvalu recognise the freedom to seek and receive information as part of the broader right to freedom of expression. Six countries — FSM, Fiji, Palau, PNG, RMI and Tonga — specifically guarantee freedom of the press. The Constitutions of four countries — the Cook Islands, Nauru, Samoa and Vanuatu — do not guarantee freedom of the media or freedom to communicate ideas and information.

The Constitution of Fiji is particularly interesting in its approach, with Article 174 specifically requiring that Parliament pass freedom of information legislation. The Constitution came into force in 1997. In 1998, a bi-partisan Constitutional Consequential Legislation Parliamentary Committee started developing freedom of information legislation. A draft was produced in the form of a “White Paper” published in the in the Government Gazette in December 1998. A Bill was approved by the Fiji Labour Party in early 2000 and was published for consideration by Parliament, but lapsed after the May 2000 coup. Civil society also launched a Model Freedom of Information Bill in 2004. More recently, the new Fiji Government elected in May 2006 has stated that it will table a Freedom of Information Bill in Parliament shortly.

The new Solomon Islands Government which came into power in early 2006 specifically refers to freedom of information legislation in its legislative program. The only other report of government freedom of information legislation being developed is in the Cook Islands where it is understood that a draft Bill was submitted to Cabinet for consideration in 2005. It is not clear what action has been taken since then. In Papua New Guinea, media groups developed draft freedom of information legislation in 1999, but no action has yet been taken on that draft. In Vanuatu, the local chapter of Transparency International is currently finalising a model Freedom of Information Bill.

## THE VALUE OF INFORMATION DISCLOSURE

Information is a public good like clean air and drinking water. It belongs not to the state, the government of the day or civil servants, but to the public. Officials create information for the benefit of the public they serve, as part of the legitimate and routine discharge of their official duties. Information is generated with public money by public servants paid out of public funds.

In this interconnected information age, the combination of technology and easy availability of know-how – coupled with guaranteed access to information – offers unprecedented opportunities to develop innovative strategies for tackling the governance and development challenges faced by so many Pacific island countries. Shared equitably and managed to the best advantage of all, information offers a short cut to development and democracy.

### **Supporting sustainable development**

Many Pacific island governments focus considerable resources on development programmes intended to improve the welfare of their constituents. Nonetheless, in 2006 five countries in the Pacific are still characterised as Least Developed Countries by the United Nations.<sup>11</sup> One of the reasons why so many development strategies in the Pacific Islands have made limited progress is that, for years, they have been designed and implemented in a closed environment - between governments and donors and without the active involvement of the public. This can result in strict policy prescriptions rather than a practical and inclusive approach to implementation. Poor people and women in particular are often completely excluded from development decision-making processes and only learn about projects supposed to benefit them after they have been signed off. Troublingly, even elected parliamentarians have sometimes complained that they are kept out of the policy loop and struggle to access information about development plans and donor budgets.

#### **Information empowers citizens and NGOs**

The right to access information offers a very practical means for individuals, civil society and even parliamentarians to engage more effectively in development activities and ensure that their rights are protected and their legitimate interests promoted. This has been particularly well-illustrated by environmental action groups which have been very adept at using access to information legislation to expose and discourage anti-green government and/or donor-driven and/or private sector driven programmes.

For example, in 2002 in Uganda, Greenwatch Limited, an environmental NGO, used the open government clause in Article 41 of the Ugandan Constitution to obtain the release of a key document about a controversial dam project that the Ugandan government and the World Bank had previously declined to release. The Ugandan High Court ordered the release of the document, whose very existence the Ugandan Government had denied during the court proceedings. A subsequent analysis of the document, commissioned by the International Rivers Network assessed that "Ugandans will pay hundreds of millions of dollars in excessive power payments if the World-Bank-financed Bujagali Dam proceeds according to plan." The project was consequently put on hold by the World Bank.<sup>12</sup>

With assured access to information, local parliamentarians and beneficiaries will be given a powerful tool to engage with development processes being directed at them. The World Bank has specifically acknowledged that: "The sharing of information is essential for sustainable development. It stimulates public debate on and broadens understanding of development issues, and enhances transparency and accountability in the development process. It also strengthens public support for efforts to improve the lives of people in developing countries, facilitates collaboration among the many parties involved in development, and improves the quality of assistance projects and programs."<sup>13</sup> If governments promote the provision of

development information to the public – for example, information about proposed new projects, an explanation of how programmes are being designed and implemented, details of anticipated beneficiaries, and/or information about the implementation of current activities – citizens can more effectively engage with their own development. With more information, affected communities can meaningfully participate with governments to develop targeted, sustainable programmes which are genuinely owned by local beneficiaries.

### **Encouraging equitable economic growth**

Markets, like governments, do not function well in secret. Joseph Stiglitz, Nobel Prize winning ex-Chief Economist of the World Bank, has consistently argued that greater transparency and information sharing between governments, business and citizens produces improvements in market efficiencies and public policy.<sup>14</sup> Of the thirty countries that are members of the Organisation for Economic Co-operation and Development (OECD), only three have not passed access to information laws. Information disclosure lays the foundation for market-friendly good governance principles of transparency and accountability, which in turn encourage growth. More government openness also supports more efficient economic outcomes because “a case can be made that the heightened transparency that leads to better prices for government procurement [which] translates into better value for taxpayers’ money”.<sup>15</sup> A transparent government committed to information disclosure will provide good-quality economic and social data proactively which will better inform government economic policy and decision-making.

In recent years, Pacific Island states have struggled to attract significant levels of foreign investment in order to accelerate economic growth and development, even though many countries are heavily reliant on remittances from citizens working abroad. Easy access to fulsome information that is not mired in bureaucratic processes encourages long-term investor confidence as well as making it easier for Pacific citizens overseas to engage in economic development activities at home. Foreign and local investors need to be able to rely on the routine availability of accurate information about government policies, the operation of regulatory authorities and financial institutions and the criteria used to award tenders, provide licences and give credit. Conversely, investors are reluctant to make commitments if they do not know what the rules are or are not confident they will be applied fairly and consistently.

Not merely economic growth, but also economic equity is promoted by access to information. By empowering smaller stakeholders to more effectively participate in the economy, the right to information can also help to ensure the economy grows more fairly. Liberating information from government increases economic opportunity for the less powerful, as much as for the big player. For example, communities who want to develop their natural resources can access information which will help them better assess their options and more effectively negotiate fairer deals with private companies. A worker can access information about labour regulations and their entitlements, a businessperson can find out about licensing, taxation and trade regulations; and farmers can get hold of land records, market trend analysis and pricing information.

### **Supporting decentralisation efforts**

The free flow of information between different levels of government, and between governments and the public promotes better decentralised governance and more effective service delivery, in particular by facilitating more informed participation by communities in the operation and oversight of services. A number of Pacific Islands countries have chosen to pursue devolution or decentralisation strategies, but continue to face difficulties. Local level corruption has been a problem and effective public participation is often still lacking. There is often considerable confusion, among communities and within government, over which level of government is responsible for providing what public services. This has weakened accountability mechanisms.

More active dissemination of information by all levels of government can address some of the practical problems of decentralisation, by making public more information about what governments do and who does what. In terms of service delivery specifically, information about how much money is to be spent on a community, what the money is to be spent on, over what period of time and by which department(s) could be disseminated. With this information, the public will then know who to talk to about services they need and programmes they want to be involved in. Information disclosure opens up communication channels between governments and remote communities, giving locals real power over decisions that affect their lives.

#### **Promoting more effective service delivery through information disclosure**

In Uganda, despite massive increases in education expenditure during the 1990s, a five-year survey found that 87% of all funds meant for primary schools were being diverted. Shocked by the findings, the national government began to publicise details of monthly transfers of grants to districts through newspapers and the radio. Primary schools were also required to display public notices on receipt of their funds. Empowered with this information, parents were able to monitor education grants and make local governments accountable for education provision. In five years, the diversion of funds dropped massively from over 80% to around 20%, while enrolment more than doubled from 3.6 million to 6.9 million children. In this way, proactive disclosure of information about education funding – a simple and inexpensive strategy – enforced greater local government accountability and the proper use of taxpayers' money.<sup>16</sup>

#### **Improving efficiency of public administration**

Open government support by information disclosure promotes more efficient and effective functioning of public administration. In many Pacific island countries, administrative inefficiencies continue to undermine public trust in the state and have hindered economic and social development. In particular, poor administration often weakens efforts at poverty reduction, creating a vicious circle where ineffective management leads to the leakage of funds, which, in turn, deters crucial foreign investment and donor support.

A good information regime often operates to make administrative procedures more transparent at all levels of government. In practice, this can encourage implementing agencies to be more efficient because they will be aware that oversight agencies and even the public can review their activities and will be able to find out about poor planning or implementation of activities. Leakage of resources from government activities will also be harder to hide. Openness also encourages better policy-making, as officials work harder to ensure that their decisions and policy approaches can withstand public scrutiny.

#### **Promoting more effective administration of government schemes<sup>17</sup>**

In India, poor citizens are given a ration card which entitles them to discounted rice and wheat. Similar government welfare programmes are found in the Pacific. In the jurisdiction of Delhi, citizens used their right to information law to access records held by the private ration shop dealers responsible for administering the programme and found that the shops' owners had been siphoning off more than 90% of the rations, while providing false records to the Government Food Department. Citizens accessed government records and compared them to the entries in their own ration books. Comparisons showed that the Government's records contained widespread false entries. Following a long NGO campaign, the Delhi Government has now agreed to open up ration registers every month to enable citizens to regularly check their ration records. This is resulting in savings to the Government, as the Food Department is now directing its limited budget more effectively.

### **Entrenching participatory democracy**

The foundation of democracy is an informed constituency that is able to thoughtfully choose its representatives on the basis of the strength of their record and one that can hold government officials accountable for their policies and decisions. Democracy is enhanced when people meaningfully engage with their institutions of governance and form their judgments on the basis of facts and evidence, rather than just empty promises and political slogans. Where people do not have access to information, voters often fall back on ethnic, religious or geographic affiliations when choosing a candidate.

Information disclosure plays a crucial role in ensuring that citizens are better informed about the people they are electing and their activities while in government. In the absence of a continuous flow of information that accurately reveals how ministries are functioning, how politicians have performed or the experience and qualifications of new candidates, elections can end up promoting only narrow interests or not recognising the very real achievements of parliamentary representatives. Likewise, where it is difficult to scrutinise the financial details of political party funding, citizens are unable to ensure that special interest groups, including criminal elements, do not co-opt their representatives for private gain. Better-informed voters mean better-informed choices, better legislators and better governance.

#### **Knowing who you are really voting for<sup>18</sup>**

As in many countries, Indian law disqualifies people convicted of serious criminal offences from standing for elections but does not bar those indicted and awaiting trial or in appeal. Alarmed by the number of people with questionable backgrounds entering parliament, a group of enterprising academics applied to the Supreme Court to direct India's Election Commission to make it compulsory for candidates to disclose any charges of serious crimes pending against them. The Supreme Court agreed, finding that the right to information is inherent to democracy and that voters have a constitutional right to know a candidate's background. The Commission immediately made the necessary changes to the nomination process. Despite some legal challenges, all candidates in Indian elections, at the time of nominations, must file an affidavit disclosing if they have been charged with serious crimes, their educational qualifications and the extent of their wealth and liabilities. This information must be made widely available.

### **Strengthening responsible media reporting**

In robust democracies, the media have an important role to play as an effective means of communicating key messages and information to the public. The media is the foremost means of distributing information; where illiteracy is widespread, radio and television have become vital communication links. The media can act as a two-way communication mechanism, reporting to communities on government business and activities and feeding back to the centres of power the issues that are important to villages and communities. In this capacity, the media also often acts as a watchdog, scrutinising official activities and exposing mismanagement.

Journalists have a duty to report the facts to the public in a fair and balanced way, without fear or favour. However, where the media is hemmed in by regulation or is unable to get reliable information held by governments and other powerful interests, it cannot fulfil its role effectively. Lack of access to information leaves reporters reliant on rumour and half-truths instead of facts. Conversely, a sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and is therefore in the interests of governments as well as the public.



Many MPs in the Pacific have raised concerns about how the media might use information which they have accessed from government. They fear that implementing a disclosure regime could lead to frivolous or contentious requests from the media, and irresponsible reporting. However, at a 2005 Pacific Workshop for MPs on Freedom of Information, Pacific MPs endorsed a statement which recognised among other things, that:

*A freedom of information system can help improve the level of public debate and media reporting in a country by making more facts available to the public, and therefore reducing the risk of debate and reporting being based mostly on rumours and unverifiable allegations.*<sup>19</sup>

### **Reducing conflict by cementing public trust**

Democracy and national stability are enhanced by policies of openness which engender greater public trust in government. Systems that enable people to be part of, and personally scrutinise, decision-making processes reduce citizens' feelings of powerlessness and weakens perceptions of exclusion or unfair advantage of one group over another. Importantly, enhancing people's trust in their official representatives also goes some way to minimising the likelihood of conflict. In post-conflict development situations such as that underway in the Solomon Islands, the right to information can be especially crucial in the state-building process because openness and information-sharing contribute to national stability by establishing a two-way dialogue between citizens and the state, reducing distance between government and people and thereby combating feelings of alienation.

