



**International Records
Management Trust**



**TRANSPARENCY
INTERNATIONAL**

**PROCEEDINGS OF THE
INFORMATION FOR ACCOUNTABILITY
WORKSHOP**

held at
**The British Council Ghana Auditorium
30-31 August 2000
Accra, Ghana**

organised by
**Ghana Integrity Initiative
and
Rights and Records Institute,
The International Records Management Trust**



**The
World
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British
Council**

Proceedings of the Information for Accountability Workshop

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Jennifer Leijten**

30 - 31 August 2000

Organised by
Ghana Integrity Initiative
(local chapter of Transparency International)
and
Rights and Records Institute,
International Records Management Trust

Sponsored by
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FOREWORD

Good government requires the participation of citizens. For citizens to participate effectively the electorate must be well informed; and this means access to the facts about government activities. A free flow of information about what the government is doing on behalf of its citizens and how taxes collected from citizens are spent is essential for accountable government.

There is an assumption that governments are maintaining adequate records of their activities and that the citizen has reasonable access to the information contained in these records or direct access to the records themselves. Others have gone further and have argued that since government acts on the citizen's behalf and is funded from taxes paid by citizens, the records created by government actually belong to the people. Thus the presumption ought to be that governments should make their records available to the public unless they can show good cause why they should be withheld, for example national security.

These views are the conventional opinion in most western liberal democracies, particularly in the United States, where these rights are enshrined in the Constitution, and in Scandinavia where freedom of information laws date back to the eighteenth century. In other parts of the world interest in improving the flow of information between the government and the public is a much more recent phenomenon.

In Ghana, every citizen has a constitutional right to information, yet there is no legislation or case law extant to clarify these rights. Tied to this, the public lacks awareness about how to obtain information, particularly from government. Part of the problem is that many public servants find it difficult to know whether information is confidential and therefore whether to allow access to it or not. Institutional mechanisms often serve to restrict access to information rather than facilitate it.

The Government of Ghana has adopted a Civil Service Performance Improvement Programme (CSPIP) that aims to transform the public service by changing its capacity, systems and culture. The goal is to deliver high quality public services under severe budgetary constraints. In recognising that it is a service delivery organisation, the government must accept that the demand for accountability will increase and, as a consequence, it will need to allow citizens to question actions taken on their behalf.

The aim of the Information for Accountability Workshops project is to stimulate a closer link between information supply and demand in the public sector. The workshops are designed not only to encourage civil society to articulate their needs for information from government, but also focus the attention of policy makers, opinion formers and senior civil servants on the need to strengthen records management systems as a primary delivery mechanism to supply that demand. The Rights and Records Institute of the International Records Management Trust and Transparency International are working together to achieve this objective.

The Information for Accountability Workshop, held in Accra on 30-31 August 2000 provided an opportunity to discuss freedom of information in the Ghanaian context, specifically by considering a draft 'Bill' produced by the Institute of Economic Affairs. On Day One of the workshop, participants were invited to define problems, consider different perspectives and articulate needs. They explored the options available to facilitate improved access to government information on Day Two, both by analysing the draft 'bill' and also by considering non-legislative or operational issues that would have to be addressed to make freedom of information law effective.

Citizens need information to contribute to the political debate that affects their lives. Government needs to accept that public bodies need to explain what they do. The Information for Accountability Workshop enabled participants to identify actions that would need to be taken if initiatives to improve access to information are to have a practical effect in Ghana. The government and the people of Ghana will decide the next steps.

*Piers Cain
Director, Rights and Records Institute
International Records Management Trust*

EXECUTIVE SUMMARY

An Information for Accountability Workshop on Freedom of Information (FOI) was held at the British Council in Accra on 30-31 August 2000. The workshop brought together key stakeholders, sharing a desire to develop better lines of communication between government and the public by improving access to information. The participants came from Parliament, public administration, information management, academia, the media and business.