### **Supporting human rights**

The right to information has been recognised by the United Nations General Assembly as far back as 1946, when it declared "*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*"<sup>20</sup>. For example, freedom of expression and thought inherently rely on the availability of adequate information to inform opinions. The realisation of the right to personal safety also requires that people have sufficient information to protect themselves. Lack of information denies people the opportunity to develop their potential to the fullest and realise the full range of their human rights.

The right to information was given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights.<sup>21</sup> Over time, the right to information has been included in a number of regional human rights instruments, including the African Charter on Human and Peoples' Rights,<sup>22</sup> the American Convention on Human Rights<sup>23</sup> and the European Charter of Human Rights.<sup>24</sup> This has placed the right to information firmly within the body of universal human rights law. Notably, the Pacific is one of the only regions in the world which does not have its own regional charter of human rights.

## CORE PRINCIPLES

Drawing on international and regional standards, evolving State practice, and the general principles of law recognised by the community of nations, this Toolkit sets out 4 key principles which commonly underpin information disclosure policies. These principles reflect agreed standards endorsed by the United Nations Special Rapporteur on Freedom of Expression in 2000.<sup>25</sup> Notably, the African Union<sup>26</sup>, the Organisation of American States<sup>27</sup> and the Commonwealth<sup>28</sup> have also endorsed minimum standards on freedom of information, while the European Union has developed a specific Regulation on Freedom of Information.<sup>29</sup>

### **Maximum disclosure**

**It is important to make a clear statement that as much information as possible will be released to the public.**

The principle of maximum disclosure commonly underpins access to information regimes. In practice, this presumption in favour of access means that all people have a *right* to access information and all bodies covered by the policy have a corresponding *duty* to provide access in accordance with an Information Disclosure Policy (IDP).

All arms of government – for example, the Head of State (eg. President, monarch, Governor-General), parliament, the courts, and the armed services – are usually covered by an IDP. All bodies are encouraged to release as much information as possible, including emails, file notings, contracts, draft documents and the like. Records management systems need to be (re)developed to facilitate the aims of the law.

**Any denial of information is based on proving that disclosure would cause serious harm to a legitimate interest and that denial is in the overall public interest.**

The principle of maximum disclosure nonetheless recognises that the right of the public to access information is not absolute. Exemptions from disclosure are usually allowed where release of information would cause serious harm to national security, international relations, law enforcement activities or the competitive position of a company. Unreasonable disclosure of personal information is also usually not permitted.

However, IDPs need to avoid broadly defined exemptions applying to whole classes or types of information. In most cases, each document and the context of its release is unique and needs to be judged on its merits. Accordingly, exemptions are applied on a content-specific case-by-case review. Non-disclosure is only justified where, on balance, withholding the information is in the “public interest”. A good IDP will not permit non-disclosure simply to protect a government official from embarrassment or because disclosure might be confusing for the public. In such cases, governments may consider disclosing additional information to put the requested information into context. There is always be a strong public interest in disclosures which lead to the exposure of wrongdoing in public authorities.

**Information which is of general relevance to constituents is routinely published and disseminated.**

Even in the absence of a comprehensive law on the right to information, one effective way of promoting development accountability and more meaningful public participation in development activities is for governments to explicitly prioritise greater publication and active dissemination of information to the public. At a minimum, basic information needs to be published about government organisations, such as the names of the responsible Minister, key staff, contact details, organisational structure, the services provided and programmes run, the departmental budget and ongoing updates on expenditure.

To promote better development outcomes, information can also be published about proposed activities, as well as updates about the implementation of current programmes (eg. budget, beneficiaries, proposed outcomes). Governments can also publish information about opportunities for the public to participate in organisational consultations and activities, and keep them updated on general government business.

**Information is published and released in a form and language which makes it practically accessible by all members of the public.**

Even where information is released to the public, it will have little useful impact in terms of improving development and governance outcomes unless it is released in a form which can be understood by ordinary people. In Pacific countries, at the very least this means that information needs to be released in languages other than English, so that people in villages are not effectively excluded. More specifically, technical government information – in particular, information about budgets and expenditure – needs to be explained in simple language so that people can make sense of it.

The medium for publication also needs to be considered. In countries with minimal internet access, web publishing may not have a significant impact. The opportunities presented by existing government and community outreach networks need to be explored. For example, community noticeboards, village meetings and provincial government offices can all be used as dissemination points. Local government or NGO fieldworks can also be utilised to disseminate information to the public. Broadcasting key information – on commercial and community radio and television – is also an option that can be pursued.

**Simple, cost-effective, timely access processes**

**A key test of an access policy's effectiveness is the ease, cost and promptness with which people seeking information are able to obtain it.**

Even where the government routinely publishes key information, members of the public may submit specific requests for access to information. The government needs to have in place procedures for handling such requests. Request procedures need to be clear and uncomplicated so that the public are not confused or burdened by complex bureaucratic requirements.

Applications can be submitted in writing (electronically, by mail or by hand) or even orally where the applicant is illiterate or where geographic difficulties might mean that requests by telephone are the most practical method. Procedures need to specify a processing time limit; usually information must be either provided or refused within 5 to 30 days. Ideally, no fees should be imposed because public taxes already support information collection and dissemination. At most, only the actual costs incurred in copying and posting the requested information will be passed on to applicants.

**Officials are nominated as a key contact point for information disclosure.**

Most access to information regimes nominate specific officials who are given primary responsibility for handling requests for information. Commonly, a Departmental Information Officer (DIO) is appointed within each department to act as the contact point for applications and for internal information queries for other officials. Powers can then be delegated to other officers within the department or regional offices, if necessary. This approach makes it easier for the public to know who to submit their application to, as well as identifying someone who can be contacted if follow-up is necessary. DIOs can also be targeted for specific information disclosure training and can act as a disclosure expert who other officials can call on for advice.

**The special needs of poor, illiterate or marginalised groups need to be addressed.**

Access procedures need to be designed to specifically take into account the needs of the poor, illiterate or marginalised groups. For example, in countries where education constraints mean that many people are illiterate, systems for making an application for information need to allow oral applications and officials need to be under an obligation to assist requesters to understand the information they are given. Where women are less empowered, proactive disclosure requirements can require that places where women gather are nominated as priority dissemination points. Procedures for facilitating access by disabled people can also be considered. In the Pacific, with its special challenges of geography, it is important that consideration is given to how people in outlying areas can most easily access information.

**Complaints**

**The public needs to be able to complain to someone if they believe the Policy has not been implemented or misapplied.**

Ideally, a strong, independent and impartial reviewer/body will be given a mandate to review refusals to disclose information and other procedural matters, with the power to compel release. In many countries, a specific Information Commission(er) is established specifically for this purpose. In other jurisdictions, an existing Ombudsman or administrative tribunal fills this role, and/or the courts can hear appeals. The key issue is that bureaucrats should not have the last word on disclosure because sometime there will be cases where it will be in an official's interest to withhold information, even where the Policy requires disclosure. There need to be some *independent* oversight mechanism available to ensure that decisions are correctly made. Where implementation is poor, the public also needs to be able to make a complaint. It is crucial that the review agency itself should be trusted by the public. Complaints procedures need to be simple, timely and cheap to promote maximum accessibility by the public.

**Mechanisms need to be available to deal with cases of wrongdoing.**

In many countries, sanctions are available to punish officials who deliberately delay release of information, knowingly provide incorrect information, conceal or falsify records, wilfully destroy records subject to requests or obstruct the work of information officials. This approach recognises that bureaucrats in countries with an entrenched culture of secrecy may need the strong incentives arising from penalties to prod them into implementing openness and access seriously. Such penalties serve a useful role in protecting the government against officers working against its interests and those of its constituents. In any case, mechanisms will usually be available to punish serious cases of criminal wrongdoing which have been identified in the criminal law, such as forging or destroying documents.

**Monitoring, public education and training**

**A body or person is responsible for monitoring and promoting information disclosure.**

It is increasingly common to include provisions in access laws and policies mandating a body – such as the Ombudsman or a Unit within a key Ministry or under the Prime Minister's Office – to monitor and promote implementation. Monitoring is important – to evaluate how effectively public bodies are discharging their obligations and to gather information which can be used to support calls for improvements to the law and implementation activities. Ongoing monitoring and evaluation will enable implementation efforts to be continuously assessed, reviewed and strengthened, so that best practice can be distilled and copied, and areas still requiring more work can be identified and addressed. At a more strategic level, governments need to take steps to monitor how the improvements in disclosure activity are contributing to other governance and development goals.

Public education programmes and/or a media strategy also need to be developed to publicise the new policy and people's rights under it. For example, the public need to know what kind of information they can expect to be routinely published, and how they can make an application for information. Any education programmes and materials need to be developed to ensure that they are in a form accessible to all people, literate or illiterate, in both the urban and rural areas of the country. Where people have a limited understanding of how governments works, it may also be necessary to undertaken broader civic education programmes, so that the public understand the value of information disclosure to their everyday lives. Where civil society is not strong, it can also be useful to target education programmes at NGOs and the media, because they are commonly key information intermediaries between governments and the public.

**Officials are given specific training on information disclosure principles and processes.**

One of the most important practical ways of promoting information disclosure is to undertake training programmes to ensure that all officials understand their duties and are committed to openness. Beyond the mechanics of knowing what the law says, what records management systems hold and how information is to be provided, holistic training emphasises the role of public servants in implementing 'openness' as a core value of public service.<sup>30</sup> Training needs to focus on changing the attitudes that distance governments from the people they serve and must aim at mitigating the disquiet that changes in institutional culture always create.<sup>31</sup> Performance criteria also need to be incorporated into officials' employment contracts and any Public Service Charter to encourage officials to prioritise their new responsibilities under the policy.

## **Part 2**

# **MODEL INFORMATION DISCLOSURE POLICY**

# MODEL INFORMATION DISCLOSURE POLICY

All Pacific countries face different operating contexts, such that it is not possible to develop a one-size-fits-all Model Information Disclosure Policy (IDP). Any Policy will need to be contextualised to take account of local issues.

This Model IDP is designed as a basic framework which can be used as an initial template for National IDPs throughout the Pacific. The Policy starts from a premise of maximum disclosure, subject to key exceptions to protect the national interest. It then sets out a number of areas where the government will need to target specific resources in order to get information flows moving. Care has been taken to design the Policy to minimise the need for new human and financial resources, in recognition of the fact that many Pacific countries are already stretched implementing a range of reform programmes. Nonetheless, it is unavoidable that there will be some resource implications in bedding down the new Policy.

Throughout the Model IDP, certain key concepts are highlighted in bold text. This indicates that the issue is discussed in more detail in the Explanatory Notes. Readers using the on-line version of the Toolkit can click on these terms and will jump directly to the Explanatory Note. Pressing Ctrl + Z will return the reader to the Model IDP. The Explanatory Notes explain each key concept and suggest some additional issues which will need to be considered when the Policy is being modified for domestic use. When reading these sections, officials are encouraged to ask themselves: "What do I need to do in practice to ensure that the public can more easily access information that they need?"

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## **Introduction: A commitment to open government**

1. The **importance of information disclosure** to good governance and sustainable development has been recognised by national governments and international organisations around the world. A high level of transparency directly facilitates public participation and government accountability. Openness supports equitable economic growth and foreign investment. It also cements public trust in government and reduces the feelings of exclusion which often contribute to conflict. Access by the public to information held or generated by the Government will facilitate the transparency, accountability, legitimacy, and the local ownership of our activities.
2. Taking account of the many benefits of open government, this Information Disclosure Policy (IDP) sets out a long-term plan for moving from an information poor to an information rich society over time. It covers the period from [2007-2017]. This timeline recognises that the process of building an information society will require **ongoing commitment**.
3. The Policy has been designed to **maximise scarce resources**. The Government has been careful to ensure that this Policy is realistic and capable of implementation, taking into account limited financial and human resources. The Government wishes to send a strong message to donors that information disclosure is a key element of the Government development programme and should be prioritised for support accordingly.
4. The Policy **clarifies existing disclosure practices**, for the benefit of officials and the public. It also establishes a basic framework for requesting, releasing and publishing information. The Policy also highlights key areas where more work needs to be done to move the country towards the overall goal of an effective access to information regime.
5. Over time, the Government will ensure that **new or revised government policies** will explicitly include a consideration of how information disclosure can be more effectively promoted in specific sectors. All government policies need to make sure to exploit opportunities to promote information disclosure and dissemination.

### **Coverage of the policy**

6. In recognition of the Government's resource constraints, this Policy has adopted a **phased approach** to implementing full information disclosure. In the early stages of implementation, the focus will be on those bodies which are most central to the country's proper functioning.
7. In the first *[3 years]* of the Policy (Phase 1), the **bodies covered by the Policy** include: the office of the Head of State, Ministers, ministerial advisors, parliament, parliamentary committees, all government departments (at all levels, including central, provincial and district level offices), all bodies created by the Constitution or by statute, the police service, the armed services, the prisons service, the courts administration, *[and the Ombudsman, Auditor-General, Accountant-General, any government anti-corruption/watchdog agency]*.
8. At the end of *[Year 3]* of the Policy (Phase 2), a review will be conducted to assess whether any additional bodies which receive public funds should be covered by the Policy.

### **Responsible officers**

9. The *[insert title of **responsible Minister**]* is responsible for overseeing the implementation of this Policy.
10. The Minister will identify *[insert number – at least 1]* officials who will be responsible for overseeing the day to day implementation of the Policy. This **IDP Implementation Unit** will be responsible for providing practical guidance and advice to officials working at the department level to implement the Policy.
11. The IDP Implementation Unit will develop a detailed **Action Plan** for the first *[3 years]* of the Policy within *[2 months]* of approval of the Policy. The IDP Implementation Unit will also establish:
  - An **IDP Advisory Group** consisting of the departmental officials responsible for implementation, which will meet *[fortnightly]* to discuss progress and problems and exchange ideas, best practice and lessons learned.
  - An **IDP Stakeholders Group** consisting of civil society and media representatives and key officials, which will meet *[monthly]* to discuss progress and problems.
12. The *[Head]* of each body covered by the Policy will have primary responsibility for ensuring that this Policy is implemented within their organisation. This responsibility may be delegated to **Departmental Information Officers (DIOs)** as appropriate. DIOs will assist individuals seeking to obtain information, assist officials to process requests for information, receive individual complaints regarding the performance of the public body relating to information disclosure, promote best practices within the organisation in relation to information management, monitor implementation and collect statistics for reporting purposes.

### **Presumption of disclosure**

13. This Policy commits the Government to the principle of **maximum disclosure**. This means that officials will approach information creation, management and disclosure issues with the presumption that disclosure will be allowed, unless the release of information would be genuinely likely to cause harm to one of the key interests listed in paragraph 14 below and there is no overriding public interest reason in favour of disclosure.



14. The Government is committed to ensuring that information which if released could harm the country is protected. To this end, in accordance with this Policy [officials may withhold information](#) in the following situations:
- Where disclosure would be reasonably likely to cause serious harm to national security, international relations, the national economy;
  - Where disclosure would be reasonably likely to cause serious prejudice to the effective formulation, development or delivery of government policy.
  - Where disclosure would be reasonably likely to cause serious prejudice to the investigation or prosecution of a crime or the ability to conduct a fair trial, would constitute a contempt of court, is forbidden to be published by a court or tribunal or would facilitate an escape from legal custody;
  - Where disclosure would constitute a breach of legal professional privilege or any other fiduciary relationship recognised by statute;
  - Where disclosure would endanger the health or safety of any natural person;
  - Where disclosure would seriously prejudice the legitimate commercial or competitive position of the organisation or a third party or cause unfair gain or loss to any person or the information was obtained in confidence from a third party and it contains a trade secret protected by law;
  - Where disclosure would constitute an unreasonable invasion of privacy of a person who is not a government official or where the information is about a government official but has no relation whatsoever to their official position or duties;
15. Each case must be considered on its merits and the public interest in disclosure and secrecy must be weighed up. Where considering what is in the [public interest](#), officials will prioritise the need to:
- promote accountability of Ministers and public authorities to the public;
  - ensure that the expenditure of public funds is subject to effective oversight;
  - promote informed public debate and effective public participation in the making and administration of the laws and policies of the country;
  - keep the public adequately informed about the existence of any danger to public health or safety or to the environment;
  - ensure the protection of human rights and the prosecution of violations;
  - ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.
16. Where a public official, acting in good faith, misapplies this Policy and releases information which should have been kept secret, that official will not be prosecuted and will be protected from any liability or disciplinary action.
17. Although the Official Secrets Act (OSA) remains in force, this Policy recognises that in reality in *[insert country name]* today, the OSA requires updating and is only to be used in the most extreme cases to prosecute only the most serious breaches of secrecy which would cause substantial harm to national security. The *[IDP Implementation Unit/Attorney-General's Office/ Law Reform Commission]* will [review existing secrecy laws and rules](#) to ensure that they are consistent with this Policy. The *[IDP Implementation Unit/Attorney-General's Office/ Law Reform Commission]* will publish a report on this work within *[18 months]* of this Policy being adopted, and the report will be submitted to Parliament for consideration. Amendments or additional clarification orders/circulars will be issued as necessary.

18. Although paragraph 14 of this Policy provides general protection against information disclosures which could cause an unwarranted invasion of privacy, this Policy does not address [privacy issues](#) in detail. The Government recognises that privacy issues need to be dealt with as a priority to ensure that personal information collected and/or held by private bodies and/or the Government is accurate, is properly handled and cannot be misused by government officials, private bodies or other members of the public. The *[IDP Implementation Unit/Attorney-General's Office/Law Reform Commission]* will be tasked with examining privacy issues and providing recommendations to ensure appropriate protections are in place, and will submit a report on their findings to Parliament for consideration within *[18 months]* of this Policy being adopted. At that time, consideration will be given to amending this Policy and/or developing a separate policy or legislation to appropriately deal with privacy issues.

### **Ensuring information is accessible by all**

19. All information will be published and disseminated taking into consideration local languages, available infrastructure and the most effective local modes of communication, taking into special account the limited literacy in some areas. Government bodies will develop effective dissemination strategies which use a range of communication options, such as notice boards, newspapers, television, radio, village announcements, posters, the internet, inspection at local government offices and other means.

20. The Government will [use existing government networks](#) more effectively to disseminate information to the public under this Policy. The *[insert title of responsible Minister]* and the IDP Implementation Unit will liaise with other government departments to assess what networks are available and how they can be utilised to better share information with communities. Particular attention will be paid to developing strategies to disseminate information to rural areas, including through existing radio networks and local government offices. The *[IDP Implementation Unit / responsible Minister]* will publish a progress report on progress made with this work each year for the first *[insert number of years]* following the adoption of this Policy.

21. The Government will also work with [existing community networks](#) to ensure the better dissemination of government information throughout the country, and in particular in rural areas. The *[insert title of responsible Minister]* and the IDP Implementation Unit will in the first instance rely on the IDP Stakeholders Group for advice and ideas.

22. [Government websites](#) will be more effectively utilised as a public communications tool. Although internet infrastructure is relatively limited, the Government recognises that the internet can be developed over time into a more effective information dissemination tool.

### **Proactive disclosure: by the Executive/bureaucracy**

23. The Government is keen to use information disclosure to empower citizens to re-engage with governance and development activities. To this end, this Policy commits the Government to more regular publication and active dissemination of information (referred to as “proactive disclosure”). [Proactive disclosure by the bureaucracy](#) will be used as a key mechanism for communicating with the public and promoting open government.

24. *[All government bodies]* covered by the Policy will be required, within the first *[4 months]* of the Policy being approved, to publish – at a minimum, on the government website, and on their own website if they have one – the following:

- A statement of the department's mandate and key areas of work, including services provided by the department if any;

- A chart and/or list setting out the department's organisational structure, including:
    - A directory of the all officers, at least to the level of Section Head (*or equivalent*), including the total number of staff in each department broken down by levels, and the pay scales applicable to each level;
    - A description of the powers and duties of senior officers and the procedure to be followed in making decisions;
  - A list of the types/categories of information/records the organisation holds and publishes and the procedure to be followed in obtaining information (*which will be developed over time*)
  - The department's annual budget, including:
    - A breakdown by programme/project as appropriate to the department
    - Regularly updated reports (quarterly if possible) about the disbursement of the Budget;
    - The results of any audits and corresponding departmental explanations;
  - Speeches made by the responsible Minister and press releases;
  - Policy documents, including drafts for public comment where appropriate;
  - Quarterly and annual reports, where produced;
  - The services offered, schemes run, programmes managed and/or projects being implemented, including:
    - Copies of all contracts held in electronic form, in particular the name of the contractor, scope of services, the amount, including payment schedules and criteria for payment; the period within which the contracts must be completed and arrangements for penalties due from both parties if the contract is not adhered to (and all future contracts must provide for an electronic copy to be created);
    - Copies of all policies, guidelines, rules and forms (and all future documents of this type must provide for an electronic copy to be created);
  - Mechanisms for citizen participation, where they exist, including complaints mechanisms, information regarding public consultations, open meetings of committees and councils and any other opportunities for the public to participate in policy-making.
25. The *[Treasury Department]* will also be required, within the first *[4 months]* of the Policy being approved, to publish – on the government website and via newspapers and on the radio – simple [budgetary updates](#), including information on national and local budgets, and *[quarterly]* updates on expenditures and revenues. The *[Treasury Department]* will also publish information about overseas development assistance receipts, including what money is being provided by what donors for what projects/programmes. This information will be presented in a simple format which is easy for laypeople to understand.
26. The *[Electoral Commission/Attorney General's Department]* will also be required, within the first *[4 months]* of the Policy being approved, to publish [electoral information](#), including:
- Publishing on the government website, all laws, rules and guidelines relating to elections, including information on nominating for elections and conducting elections;
  - Publishing on the government website and via newspapers and on the radio, details of all donations to parliamentarians, political parties, and government officials, including the name of the donor, the amount and the date.
  - Ensuring that all electoral rolls are open for inspection and will be provided to members of the public upon request.
27. The IDP Implementation Unit will work to ensure that the information in paragraphs 24-26 will be disseminated broadly, in accordance with the commitment in paragraphs 19-22 to ensuring maximum accessibility for all people.

28. Information will need to be updated at least every *[3 months]*, although some information may need to be updated even more regularly if it is to be useful to the public.

### **Proactive disclosure: by Parliament**

29. The Government supports better [information disclosure by Parliament](#) and will provide at least *[1 dedicated computer with internet and email facilities and a printer]* for the use of parliamentarians. The Government encourages all Members of Parliament to use these resources both to inform themselves and disseminate key information to their constituents.
30. The Government will ensure that the *[Clerk of Parliament/Law Office]* has access to a computer with internet and email facilities and a printer to enable the Clerk to fulfil his/her duties to print, circulate and publish Bills, draft Rules, final legislation and final regulations.
31. The *[Clerk of Parliament/Law Office]* will ensure that at least one copy of all Bills, draft Rules, final legislation and final regulations is kept either in his/her office or the parliamentary library for inspection by parliamentarians and members of the public.
32. The IDP Implementation Unit will work with the *[Clerk of Parliament/Law Office]* to ensure that all Bills, draft Rules, final legislation and final regulations are published on the government website. This information will also be disseminated more broadly, in accordance with the commitment in paragraphs 19-22 to ensuring maximum accessibility for all people.

### **Disclosing information upon request**

33. This Policy recognises that the public can access all [different types of government information](#), including files, reports, opinions, memos, emails, internal departmental notes, submissions, briefings, videos, tapes, databases, samples and models.
34. This Policy empowers any member of the public to request copies of information and/or inspection of information. Under this Policy, requesters may also request to inspect public works and can obtain samples from public works.
35. Where people want to access information which has already been published, government officials will advise requesters where the information can be found, and assist them to access a copy if resources permit.
36. People may also [request access to information](#) which has not already been published. Government officials will accept requests for information from any member of the public, in writing, by fax, by email, by telephone or in person and in any of the languages spoken in the country. The requester does not need to provide a reason to justify their request.
37. The request should identify a contact person, contact details (mailing address, phone/fax number or email), a clear description of the information requested (specified as much as possible by reference to relevant dates, places, topics, etc), the form the information is needed in and the date the request is being submitted.
38. Upon receiving a request, the official will put a date stamp on the written request. Where no date stamp is evident, the requester will be given the benefit of the doubt if there is a disagreement about the date the request was submitted. If an application is made to the wrong organisation, officials should promptly transfer it to the organisation which holds the information and notify the requester of the transfer immediately.

39. In relation to [processing requests](#):

- Where the request is sent by post, it will be addressed to the head of the office it is being sent to. The head of the office will then process the request him/herself or forward it to a delegate to process (for example, the DIO).
- Where the request is received orally, the official will write down the request and provide a copy to the requester for their records. The official will then promptly forward the request to the head of that office or a DIO if one has been appointed in his/her office, who will be responsible for processing the request.
- Where the request is submitted in person or by email, the official who receives the request will promptly forward the request to the head of that office or a DIO if one has been appointed in his/her office, who will be responsible for processing the request process it him/herself, unless.