The workshop was organised by the Ghana Integrity Initiative (the local chapter of Transparency International) and International Records Management Trust, Rights and Records Institute. The draft Right to Information 'Bill' published by the Institute of Economic Affairs provided the focus for discussion. [See Annex One for the full text of the 'Bill']

The Hon John Mahama, Minister of Communications, delivered the keynote address in which he expressed the view that Government was not adverse to FOI legislation. He acknowledged the 21st century as the Information Age and emphasised the importance of information to citizens.

The workshop was divided into four sessions, spread over two days. Professor Nana Apt, Director of the Centre for Social Policy Studies chaired the first day (Sessions I and II). Session I considered the obstacles facing citizens seeking information from public sector bodies. Dr Robert Doodoo, Head of the Civil Service; Mr Yaw Boadu-Ayebofoh, Ghana Journalists Association and Professor Kofi Kumado, Faculty of Law, University of Ghana presented papers. Discussions revealed that obstacles faced could be divided into two broad categories: legislative and operational issues.

The law discourages civil servants from releasing information. The lack of established appeals procedures and inadequate public education about what information is available and how to access information were also seen as important factors. Furthermore, logistical difficulties such as the distance that may have to be travelled to obtain information, bureaucratic procedures and the availability of recorded information only in the English language are significant. The culture of secrecy in the civil service is also a major impediment. This was identified as a key element to be addressed. Participants pointed out that relying on informal networks to obtain information creates information 'haves' and 'have nots'. Along with this is a problem of bribe-payers and bribe-takers, which creates an unofficial cost attached to obtaining information. In this environment information disclosure becomes discretionary, leading to a lack of transparency.

Session II identified the advantages and disadvantages of implementing Freedom of Information legislation in Ghana. Professor E Gyimah-Boadi, Executive Director, Center for Democracy and Development; Dr Yao Graham, Africa Co-ordinator, Third World Network; Mr R B Arthur, Director, Policy, Planning, Monitoring and Evaluation, Ministry of Communications; and Mr Issah Yahaya, Assistant Director, Research, Statistics and Information Management Division, Ministry of Communications, participated in a round table discussion, which was followed by breakout groups. Participants were clearly in favour of FOI legislation, which was felt to have widespread public support, although they recognised that there were issues that would need careful handling.

It was hoped that FOI would increase the public's confidence in government; advantages could also accrue to the operations of government. A better-informed Parliament would enact better laws. The political will to implement FOI would help to ensure leaders are more accountable, and help to build

international confidence in the government. Enhancing and promoting the education of the public about their rights and responsibilities would greatly assist the implementation of public policy.

Disadvantages were seen as 'challenges' that must be faced. The key challenge identified was cost; both of setting up and maintaining the required infrastructure and operational changes, and also of the accompanying public awareness campaign that would be necessary. The importance of protecting the interests of both the state and the public was also highlighted. It was suggested that FOI could, at worst, endanger state security, particularly through irresponsible journalism. There was also concern about protecting ordinary citizens and members of the government from invasions of their privacy. This was countered by the view that the social benefits outweighed the expense. Moreover, the increased exposure of fraud would reduce costs to the public purse, complementing the work of the Serious Fraud Office.

The second day was chaired by Professor Patrick Twumasi, Chairman of the Civil Service Council. Session III discussed the draft Right to Information 'Bill' produced by the Institute of Economic Affairs. Mr Bernard Joao da Rocha, Fellow, Institute of Economic Affairs and Professor Tom Riley, Executive Director, Commonwealth Centre for Electronic Governance presented papers. Participants debated the question of appropriate oversight for FOI, the need to harmonise legislation and ensure consistency with the constitution. This included the need to review current laws relating to secrecy with a view to repeal.

Participants made recommendations to improve the draft 'bill'. These include:

- including provisions on records management
- including provisions on oversight by Parliament
- strengthening provisions on privacy
- including the facility for sanctions against those who refuse access
- defining mandatory and discretionary exemptions
- including procedures for accessing information
- improving the technical drafting.