40. Bodies covered by the Policy will provide requesters with the information requested within 30 days, unless there are good reasons for non-disclosure on the basis of any of the grounds set out in paragraph 14 above and after considering the public interest in disclosure of the information. This 30 day period starts on the date the request is first received, even if it is later transferred to another organisation.

41. All officials will do their utmost to work with requesters to provide them with the information, in a form that they can understand. Illiterate, sensorily disabled and/or handicapped people should be assisted to understand any information they are given. Where a requester asks for help understanding a document, officials will use their best endeavours to provide assistance.

42. If the request is for so many documents that the relevant official is having trouble processing the request, he/she must discuss the request with the requester and with the DIO or the Head of Department, as appropriate, to decide how to proceed. Within the 30 days time limit, the official will need to contact the requester and explain any delay and provide a reasonable alternate date for providing the information, of not more than 60 days from the date of the request.

43. Where the request is approved, the official will contact the requester as soon as possible (by registered letter, telephone, fax or email) and advise when, from whom, where and how the requester can access the information. Every requester shall receive a response to their request.

- *[Where the information is for a document of more than [25 pages], the requester may be asked to pay a [fee](#) equivalent to the actual cost of copying the information.*
- *Where the information is to be provided on a video, tape, CD or computer disk, the requester can provide their own and the information will be free. Otherwise, the requester may be charged the cost price of providing the video, tape, CD or computer disk.*
- *No fee will be charged where the cost of collecting or paying the fee is more than the amount of the fee itself]*

44. Where an official intends to reject a request, they will first discuss the case with the DIO or the Head of Department, as appropriate, and get their [approval for any rejection of a request](#). Where the request is denied, the official shall contact the requester as soon as possible (by registered letter and telephone if possible) and provide a clear explanation of why the request was rejected and details of any complaints mechanism(s) available.

## **Government-media relations**

45. The Government recognises that the media play an essential role in a democracy as they provide a key channel for disseminating accurate information to the public about government activities and decisions, and for people to voice their agreement and disagreement with those activities and decisions. The Government is therefore committed to strengthening its [relations with the media](#).
46. The *[Government Communications Unit]* is primarily responsible for ensuring that information is regularly shared with the media, via press releases, briefings and conferences and the full release of key documents (eg. the Budget) as appropriate. The *[Government Communications Unit]* has a responsibility to develop positive relations with the media and to ensure that the media can access relevant, reliable and timely information so that the public are kept properly informed of the government's policies and activities.
47. In accordance with this Policy, all Heads and Deputy Heads of Department have the [authority to issue public statements](#) to the media. This authority may be delegated by these officials, as appropriate considering the size and functions of the organisation.
48. The Government encourages the media to use this Policy to access information from Government to ensure that stories are based on verified facts, rather than leaks or rumours. Reporters are encouraged to seek comments from the Government Communications Department and/or the relevant departmental officials.

## **Complaints**

49. Where a member of the public, including members of the media, are unhappy with the way this Policy has been implemented or applied – including where they believe they have been wrongly denied information – they may make a [complaint](#) to the *[Ombudsman]*, an independent and impartial arbiter of administrative functioning in government. The process for making complaints will be the same as that imposed under the legislative instrument establishing the Office of the *[Ombudsman]*.
50. The *[Ombudsman]* will make every reasonable endeavour to dispose of the complaint within 30 days, recognising that the usefulness of obtaining access to information often depends on its timeliness. The *[Ombudsman]* can exercise all powers he/she has under the law establishing his/her position in relation to complaints under this Policy.
51. Where, while investigating a complaint, the *[Ombudsman]* uncovers an act which may constitute criminal wrongdoing, the *[Ombudsman]* will send a report of his/her findings to the *[insert the name of the relevant Minister]* for follow up. As permitted under the relevant empowering statute, the *[Ombudsman]* will also refer the case to *[an anti-corruption watchdog or public prosecutor]*. Where there are allegations that a public official is involved, the *[Ombudsman]* will also refer the case to the *[Public Service Commission]* for action.

## **Information management**

52. Providing timely access to information will be difficult if information is not properly managed and stored. Accordingly, the Government is committed to ensuring that [records management systems](#) are strengthened with a view to promoting the objectives of this Policy. Where resources are available, specific records management programmes will be implemented. However, even where this is not possible, all organisations covered by the Policy are expected to review and streamline their systems and to develop basic guidance for staff on how to create, save, file, store, archive and dispose of records and information.

53. The Government recognises that [computers and other new information technology](#) could assist with providing more effective access to information by the public and more efficient information management. The Government is committed to *[developing and]* implementing an appropriate information and communication technology which is designed to maximise scarce resources while promoting efficient and open government.

### **Training and public education**

54. Promoting information disclosure and open government is a key duty of all public officials. To ensure that this message is unequivocal, the Government will ensure that all officials receive [training](#) on how to implement this Policy. Ministers, heads of department, senior officials and DIOs will be given priority in training activities.
55. The IDP Implementation Unit will be responsible for ensuring that [public education activities](#) are undertaken to explain this Policy to the public, NGOs and the media in particular, in recognition of their key role as partners in the effort to disseminate more information to the public.

### **Monitoring and reporting**

56. The *[IDP Implementation Unit]* will be responsible for [monitoring](#) implementation of this Policy and any relevant Action Plan(s).
57. The *[Ombudsman]* will be responsible for submitting an annual report to Parliament on implementation of this Policy. The [Annual Report](#) will be referred to a relevant parliamentary committee for consideration. The committee will report back to Parliament at the session immediately following submission of the Annual Report with comments and recommendations. The *[insert title of responsible Minister]* will table a report in no later than the following session of Parliament responding to the Committee's report.
58. The Annual Report will include:
- specific discussion of each department's progress with implementation, including how well they are implementing their proactive disclosure obligations;
  - specific discussion on parliament's implementation of its proactive disclosure obligations;
  - as much statistical information as possible on the types of information being requested, the responses being provided by officials, and the timeliness and cost of responses;
  - specific recommendations for reform and improvement.

## EXPLANATORY NOTES

Throughout the Model IDP, certain key concepts are highlighted in bold text, which are linked to these Explanatory Notes. The Explanatory Notes explain each key concept and suggest some additional issues which need to be considered when the Policy is being modified for domestic use. When reading these sections, officials are encouraged to ask themselves: “What do I need to do in practice to ensure that the public can more easily access information that they need?”

### **Introduction: A commitment to open government**

#### **Importance of information disclosure**

The value of information disclosure to Pacific islands countries is discussed in detail above at pp.14-18.

#### **Ongoing commitment at senior levels**

Even where a freedom of information law or information disclosure policy is approved, officials may be sceptical of the usefulness of the new openness approach. It is vital that Ministers, parliamentarians and senior bureaucrats actively promote the right to access information and consistently pledge their unequivocal support for a new openness regime. It is important to avoid sending conflicting messages to those responsible for administering the new policy. Clear statements need to be made by leaders and senior officials to encourage bureaucrats to believe that facilitating access to information is an activity they should prioritise in their daily work. Establishing a culture of openness is crucial.

#### **Key questions:**

- Are there strong, identified “champions” of open government within the Government (Prime Minister, Minister for Information, Cabinet, MPs) and bureaucracy (heads of department, senior managers)? Do opposition parties support the new Policy?
- Have leaders been encouraged to promote the new policy to the bureaucracy and other key stakeholders? Has the Government promoted the new policy – eg. via the media?
- Is training on the Policy being planned for leaders?

#### **Maximise scarce resources**

In the Pacific region, administrative resources available to governments are often scarce. Budgets are already usually fully-programmed and personnel have full work plans. Nonetheless, promoting more efficient information management is often a key means of freeing up resources, because staff waste less time looking for documents. They also save time using old documents as templates instead of developing documents from a blank page. In the early stages of implementation, it is important that an appropriate budgetary and human resources are available. For example, two current staff members could be seconded to the IDP Implementation Unit for the first 1-2 years of the Policy to manage implementation.

#### **Key questions:**

- What resources (personnel, financial, infrastructure) are available for implementation? Over what period of time? Can personnel be “borrowed” from other programmes (in the short-term)? Can volunteers (eg. via overseas programmes) be used to support implementation?
- Have donors been asked to support implementation? Could this work be incorporated into any of the current government reform programmes, eg. on public administration?



## **Clarify existing disclosure practices**

Before any Policy is finalised, it is important to assess what disclosure practices are already in place to ensure that the Policy incorporates the good elements of current approaches, and specifically overrides any bad practices within the bureaucracy. For example, if some departments have already appointed their own communications officers, that could be noted in the Policy in the section on Departmental Information Officers (DIOs). Or if a Government Communications Unit is in place, that could be mentioned and strengthened in the Policy in the section on Government-media relations. Conversely, if officials have fallen into bad practice, for example because they automatically reject all requests for information or refer them to other bodies, such practices need to be reviewed so better practices can be encouraged. It may be helpful for the IDP Implementation Unit to convene a meeting with the media and civil society groups to identify those agencies they experience the most communications difficulties with.

Clarifying existing practices will be a first step towards identifying gaps and identifying issues that require further consideration. It will also ensure that the final Policy is a comprehensive document which will provide a single, clear statement for the public and officials on what can and cannot be disclosed. All other relevant policies or regulations need to be identified and any conflicts with the Policy will need to be considered and resolved to avoid confusion.

### Key questions:

- Are there any policies currently in place which deal with information disclosure in any way (eg. information and communications technology policy; policy on liaising with the media)?
  - Are there information policies in place for individual government departments (eg. finance, education, health)? Do departments have press/information officers?
- Are there laws, regulations or administrative circulars in place which deal with information disclosure (eg. Official Secrets Act; Archiving Act)? Do they place limits on what can be disclosed? If so, how? Do they set in place managerial arrangements for deciding on disclosure?
- What systems are currently in place to deal with information disclosure? Is information uploaded regularly on government/department websites? Is any information disclosed through brochures, noticeboards, workshops, etc? If the media or the public make information requests, how are they handled? Do people receive answers?
- Are there currently any officials who specifically deal with information disclosure (eg. Government Communications Unit, information officer)?
- What classification and declassification policies and procedures are in place?

## **Incorporate openness into new/revised government policies**

While the Model IDP provides a comprehensive framework for information disclosure, nonetheless it is important that other government policies reinforce the Government's commitment to open government by incorporating specific statements on access to information. The Model IDP can be reinforced by using sectoral policies to extend information disclosure. For example, a new national health policy could include a new section on how greater information disclosure will be promoted in support of empowering communities to engage with their local health clinics, for example, by requiring health clinics to publish their budget, procurement statements and details of ongoing health grants and expenditure. All sectors need to be encouraged to consider how more proactive disclosure could be used to promote accountability and local participation.

Key questions:

- Do existing sectoral policies properly deal with issues about information disclosure?
- Should key sectors (eg. health, education, finance, lands natural resource management, provincial government) be encouraged to revise their policy statements and programme designs to promote more information disclosure?
- What are the best ways to disclose information to ensure rural communities can get access and can understand the information that is available?

## **Coverage of the policy**

### **Phased approach**

In countries where resources are scarce, a phased approach to implementation can be a good way of ensuring that reform proceeds, but at a pace that the bureaucracy can handle. In Jamaica for example, the Government adopted a phased approach to implementation of their new freedom of information legislation because personnel resources were scarce in their Implementation Unit. In the first 12 months, only around 10 Ministries were required to implement the law, while the rest followed in the next year. If Pacific governments prefer to adopt a phased approach, consideration could be given to specifically listing the bodies responsible for First Phase implementation, and then requiring that all other bodies have prepared for implementation by the end of the Second Phase.

### **Key questions:**

- Strategically, taking into account the current state of information management in the bureaucracy, resources constraints and the size of the bureaucracy, is it more appropriate to require all bodies to implement the Policy immediately, or would a phased approach be more realistic?
- If a phased approach is chosen, how many phases will there be? What bodies will be responsible for implementing during what phase? How will these bodies be chosen? What is the timeline for each phase (eg. 6 months – 1 year)? What on-going monitoring will take place to ensure phases are adhered to and lessons learned from initial phases can be incorporated into later phases?

### **Bodies covered by the Policy**

In accordance with international best practice, the Policy covers all arms of government because they all – the executive, judiciary and legislature – have obligations of transparency and accountability which would benefit from openness. Although there is often an instinctive sense that the Head of State and/or parliamentarians should be exempt from disclosure, in fact, they play such an important role in national governance, that to exempt them from the Policy would severely reduce the Policy's effectiveness. Historically, it was not unusual for the Head of State to be above scrutiny, but in contemporary democracies, it is usually accepted that the Head of State – or at least their representative in government (ie. the Prime Minister, Governor-General or President) is answerable to the people. The monarchies in the Pacific may take a different approach. In time, the government may also wish to extend the Policy to cover information held by private bodies, at least where the body is performing public service or is being paid with public funds. This approach is increasingly being adopted internationally in freedom of information laws.

### **Key questions:**

- What bodies need to be covered by the Policy, in addition to those listed in the Model IDP? Eg. Local oversight bodies? Council of Chiefs? Special district offices? Government trusts? Specialised agencies (national museum, advisory groups, municipal bodies)? Should the Policy cover information held by private bodies, at least where they perform public functions or receive public funds?
- If a decision is made to exempt certain bodies, has an explanation been included in the Policy explaining why the body is exempt? This will be useful in helping the public understand the Government's reasoning. If a decision is made to exempt certain bodies, can the exemption apply to just part of the body not all of it (ie. a particular department/unit within the body)?

## **Responsible officers**

### **Minister**

It is important that the Minister responsible for implementation has a strong commitment to the new information disclosure regime. Different countries have made different ministers responsible, including the Prime Minister, Minister for Information, Minister for Constitutional Affairs, Attorney General or Justice Minister.

#### **Key questions:**

- Which Minister within government has the best set of available expertise, resources, portfolio responsibilities and personal commitment to lead implementation?

### **IDP Implementation Unit**

The Model IDP suggests that an IDP Implementation Unit be set up to guide and monitor implementation of the Policy. Such units have been common in countries implementing new information disclosure regimes, to ensure that proper attention is given to bedding down the new Policy. Otherwise, often a disclosure policy will just sit on the shelves gathering dust. Both Jamaica and Trinidad and Tobago – two small island states with similar experience to Pacific countries – set up implementation units to implement their new freedom of information laws. Due to resource constraints, each unit only had 2-3 staff members. With limited staff, the units nonetheless developed training modules and undertook training for officials, developed guidance materials for officials and systems to help process applications, liaised with senior officials to fix problems, collected statistics and developed public awareness materials.

In the United Kingdom, a section was set up within the Department of Constitutional Affairs. In Uganda, the Ministry for Information is taking the lead. In South Africa, the National Human Rights Commission was made responsible for training public officials, conducting educational programmes, monitoring implementation and reporting to Parliament.

Where countries already have a dedicated Government Communications Unit, this may form the basis of the IDP Implementation Unit. Alternatively, if there are departmental press/information officers, consideration may be given to seconding them into a single unit to support implementation. Consolidating press/information officers into a single unit may create efficiencies for the entire bureaucracy, reducing duplication and streamlining processes and outputs. Commonly, implementation units are put in the Prime Minister's Office as a sign of their importance and to encourage other departments to take their work seriously.

#### **Key questions:**

- What personnel resources are available that could be dedicated to supporting implementation of the new Policy? Where do they currently reside (in a single department/agency/unit or scattered throughout the bureaucracy)?
- Is it possible to task an existing department/agency/unit with implementation? In which ministry? If not, could existing press/information staff be brought together into single implementation unit with resources to focus on implementation? Could this conflict with their existing obligations/duties? If so, how will this be managed?

### **Action Plan**

An immediate way of signalling the government's commitment to implementation is by developing and publishing a detailed plan of action identifying key implementation tasks, the agency/ies responsible for actioning them and strict timelines for completion. Experience has shown that it is most efficient for a whole-of-government Action Plan to be developed by an

implementation unit (see above). This ensures that implementation activities are consistent across the government.

An IDP Implementation Unit could take the lead in developing an Action Plan. However, the Action Plan needs to be developed participatorily, to promote whole-of-government ownership of the final Plan and its activities. Key ministries – particularly Ministries which may be concerned about new openness requirements, such as the Cabinet Office, Home Ministry and/or the Police Ministry – should be brought into the process so that they are on-board from the outset and their concerns can be addressed and overcome early on. One of the most important elements of any Plan is DEADLINES. Clear dates need to be included for completion of various implementation steps. The IDP Implementation Unit then needs to monitor these deadlines and ensure that any slippage is queried, explained and if necessary, sanctioned and remedied.

Key questions:

- What are the key activities which need to be undertaken? By whom (which organisations, which officials will be responsible within the organisation)? By when?
- What resources are available for implementation? How can these most effectively be deployed? How can money be targeted for maximum effect (eg. one computer v 10 filing cabinets)?
- What support will need to be provided to organisations to help them with their implementation activities? Could the IDP Implementation Unit develop detailed guidance notes and training to help officials with implementation (eg. on records management, proactive disclosure, processing requests)?

Start Date	End Date	Activity	Responsible Officer	Status

**Departmental Information Officers (DIOs)**

The Model IDP sets in place a system which requires each organisation to nominate a Departmental Information Officer (DIO) to be responsible for the Policy. DIOs usefully operate as a central contact point to promote the law within their organisation and as a resource which officials can draw on if they have questions regarding the law. Designating specific officials as contact points is a useful strategy because they can be used as an embedded resource to promote transparency within their organisation.

Rather than outsiders from other departments or oversight bodies trying to explain the law to sceptical officials, DIOs – who have the trust of their colleagues and understand the intricacies of the organisation and its information needs – can work with the IDP Implementation Officer to perform this role. To do so effectively however, governments need to ensure that DIOs have sufficient time and resources to discharge their duties, and that their new role is recognised within the promotions and rewards systems within the bureaucracy.

Key questions:

- What level of officer should be nominated as a DIO to ensure that they have sufficient authority and knowledge of the organisation to promote implementation amongst their colleagues? What about geographical spread - should DIOs be allocated across the country?

## **IDP Advisory Group**

In countries with small bureaucracies, it can be an effective means of getting officials on board with a new policy to set up an advisory group which brings together the key implementers responsible for managing implementation of the Policy within their organisation. The Model IDP sets in place a system which requires each organisation to nominate a Departmental Information Officer (DIO) to be responsible for the Policy. These DIOs could usefully be brought together to regularly share implementation problems and innovations.

This approach has been successful internationally. In Jamaica for example, their Access to information (ATI) Implementation Unit set up the ATI Association of Administrators, which brought together Information Officers from various agencies to regularly discuss the challenges they were facing and share lessons learned and good practice. Likewise, in Scotland, the Government set up the Freedom of Information Implementation Group, which consisted of senior officials from the Executive as well as a cross section of Scottish public authorities. The Group was set up in 2001, four years before the Scottish Act came into force, and was tasked with preparing for and assisting with implementation.

### Key questions:

- How many organisations will be implementing the Policy? Is it feasible for the DIOs from each organisation to meet regularly to discuss implementation?
- If DIOs cannot meet in person, is it feasible to set up an on-line discussion group for DIOs? Alternatively, could the IDP Implementation Unit run a phone or radio chat-line for DIOs? What about DIOs stationed outside the capital?

## **IDP Stakeholders Group**

To be practically effective in facilitating the public's right to information, it will be important for implementation approaches to take account of the local needs of the community. To do this, governments would do well to develop strategies which promote government-community implementation partnerships. For example, in Jamaica, the Government's Access to Information (ATI) Implementation Unit set up an ATI Advisory Committee of Stakeholders, which drew together representatives from civil society, the private sector and the media. The Committee met monthly with the Director of the ATI Unit – and even the Minister at times – to promote non-governmental monitoring of the ATI Programme, the provision of recommendations to the Government on best practices and to provide assistance to the ATI Unit that its individual members were in a position to render. For such monitoring bodies to be effective, they require strong commitment from government representatives, who need to be active in listening to and acting on their recommendations.

### Key questions:

- What organisations within the country should be invited to regularly meet with the IDP Implementation Unit to talk about implementation? It is important that a cross-section of views is represented – what organisations will bring in views from women, youth, rural people, the media, business, etc?
- If civil society is not consulted via a regular meeting, is it possible to set up a feedback system (via the government website, radio talk shows, writing to the IDP Implementation Unit, calling a Feedback Line) to encourage comments from the public and civil society?

## **Presumption of disclosure**

### **Maximum disclosure**

The principle of maximum disclosure is discussed in detail above at p.19.

### **Officials may withhold information**

The key principle underlying any exemption is that its purpose must be to genuinely protect and promote the public interest. All exemptions therefore need to be concerned with whether disclosure would actually cause or be likely to cause harm. International experience supports the view that blanket exemptions should not be permitted simply because a document is of a certain type – for example, a Cabinet document, or a document belonging to an intelligence agency. The key issue needs to be whether disclosure of the information would be likely to do serious damage to a legitimate interest which deserves to be protected. The Policy needs to avoid including mandatory grounds for withholding information (except for those already provided for in pre-existing statutes).

In accordance with international best practice, every test for an exemption (articulated by the international NGO, Article 19) should be considered in 3 parts:

- (i) Is the information covered by a legitimate exemption?
- (ii) Will disclosure cause substantial harm?
- (iii) Is the likely harm greater than the public interest in disclosure?

#### **Key questions:**

- Are the exemptions listed in the Model IDP appropriate for the national context, or will they require further elaboration to ensure that officials apply them properly and do not interpret them too broadly?

### **Public interest**

The Model IDP makes all of the exemptions subject to blanket “public interest override”, whereby a document which falls within the terms of a *general* exemption provision will still be disclosed if the public interest in the *specific* case requires it. This ensures that every case is considered on its individual merits and public officials do not just assume that certain documents will always be exempt. A number of public interest grounds is listed in the Model IDP to assist officials with weighing up the competing interests. The idea of this provision is to ensure that the “public interest” is always the focus of any decision about disclosure. For example, while information about police deployment might need to be withheld during a period of unrest, after the unrest is over, that same information may well need to be released in the public interest, to enable the public to assess whether the situation was dealt with properly.

#### **Key questions:**

- Are there any other grounds that could be added to the list of issues to help officials understand when disclosure will be in the public interest?

### **Review existing secrecy legislation**

Governments may need to review existing legislation to make sure that the laws and rules which regulate the conduct of government bodies do not conflict with the new Policy. For example, if there is an Official Secrets Act in place, officials may be concerned that they will be prosecuted under the Act if they release information to the public, notwithstanding the fact that the policy says they should be more open. If secrecy provisions are left on the law books, officials may be confused about their obligations.

Ideally, conflicting legislation will be amended or repealed. In fact, consideration may be given to developing a freedom of information law to provide certainty to officials.<sup>32</sup> If enacting a comprehensive law or even passing amendment Bills through parliament will be difficult or time-consuming however, governments may wish to issue administrative circulars clarifying how existing laws and regulations will be interpreted applied in light of the new information disclosure policy. For example, the government may wish to clarify what acts of disclosure the Official Secrets Act will no longer be used to punish. To help ensure Ministers and Parliament are kept informed of progress on this issue the IDP Implementation Unit can produce a report for publication by Ministers within 18 months of this policy being adopted.

#### Key questions:

- What legislation, regulations and/or administrative orders are currently in place which promotes information disclosure?
  - Is there any constitutional guarantee for the right to information?
  - Are there any relevant treaty obligations dealing with the right to information? Has the country signed up to treaties that may require legislation to enforce openness – such as environmental treaties?
- What legislation, regulations and/or administrative orders are currently in place which restrict information disclosure? Is there an Official Secrets Act in place? If so, is it a living law, or has it fallen into disuse?
- Are there any legislative reform programmes in place currently? Could these be developed/redesigned to include a review of all secrecy and openness legislation? Is the Attorney-General's Office and/or Law Ministry equipped (in terms of personnel, expertise and resources) to undertake a review of secrecy legislation?
- Has any work been done to develop a freedom of information law? Has the government developed draft legislation? Has civil society developed a model FOI law? Was any draft law developed participatorily, in that the public and civil society were engaged in the legislative development process? Is there a realistic timetable for tabling, enacting and implementing FOI legislation?
- If there is no law in draft, are there government statements recognizing the need for legislation or specific commitments to passing relevant laws?

#### **Privacy issues**

In an age where governments and private bodies are collecting and holding increasing amounts of information about members of the public, it is essential that proper policies are in place to ensure that personal information is appropriately protected from disclosure and cannot be misused by officials. Privacy issues are complex – particularly now that considerable information is held in electronic databases and shared between the private and public sectors, between levels of government, and between countries. Specific attention and expert resources need to be dedicated towards developing appropriate national privacy regimes.

- Is there any constitutional right to privacy? Is there a national Privacy Policy or Act in place? If not, have any sectoral policy documents or issues papers been produced or commissioned? What safeguards are in place currently to ensure that personal information held by government and private bodies is not incorrectly released or misused?
- Are there any legislative reform programmes in place currently which could be developed/redesigned to include an examination of privacy issues? Is the Attorney-General's Office/Law Ministry/Law Reform Commission equipped (in terms of personnel, expertise and resources) to undertake such an exercise?



## **Ensuring information is accessible by all**

### **Use existing government networks**

Considering the scarce resources available to develop new information infrastructures, it is more strategic to consider how existing communication and outreach networks can be harnessed for maximum effect. For example, existing radio and TV services can be a cheap but effective method for disseminating government information. Almost all Pacific islands have government radio services which could be used to disclose key government information and 5 have government TV services.<sup>33</sup> Many governments have also invested in maintaining radio networks in provincial offices, local health clinics, schools or village centres which could be better utilised. In fact, health clinics could be developed as “information hubs” as they often constitute a village meeting point, where parents meet and share information. Likewise, local schools could double up as information hubs, where important information could be pinned to noticeboards or sent home to parents via their school children. Where they exist, village court networks could also be tasked with disseminating more government information.

Existing community outreach networks could also be utilised. Many Provincial Government, Rural Development and/or Natural Resources Ministries have programmes which involve fieldworkers or rely on officials stationed outside of the capital. These workers can be used as local information officers, who could be tasked with disseminating key documents and messages and assisting people to use the new Policy. For example, in Papua New Guinea, the Department For Community Development is currently working on the establishment of informal Community Resource Centres, which will operate as community focal points in each province. They will house officers from the Community Development Division, but will also provide a centre for civil society interaction with government.

### **Key questions:**

- What government systems exist for disseminating information to the public, not only within the ministry for information, but within other ministries (eg. school noticeboards, health clinic radio systems, provincial government offices)?
- Are there ministries which deal with outreach to village areas (eg. ministry of provincial government, ministry for rural affairs)? Are there any programmes or resources available through those ministries which could be used to promote information disclosure?
- Can the Development Assistance Funds available to MPs in many Pacific countries be specifically targeted towards promoting information disclosure, eg. via MPs local offices?

### **Use existing community networks**

Taking into account the resource and personnel constraints faced by many Pacific countries, government needs to harness all of the current resources available to the government – including resources that may be owned or run by non-government bodies. Many NGOs and church-based organisations have strong community outreach networks (eg. fieldworkers stationed in rural areas as community liaisons). Five countries have community radio.<sup>34</sup> Rather than attempting to duplicate these networks, government may wish to partner with them – formally or informally – so that they can be developed as community information points.

Where the government provides information on a government website, community networks can also be encouraged to take the information, simplify it and share it with their constituents. Basic training may be provided to community groups to assist them to understand government documents (eg. budget information) before they disseminate them to the general public.

### Key questions:

- What forms of media exist (eg. newspapers, commercial and/or community radio, television, internet news)? What languages do they operate in? Which have the most outreach?
- Are there any community organisations or networks already in place which could be utilised by the government to promote information disclosure? Do these groups have communications infrastructure that could be put to good use?
  - Are there traditional community fora/networks/channels which could be harnessed as information dissemination points?
  - Do NGOs and civil society groups have community networks or run outreach programmes?
  - Are there reliable church-based networks which could be used to disseminate information (in an unbiased, non-proselytising way)?
- Is any department already responsible for liaising with civil society (churches, NGOs, traditional groups, etc)? Could that ministry use its existing contacts or programmes as entry points for community activities on information disclosure and dissemination?

### **Government website**

Although computer infrastructure is currently limited in the Pacific, nonetheless, most Pacific governments have been able to set up a single website which is supposed to publish government information. Even in countries with limited communications infrastructure, the internet can be a key dissemination point, particularly if coupled with a strategy which encourages other networks (eg. churches or NGOs) to print and disseminate the information. In this respect, the Model IDP is based on the assumption that the cost of ensuring that a single government website is kept up to date with useful information will be outweighed by the benefits of greater information disclosure. For example, server space rented from an existing overseas provider and regularly updated using off-the-shelf web design software by a computer specialist who is responsible for the entire government website, could be a cheap first step towards more effective web dissemination of government information. Training a public servant to manage the government's websites could reduce costs over time.

### Key questions:

- Does the government currently run a website? Do separate departments have websites? Are these websites linked to each other in any way? Who is responsible for updating the website(s)? Could current financial and personnel resources be more effectively deployed?
- What protocols can be developed which promote proactive disclosure – eg. when key files which need to be published are created who should they be sent to, to ensure they are collated and kept for inspection AND published on the web?

## **Proactive disclosure: by the Executive/bureaucracy**

### **Proactive disclosure by the bureaucracy**

Promoting greater dissemination of Government information to the public is a cheap, simple but very effective mechanism for increasing public participation – a common goal of governments throughout the Pacific. It removes the burden from the public, by providing them with key information without requiring a specific request to be made. If the public are given more information about projects in their area or programmes being implemented for their benefit, they will better know what services they should expect and they will be able to intelligently engage with agencies to encourage better service delivery.

The initial effort of setting up a proactive disclosure system is worth the investment because publication of key information reduces requests in the long run as people are able to easily access routine information which is already in the public domain, without having to apply to public bodies. Actively sending more information into the public domain has long been recognised as a key strategy for raising the profile of government organisations and thereby promoting its value to its constituents. It is also a simple practical means of demonstrating an organisation's genuine commitment to the good governance principles of transparency, accountability and participation.

If the government is concerned about the feasibility of implementing proactive disclosure across the whole of the bureaucracy immediately, consideration could be given to identifying pilot proactive disclosure departments, which could be given priority for implementing proactive disclosure first, to develop robust systems that can then be used by other departments. The following departments could be prioritised:

- Finance Ministry – in particular by publishing: the budget; regular and detailed updates on expenditure broken down by line item; details about development assistance received from donors, broken down into projects/programmes;
- Education and Health – in particular by publishing: basic budget information and expenditure updates; details on the release of monthly grants to local health services and schools; information on special programmes;
- Public Works – in particular, by publishing all public contracts entered into.

### **Key questions:**

- Is the list of information in the Model IDP appropriate – ie. does it cover all key information that the public would regularly be interested in accessing? Are there any other types of information that could usefully be disclosed? Is information listed that is relevant to women, rural people, other marginalised groups or special interest groups?
- As a first step, what information is already easily available and regularly produced that could be published, at least on the web?
- What systems and protocols can be developed which promote proactive disclosure – eg. when key files which need to be published are created who should they be sent to, to ensure they are collated and kept for inspection AND published on the web? Should the IDP Implementation Unit be the hub for proactive disclosure? Is there any other agency that is responsible for publishing government information/documents/reports?
- Is official information available in appropriate forms by people with low levels of literacy? How can systems be developed to encourage officials to produce information in a form that is useful to women, the poor and the handicapped, in terms of content and accessibility?

## **Updates on the budget**

The regular publication of key budget and financial information is of particular importance, especially in countries which are struggling to bring their budgets into order and to fund key services and activities. Putting more information in the public domain about the size of the National Budget and its priorities, as well as regular expenditure updates, can serve to reduce suspicion about mismanagement or misdirection of funds to non-priority sectors. Similarly, dissemination of information about grants to provinces/local councils could contribute to a better understanding of the roles and obligations of the different levels of government. This could have benefits by ensuring the people do not blame officials for non-performance in areas which are not their responsibility.

### Key questions:

- What budget information is currently produced which could be released to the public (eg. national budget documents, regular departmental budget and expenditure reports, specific programme/project budgets, payroll information, tax revenue summaries)? Is any of this information currently being disclosed to the public? If so, could it be disseminated more actively and effectively?
- What financial information are donors publishing? Can donors be encouraged to publish more information about the funding of development projects/programmes?

## **Electoral information**

The need for transparency is particularly important in relation to electoral information because elections are such a core part of the democratic process. The current laws relating to information disclosure about electoral information vary throughout the Pacific. The Model Policy proposes a baseline of information disclosure, aimed at ensuring that the most important information about how elections are conducted is easily accessible by the public. It also proposes some basic transparency standards in relation to disclosing electoral funding, such as requiring the disclosure of donations made to candidates and political parties. Internationally, this kind of information is increasingly being made public in accordance with election laws and parliamentary codes of conduct.

### Key questions:

- What electoral information, if any, is currently being disclosed to the public? How can the information currently be accessed by the public? Could the information be disseminated more actively and effectively? What additional information needs to be disclosed to assist the public to make more informed choices about candidates and the political parties they may represent?
- Are there any government programmes or civil society activities currently being undertaken in the area of elections (eg. institutional strengthening of the Election Commission, voter education, etc)? Could information disclosure activities be (better) incorporated into such programmes?

### **Proactive disclosure: by Parliament**

To perform effectively in Parliament, parliamentarians need access to Parliamentary Standing Orders and other regulations governing their conduct. The voting record of MPs, including what they have achieved during their term in office, needs to be collected and published. Draft Bills and regulations need to be published and circulated so that all stakeholders can make comments before they are enacted. While many parliaments suffer from severe resource constraints which have sometimes impaired the Clerk of Parliament's ability to ensure timely publication of drafts, nonetheless, if parliamentarians are to do their jobs, this work needs to be prioritised. At the very least, one copy of all drafts should be kept with the Clerk for inspection.

It is also imperative that sufficient resources are available to ensure that final laws are published – at least once, so that they can be held in the parliamentary library and inspected if necessary. In many countries, it is only when a law is notified in the Official Gazette that it comes into force, such that it is essential that the Gazette is regularly printed and a copy is then kept in the parliamentary library.

Parliamentary committees also need to publish as much information as possible. Their terms of reference need to be available for inspection in the parliamentary library and on the government website. Likewise, all submissions to committees and draft and final reports need to be kept in the parliamentary library or with the Clerk of Parliament and/or published on-line.

To support parliamentarians and to maximise the public's ability to access parliamentary information, it is important to have a properly resourced Parliamentary Library which holds up-to-date documentation from Parliament. Unfortunately, many libraries are under-staffed and under-funded. To ensure easier access for people living away from the parliamentary capital, documentation could also be kept in local government libraries and/or published on the Internet. PacLII – the website used to collect all Pacific legislation together – could be a good partner for governments without sufficient resources to develop their own legislation website.

At an individual level, Members of Parliament can act as information collection and disclosure points for their constituents. Draft Bills and Rules, committee reports, answers to questions on notice, policy papers, government and bureaucratic guidelines, press releases and the like can be collected by parliamentarians from Parliament and/or the bureaucracy and made available for inspection or copying at local parliamentary offices and/or on parliamentarians' websites, where they have them. In the same vein, where a constituent specifically requests a document, their representative in Parliament can take an active interest in attempting to secure access and distribute the document more broadly if it is in the public interest.

#### **Key questions:**

- How accessible are draft legislation and regulations? Do all MPs receive draft Bills and Rules prior to consideration in Parliament? Can the public access draft laws and rules?
- Are all legislation and regulations published once they have been enacted? Are they accessible by the public? Has the government considered a publishing relationship with AustLII or PacLII to support the cheap but efficient publication of laws?
- Do parliamentary committees function? If so, are their hearings open to the public? Are committee hearings recorded and published? Are submissions to committees published?
- Is there a properly resourced and staffed parliamentary library? Do parliamentarians have proper access to research materials and comparative information from other jurisdictions? Do parliamentarians have email and internet access? Do they know how to use it?
- Could the Commonwealth Parliamentary Association or Inter-Parliamentary Union provide support in promoting more access to parliamentary information

## **Disclosing information upon request**

### **Forms of government information**

The Model IDP includes a broad definition of information – rather than using the narrower terms “documents” and “records”. In an era where new technologies constantly create new forms of information, this will ensure the definition is broad enough to remain contemporary. The definition of information also covers samples (eg. of materials used to construct buildings/roads/etc) and allows inspection of public works. This approach draws on the definition of information in the new Indian right to information law. That law has recognised that access to such information can be extremely useful in ensuring that public works are properly undertaken. New Zealand’s information law even permits access to unrecorded information that is known to the officials in a department. This reduces the temptation of some officials to try and circumvent the law by not recording things that should be written down.

Consideration could also be given to extending the definition to cover information that the government *should have* collected under an existing law, but has not yet received. For example, the public should be able to access an environmental report which should have been submitted by a mining company, even if it has not yet been provided by the company and the relevant Ministry has not followed up the failure to submit the report.

#### **Key questions:**

- Are there any other types of information which should be mentioned in the Policy?
- Should the Policy include access to information which *should have* been collected by an organisation, even if it has not yet been collected?

### **Request to access information**

The Model IDP is designed to make it as simple as possible for a person to request information. Imposing too many procedural requirements could otherwise act as a deterrent to applications. For this reason, no application form is required – a letter or phone call is sufficient. As long as the requestor provides details which allow information to be identified and located, that should be enough. Applications should be allowed in any local language to make it easier for people to submit requests. Translation can be organised by the government.

The Model IDP allows an application to be made by letter, fax, email or telephone. Again, this approach has been adopted to make it as easy as possible for a person to submit a request. Where telephone requests are made – an approach that that is permitted in Jamaica, another island country – they need to be written down by the official so there is a record of the application. The Model IDP makes it clear that officials cannot require requestors to state a reason for their request. There can be no room for officials to deny requests simply because they are not satisfied with the requestor’s reasons for wanting the information. This could end up personalising or politicising the application process. The official receiving the request needs to provide a written receipt on the spot if it is submitted in person, or no later than 5 days from received it, so that the requester has evidence of the date the application was submitted.

#### **Key questions:**

- Are the request procedures in the Model IDP practical considering the local context? Are any additions or amendments necessary to ensure people can easily make requests? Is the approach appropriate for people in rural area, women and illiterate people?

## **Processing requests**

The Model IDP establishes a system which allows any official to receive an information request and process it, but in addition identifies Departmental Information Officers (DIOs) who will ideally process the majority of requests. The use of DIOs means that capable officials who have been targeted for training on the Policy can handle the bulk of requests – efficiently and properly.

However, in Pacific counties where most populations live outside the capital cities and away from the head offices where DIOs will likely be appointed, it is necessary that members of the public can make applications for information to local government offices and be confident that they will be processed in a timely fashion. The option for officials to consult with DIOs or another senior official should ensure that the Policy is properly applied. To require DIOs in headquarters to process all applications would be impractical. This approach also fits in with the push towards decentralisation that many Pacific countries are pursuing.

Alternatively, governments may consider a “single desk” system whereby all applications are forwarded to a central unit to be handled by dedicated processing officials. This has the advantage of ensuring that all officials handling applications are capable of applying the Policy correctly. However, it is likely to result in huge time delays and reduces the likelihood that a culture of openness will be successfully disseminated to other government officials.

### Key questions:

- Are the processing procedures in the Model IDP practical considering the local context, in particular the fact that requests will in practice need to be handled at local offices to promote timely processing? Are any additions/amendments necessary to ensure officials can easily process requests?

## **Fees**

Best practice requires that no fees should be imposed for accessing information, particularly government information, as costs are already covered by public taxes. Imposing an application fee could constrain the poorer sections of the community from making an application. In countries like Mexico and the United Kingdom, no application fee is charged.

If such fees are to be collected, the rates need to be set so that the costs imposed for access are not so high as to deter potential applicants. At the most, fees need to be limited only to cost recovery, with no additional margin for profit, and a maximum limit needs to be imposed for all organisations. Charges can only cover reproduction costs, not search or collation/compilation time. Imposing fees in respect of the latter could easily result in prohibitive costs, especially if bureaucrats drag their heels when collating information in order to increase fees. Inspection of information in the offices of an agency should be free, even if charges are to be levied for providing copies to the requester. Fees should be waived where an application is in the public interest or where the imposition of fees would cause financial hardship.

### Key questions:

- Does the government wish to impose fees for access? If so, what amount will the fees be for access (eg. copying (on paper, CD, video, tape), taking samples)? How will fees be paid and collected?
- Will there be mechanisms for waiver or non-application of fees? How will the groups of people who are exempt from fees be determined?

### **Approval before a request is rejected**

The Model IDP requires that before an application is rejected, the official processing the request must first discuss the request with the head of the organisation or their delegate. This recognises that, particularly in the early stages, officials may be cautious about disclosing information and may therefore tend to reject applications. To minimise the over-use of the exemptions provisions and give officials confidence in releasing information, the Model IDP therefore proposes that officials need to discuss every case with a senior officer before they can reject a request. This will help officials learn how to apply the Policy more effectively. It will also minimise the wrongful application of the Policy – and subsequent complaints, which experience in other countries shows takes more time (and therefore money) to correct, than if the Policy is applied correctly in the first instance.

#### Key questions:

- Is the requirement that officials get approval from a senior officer before rejecting an application practical considering the local context?
- What other procedural oversight steps may need to be introduced to support officials to correctly apply the Policy?



## **Government-media relations**

### **Relations with the media**

Most Pacific governments have media units, which operate across the whole-of-government and/or at department level. The PMCF “Informing Citizens” report noted however: *“None of the [14] governments surveyed have whole-of-government communications strategies. This means that government communications relies on the commitment, capacity and interest of individual departments and officers to communicate with the media. As a result, the amount and quality of media output across departments is highly variable.”*<sup>35</sup> Strengthening government-media relations need to be an important element of an information disclosure policy, as the media are a key intermediary with the public. Deploying government press/information officials more innovatively, rather than appointing more officers, could promote this objective. Training officials to be effective and responsible communicators - not just public relations officers - will help. The information put out by information officials needs to be accurate and reliable.

Throughout the Pacific though, in many countries the relationship between the media and officials is difficult. A key concern has been raised by some officials that the media might use information they obtain irresponsibly. Conversely however, putting more information in the public domain will reduce poor journalism because incorrect facts will be exposed by comparison to original documents and the media will rely less on rumours and leaks. Supporting better media training, developing more professional relationships with journalists and encouraging media self-regulation are other key strategies.

#### **Key questions:**

- What mechanisms are currently in place to promote government-media communications? Can these resources be deployed more efficiently to promote more systematic, timely release of key government information?
- Does the media currently try to access information from government? If so, what type of information is being requested? If the information is being provided, how is it being used?
- What training is available for journalists? Does the training include a module on accessing information from government (eg. in order to gather evidence to support their stories)?

### **Authority to issue public statements**

To ensure the media can access timely and accurate information that can then be conveyed to the public, it is important that there are clear delegations of authority in relation to issuing statement to the media. Some countries have very centralised systems, whereby Ministers are responsible for making media statements and officials are barred from talking to the media. This can cause major breakdowns in communications, particularly where Ministers are not easy to contact, for example, because they are in parliament or with their constituency. Departmental officers need to be identified who will be given the responsibility for making statements – this is more efficient and will promote more regular information disclosure.

#### **Key questions:**

- Is there currently a department/agency that is dedicated to releasing press releases to the media or giving information to the public? Is there an official/media forum by which ministers/the prime minister answers public queries?
- What rank of official is currently permitted to make statements to the media? What is the rationale for this approach? Is it still appropriate? How can the current system be improved to ensure that journalists can easily access information while still ensuring that information and statements which are released are accurate and endorsed by the government?

## **Complaints**

Best practice international standards require that an effective access to information regime include a complaints mechanism that is independent of government, as well as cheap, quick and procedurally simple. The Model IDP proposes that an existing Ombudsman could fill this role. In countries where no Ombudsman is in operation, an administrative tribunal, national human rights commission, an anti-corruption agency or another oversight body (with investigative and decision-making powers) may be appropriate. Whatever body is chosen, it needs to be impartial and user-friendly. If this approach is not suitable, at the very least, complaints should be permitted to a senior Minister, who will then be responsible for assessing whether lower level officials have correctly interpreted the Policy.

The objective of a complaints mechanism is to ensure that officials are properly applying the Policy. In the early stages in particular, this will be essential because many officials may genuinely be struggling to understand the nuances of the Policy and will be likely to err on the side of caution and withhold information, particularly if this has previously been the common practice. While understandable, such an approach may undermine the effectiveness of the Policy, if it is not identified and altered. The public will also quickly become disillusioned with the Policy if they feel it is being incorrectly applied but they have no-one to complain to.

In some countries, before complaints are handled by an independent body, requesters can make a complaint via an internal government complaint mechanism. In practice, this can mean that every organisation will nominate a senior official to handle complaints against decisions made by the Departmental Information Officer. Alternatively, one government agency could be tasked with handling all complaints in the first instance. A simple internal process can be useful where it is envisaged that there may be a lot of complaints. However, in the Pacific, the number of complaints may not warrant this additional layer of procedure.

The Model IDP also requires that where complaints uncover cases of potential criminal wrongdoing, those cases will be referred to the necessary authorities for action. This is an important provision in that it makes a direct connection between information disclosure and better governance and public accountability. Although international experience has shown that most information requested by people relates to their personal information or local issues, it has sometimes been the case that records requested by a member of public have uncovered wrongdoing by public officials and others. Such cases need to be followed up, which is why the Model IDP specifically requires that they are referred to the proper authorities.

### **Key questions:**

- How many appeals are anticipated under the Policy? Is the number so large that an internal appeals process should be included in the Policy, to reduce the potential workload on the Ombudsman? If so, should each department nominate a senior official to handle appeals, or could one body – eg. the State Law Office or Attorney General’s Office – be designated as a central internal appeals point?
- Is the Ombudsman the most appropriate body to handle complaints about the Policy? If not, what other independent body has the expertise and resources to perform this role? Can and should additional resources be provided to the complaints body to handle their new responsibilities under the Policy?
- What body should handle cases of alleged criminal wrongdoing – both in relation to information disclosure (eg. forging documents) and more general criminal acts which come to light when the documents being requested are reviewed (eg. theft, bribery, corruption)?
- Are the current provisions sufficient and appropriate to ensure that the public can complain about failures to implement the Policy and proper action can and will be taken?

## **Information management**

### **Records management systems**

The information held by government departments is probably one of the most valuable assets they have. But without an effective system for creating, managing, storing, archiving and destroying records, information will not be effectively utilised to create efficiencies for governments. Without proper records management systems, implementation of an information disclosure policy will also be much more difficult. It will take longer and be more costly to provide information, if the information cannot be easily located. It will also cause problems if information has been stored so badly that the records are no longer in a fit state to be inspected or copied.

Governments need to put in place proper systems to create and maintain reliable records. Otherwise, even the most well-meaning officials can be defeated by their working environments. More troublingly, without proper systems, records can be manipulated, deleted or destroyed and their integrity may be questioned. Governments also need policies on storing and archiving information, so that information can be easily located. These policies also need to address what information can be destroyed and when, because not all records will be important enough to warrant their retention after a certain time. Officials need to be trained on how to recognise what information is important and needs to be saved.

Where resources are scarce, installing comprehensive record-keeping systems is usually a low priority. However, good records management will have efficiency dividends for the bureaucracy, in terms of the time saved looking for old records and/or starting documents from scratch instead of using a template or similar document. A records management policy will need to address issues such as: how financial resources can be maximised; what hardware needs to be acquired; how filing and categorisation systems will be developed; who will be responsible for records management within departments; and when, where and by whom records will be archived and/or destroyed.

#### **Key questions:**

- Within government, who is responsible for developing and overseeing records management policy (ministry? department? archivist)?
- Is there a government-wide and/or departmental policies on records management? Do relevant policies include protocols on managing computer records? Are records management processes manual or computerised?
- If there is no records management policy in place, what resources are available to develop a policy, over the longer-term?
- Is there an Archives Act and/or government-wide departmental archiving policies which determines how and when records are archived? How long are they archived for?
  - Where are records stored when they are archived? Are current storage facilities adequate, ie. is there enough space? Are records stored safely and securely?
  - How easy is it to locate and access records which have been archived?

### **Computers and other new information technology**

Efficient records management will require that proper systems and policies are developed to handle records created or held on computers. The rollout of computer systems in the Pacific is still relatively limited though, because many countries are concerned that electronic systems are beyond their financial means, requiring expensive hardware updates and maintenance. It is recognised that there is a good basis for these concerns, especially in the smaller countries, yet, the efficiency equipment dividends from computerised systems cannot be underestimated.

New technology poses opportunities for managing records well and making information readily available to larger numbers of people. It is easier and cheaper to reproduce electronic records and they are often more reliable than postal systems as a means of exchanging information. Conversely, electronic records can be more easily destroyed or altered, which could undermine the governments' ability to be accountable to the public because of poor "paper trails".

It would be strategic for governments to develop policies and protocols on computer information management at an early stage, to lay a strong foundation for a future computerised bureaucracy. Ideally, a standard government protocol will be developed, which may then be clarified at departmental level as necessary, to guide officials in the creation, saving, backup and archiving of computer files. Otherwise, where staff have their own filing or naming protocols, bureaucracies end up suffering from institutional memory loss; staff leave and their records cannot be found. Consideration could be given to networking computers.

#### Key questions:

- Is there a government policy on computerising the bureaucracy? If not, what other options is the government considering?
- What are the current levels of investment made in computer infrastructure (especially in remote/rural areas) by public bodies and donors? What is the timeframe for computer procurement and other technology?
- What level of officer within the bureaucracy has access to (a) a computer; (b) the internet; (c) email? Is there a networked departmental system? Is the current approach appropriate or can existing resources be more effectively distributed throughout the bureaucracy?
- Is it a specific priority that "communications officers" (either in a central communications unit or at departmental level) are given access to a computer / email / internet?
- Are there protocols or policies in place regarding:
  - (a) naming, filing, sharing and storing computer (i) files and (ii) emails?
  - (b) backing up information held on computers?
  - (c) keeping hard copies of information created on computers?
  - (d) archiving information stored on computers?
- Do officials receive training on how to properly save, store and archive information held on computers?

## **Training and public education**

### **Training**

Since adoption of an information disclosure policy normally heralds a significant change in the functioning of the bureaucracy, targeted capacity-building is usually needed for public officials in all departments and at all levels. Ideally, any training programme will be positioned as part of a broader national open government drive. As a priority, all Ministers and heads of department will need training in the IDP so that they can provide strong leadership to the bodies under them. Departmental officers also need to be trained on how to implement their responsibilities under the IDP and deal with information requests from the public or media.

Administrative training institutions will need to include sessions on information access in their training curricula. Any training programme should be regularly reviewed to ensure that it takes into account suggestions from the public and staff. New staff can get their training during any induction course that may be run, but consideration will need to be given to running a specific training programme when a new IDP is approved.

To demonstrate to officials the importance of the new disclosure duties, managers may consider including completion of training as a performance criteria built into employment contracts. Performance incentives can be a very effective mechanism for ensuring that officials prioritise their new responsibilities. At a minimum, it is important that DIOs have their new duties reflected in their employment contracts so they can be rewarded for good performance and can feel confident to dedicate work time to fulfilling their new obligations. Departments could also consider handing out annual openness awards to good performers as other countries have found this an effective way to support staff who are in a difficult position from time to time dealing with competing pressures from colleagues and the public.

### **Key questions:**

- What, if any, training programmes are available to parliamentarians? Do they include modules on the value of openness and information disclosure?
- What training do officials currently undertake (a) when first joining the public service and (b) during their careers? Do current training programmes include modules on the value of openness and information disclosure?

### **Public education activities**

If the Policy is to be effective in promoting more public participation in governance and development activities, then it is essential that the public are aware that it has been passed and have some understanding of its contents. To be really effective, it may be necessary for such awareness raising activities to be part of a broader civic education drive which places information disclosure in the context of a broader discussion of government and governance.

To minimise duplication, the Model IDP suggests that the IDP Implementation Unit be responsible for developing public education programmes. In Trinidad and Tobago, the Government's Freedom of Information Unit undertook this task and in the early stages of implementation distributed more than 200,000 brochures explaining the law to households by post; produced radio and television features, newspaper advertisements on various aspects of the law and designed posters for members of the public on their rights and responsibilities. In a novel strategy, the Unit also undertook Community Outreach through a travelling "FOI Caravan", with assistance from the Ministry of Community Development, which conducted sessions to sensitise members of the public in communities throughout the country.

In countries where civil society is not strong, it may also be important to specifically prioritise education activities for the media and NGOs. Experience internationally has shown that civil society can be an important partner both in getting information out to the public in an understandable form and in feeding back information to governments from communities. Often, civil society groups are also useful in using an information disclosure policy and raising awareness of the value of the new Policy to normal people.

Key questions:

- Based on previous experience, what methods of public education work best?
- What special programmes can be developed to raise awareness of the new Policy, in particular amongst marginalised groups?
- Would it be strategic to target civil society, in particular, NGOs and the media, for specific training on the new Policy?
- With what organisations can the IDP Implementation Unit usefully partner to maximise their outreach (eg. Provincial/Rural Development Ministry, local government offices, NGOs, the media)?

## **Monitoring and reporting**

### **Monitoring**

It is increasingly common in access to information regimes to specifically require that implementation needs to be regularly monitored. Monitoring is important - to review and evaluate how effectively public bodies are discharging their duties, to distil best practice and replicate it, to identify areas for improvement and to gather information that can be used to support recommendations for reform. In practical terms, this means that all bodies covered by the Policy need to set in place monitoring systems to collect information about the processing of applications. Ideally, the IDP Implementation Unit will develop a monitoring system. It could be paper based, whereby all DIOs and other processing officials maintain systematic notes of how they handle cases. It could also be computer-based, whereby information is entered into a database that can then easily be used to provide monitoring reports and statistics. Ideally, the information collected will be published every month on the government's website, so that the public can have ongoing information on how effectively the Policy is being implemented.

#### **Key questions:**

- What body is best positioned to take responsibility for monitoring implementation – the responsible Minister? the IDP Implementation Unit? the Ombudsman? A combination?
- What systems need to be put in place to ensure that relevant implementation information is collected from organisations covered by the Policy? Who will be responsible for developing such systems? Who will provide training to officials on their monitoring duties?
- What systems need to be put in place to ensure information derived from monitoring activities is analysed and problems fixed and improvements made?

### **Annual Report**

At a minimum, monitoring information needs to be collected together in an annual report so that there is a regular, informative record produced of how effectively organisations are implementing the Policy. Reporting regimes vary. Some countries require every single organisation to prepare an annual implementation report for submission to parliament, while others give a single body responsibility for monitoring – a particularly effective approach because it ensures implementation is monitored across the whole of government and allows for useful comparative analysis – and still others prefer a combination of both.

The Model IDP suggests that a single body – the Ombudsman – is tasked with reporting on implementation. The Ombudsman was chosen on the basis that the office is independent and will therefore be well-positioned to produce an impartial assessment of how well implementation has proceeded. Alternatively, the Auditor-General could fill this role. Where the Ombudsman does not have sufficient resources to undertake annual reporting, the IDP Implementation Unit and/or the responsible Minister may be made responsible for reporting.

The Model IDP requires that the Annual Report is tabled in Parliament and then referred to a committee for consideration. This approach is designed to encourage the Report to be widely considered. The Report will only be useful if it is actually read, discussed and acted upon.

#### **Key questions:**

- Taking into account resource constraints, is the Ombudsman the most appropriate body to be given responsibility for annual reporting? What if the IDP Implementation Unit worked with the Ombudsman? If not, who else could efficiently perform this function?
- What parliamentary committee should be given responsibility for considering the annual report? Is the committee properly resourced to undertake this work?

## GETTING STARTED IN PRACTICE

The Model IDP recognises that Pacific countries often have to work with very scarce resources. However, by streamlining current information activities and developing innovative strategies to maximise existing resources, better information disclosure can be achieved. The benefits of information disclosure – economically, politically and socially – far outweigh the initial investment of time and resources needed to bed down new systems and inculcate a new culture of openness.

**To move forward with this work in a practical, organised way, the following activities could be pursued:**

### **Nationally:**

- Task the Attorney General or responsible Ministry with taking a lead on developing a National Information Disclosure Policy and developing necessary background papers to take the issue to Cabinet;
- Get Cabinet endorsement for the development of a National IDP;
- Bring together key stakeholders – from civil society, the media, government, regionally – to develop a Plan of Action for progressing the development of a National IDP;
- Develop a draft National IDP and open it for public comment – translated into local languages – for at least 3 months, as well as tabling the draft in Parliament and consider referring it to a parliamentary committee for consideration and comments;
- Revise the draft National IDP taking into account public and parliamentary comments, and then circulate it for final comments;
- Submit the final National IDP to Cabinet for approval and get Cabinet agreement for an appropriate budget for implementation;
- Establish an IDP Implementation Unit to develop a Plan of Action for implementation, including developing implementation materials for departments to use, systems to assist with implementing proactive disclosure and processing requests, training modules, public awareness materials, and monitoring and reporting systems;

### **Regionally**

- Prioritise the finalisation of the Forum Secretariat's IDP;
- Include promoting information disclosure on the agenda of the next Pacific Leaders Meeting or Law Ministers Meeting, to encourage discussion of regional approaches to implementation – to maximise scarce resources – and to get Leaders to make a statement prioritising information disclosure and tasking the Forum Secretariat with follow up;
- Set up a Regional Information Disclosure Group, which would include officials from throughout the region who are responsible for implementing information disclosure domestically and regional and international experts on information disclosure, to share best practice and lessons learned;
- Support regional training initiatives, for leaders, officials and civil society groups;

### **By donors**

- Promote more information disclosure by donors themselves;
- Incorporate information disclosure as a priority in existing development assistance programmes/projects/activities;
- Support civil society and the media to engage with the development of National IDPs.



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## Endnotes

- <sup>1</sup> UNDP (2006) *Governance for the Future: Democracy and Development in Least Developed Countries*.
- <sup>2</sup> *Ibid.*
- <sup>3</sup> Although, only Solomon Islands has ratified the CEDAW Optional Protocol which sets up a communications procedure allowing individual women, or groups of women, to submit claims of violations of rights to the Committee on the Elimination of Discrimination against Women and enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.
- <sup>4</sup> Farr, M. (2006) "Island forum a test of Costello's skills", *The Telegraph*, 2 July.
- <sup>5</sup> PMCF (2005) *Informing Citizens*.
- <sup>6</sup> (2004) "No Hansard In Parliament", *The National*, as reported in Pacific Islands News Association (PINA) Internet News Update, 10 July 2004.
- <sup>7</sup> *Ibid.*
- <sup>8</sup> *Ibid.* p.20.
- <sup>9</sup> New Zealand is set to commemorate 25 years of FOI in 2007, when it hosts the Fifth International Information Commissioners Conference.
- <sup>10</sup> PMCF (2005) *Informing Citizens*, p.20.
- <sup>11</sup> UNDP (2006) *Governance for the Future: Democracy and Development in Least Developed Countries*.
- <sup>12</sup> *Ugandan Judge Orders Release of Key Document on Bujagali Dam*, 22 November 2002, <http://www.freedominfo.org/ifti1102.htm#1> as at 22 July 2003.
- <sup>13</sup> World Bank, op cit, Foreword by Mr James D Wolfensohn, President of the World Bank.
- <sup>14</sup> Stiglitz, J. (1999) "On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life", Oxford Amnesty Lecture, 27 January.
- <sup>15</sup> Macdonell, R. (2004) "Access to Information - The Commercial Side", *Development Outreach*, World Bank Institute, <http://www1.worldbank.org/devoutreach/article.asp?id=196>.
- <sup>16</sup> World Bank (2001) *World Development Report 2000-01: Attacking Poverty*, Oxford University Press, NY.
- <sup>17</sup> Staff reporter (2005) "Look, How Fair Price Shops Clean Up Act", *Indian Express*, 24 February. See <http://cities.expressindia.com/fullstory.php?newsid=118913>.
- <sup>18</sup> Daruwala, M., Mohapatra, B. & Nayak, V. (2003) *The Right to Know: A Voter's Guide*, CHRI and VANI, New Delhi, p.33
- <sup>19</sup> CPA& CHRI (2005) *Freedom of Information in the Pacific: Report of a CPA/CHRI Regional Workshop*, [http://www.humanrightsinitiative.org/programs/ai/rti/news/2006/pacific\\_mps\\_wkshp\\_foi\\_booklet\\_jan06.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/news/2006/pacific_mps_wkshp_foi_booklet_jan06.pdf).
- <sup>20</sup> See UN General Assembly Resolution 59(1), 65<sup>th</sup> Plenary Meeting, 1946.
- <sup>21</sup> This states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." [emphasis added]
- <sup>22</sup> See *A Right to Information*, Article 9(1), *African Charter on Human and Peoples' Rights*, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981.
- <sup>23</sup> See *A Right to Information*, Article 13(1), *American Convention on Human Rights*, 1969, Costa Rica, OAS Treaty Series No. 36, 1144 U.N.T.S. 123.
- <sup>24</sup> See *A Right to Information*, Article 11(1), *Charter of Fundamental Rights of the European Union*, 2000, Nice, Official Journal of the European Communities, C 364/1.
- <sup>25</sup> Hussain, A. (2000) *Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted in accordance with Commission resolution 1999/36*, Doc.E/CN.4/2000/63, 5 April. See also Ligabo, A., Haraszti, M. & Bertoni, E. (2004) *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1>.
- <sup>26</sup> See also *Declaration of Principles on Freedom of Expression in Africa*, Part IV, adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, Banjul, The Gambia, 17-23 October 2002, <http://www.article19.org/docimages/1600.pdf>.
- <sup>27</sup> See Organisation of American States - General Assembly (2003) *Access to Public Information: Strengthening Democracy*, resolution adopted at the fourth plenary session, June 10 2003, AG/RES.1932 (XXXIII-O/03).
- <sup>28</sup> See (1999) Commonwealth Freedom of Information Principles, in *Promoting Open Government Commonwealth Principles And Guidelines On The Right To Know*, Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, Marlborough House, London, 30-31 March 1999.
- <sup>29</sup> See European Union (2001) *Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents*, Official Journal of the European Communities L145/43.

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<sup>30</sup> Access to Information Review Task Force, (2002) *Access to Information: Making it work for Canadians*, pp. 157-165, <http://www.atirtf-geai.gc.ca/accessReport-e.pdf> as on 27 August 2003.

<sup>31</sup> Commonwealth Human Rights Initiative, (2001) *Human Rights and Poverty Eradication: A Talisman for the Commonwealth*, New Delhi, CHRI, p. 96.

<sup>32</sup> Model legislation is available to make this process simpler (eg. the Commonwealth Secretariat and the NGO Article 19 have produced Model FOI Laws), and organisations such as the Commonwealth Human Rights Initiative and Article 19 are available to provide (usually free) assistance to governments wishing to develop open government legislation.

<sup>33</sup> Nauru, Niue, Vanuatu, Tonga, Samoa: PMCF (2005) *Informing Citizens*, p.6.

<sup>34</sup> PNG, Solomon Islands, Fiji, Cook Islands, Vanuatu: PMCF (2005) *Informing Citizens*, p.6.

<sup>35</sup> PMCF (2005) *Informing Citizens*, p.22.