The objective for Session IV was to identify administrative provisions needed to operationalise FOI. Papers were presented by Mr Kofi Obeng-Adofo, Chief Director, Office of the Head of Civil Service and Mr Cletus Azangweo, Director, Public Records and Archives Administration Department. With respect to the legal framework, the main recommendations were to:

- establish an enabling legal environment, i.e. implement a FOI Act
- review and repeal statutes that conflict with the intentions of the Constitution, eg criminal libel and sedition laws.
- introduce regulations to guide the implementation of the law, whether by the Ministry of Communications or an independent institution.

A large number of operational issues were raised by participants, building on those that had been discussed over the two days. Recommendations focused on practical methods of implementing FOI and ensuring that citizens can make effective use of such legislation. These include: strengthening records management, improving infrastructure, changing civil service culture, being sensitive to language and literacy limitations, streamlining existing and developing new procedures, implementing anti-corruption measures and raising public awareness.

The workshop confirmed that there is broad support for FOI legislation among opinion formers, legislators and policy makers. There remains scope for more work on specific clauses of draft legislation and in preparing the civil service to put the legislation into operation.

INTRODUCTION TO THE WORKSHOP

Workshop Objectives

- Recognise the importance of Freedom of Information legislation
- Understand the strengths and weaknesses of the Right to Information draft 'bill'
- Identify areas of the draft 'bill' which may require additional work
- Identify implementation strategies.

DAY ONE

8:30 – 9:00	Registration	
9:00 – 10:30	Opening Ceremony	
	Mr Emile Short , <i>Chairman, GII</i>	Welcome
	Professor Nana Apt , <i>Director, Centre for Social Policy Studies</i>	Chairman's Opening Remarks
	Hon John Mahama , <i>Minister of Communications</i>	Keynote Address
	Mrs Angeline Kamba , <i>Facilitator</i>	Workshop Introduction
10:30–10:45	Coffee Break	
10:45–11:45	SESSION I: Accessing Information in Ghana	
	Session Objectives	
	<ul style="list-style-type: none"> • orient participants to the position in Ghana • develop a list of high level issues that need to be addressed 	
	Dr Robert Dodoo , <i>Head of Civil Service</i>	Access to Information and Civil Service Reforms
	Mr Yao Boadu-Ayebofoh , <i>Ghana Journalists Association</i>	Access to Information: The Perspective of the Press
	Professor Kofi Kumado , <i>Acting Director, Legon Centre for International Affairs</i>	State of the Law Relating to Access to Information
11:45–12:30	Mrs A Kamba / Break-out Groups	Break-out Group Discussion: <i>Key Issues</i>
12:30 – 1:00	Mrs A Kamba / Break-out Leaders	Reporting Back
1:00 – 2:00	Lunch	
2:00 – 2:15	Dr Justus Wamukoya , <i>Facilitator</i>	Reporting back on Attitude Survey
2:15 – 3:15	SESSION II: Freedom of Information (FOI): A Roundtable Discussion	
	Session Objectives	
	<ul style="list-style-type: none"> • identify issues for consideration for implementing FOI – including operational issues, institutional culture, political will, public support, protecting the public, protecting the state, anti-corruption 	
	Is Freedom of Information Appropriate for the Ghana Context?	
	PANELISTS	
	Professor E Gyimah-Boadi , <i>Executive Director, Centre for Democracy and Development</i>	
	Dr Yao Graham , <i>Africa Co-ordinator, Third World Network</i>	
	Mr RB Arthur , <i>Director, Policy, Planning, Monitoring and Evaluation, Ministry of Communications</i>	
	Mr Issah Yahaya , <i>Assistant Director (Project Manager, National Information Clearinghouse), Ministry of Communications</i>	
3:15 – 3:30	Coffee Break	
3:30 – 4:15	Dr J Wamukoya / Break-out Groups	Break-out Group Discussion: <i>Key Issues</i>
4:15 – 5:00	Dr J Wamukoya / Break-out Leaders	Reporting Back
5:00	Professor Nana Apt , <i>Chair</i>	Chairman's Conclusion and Vote of Thanks

DAY TWO

8:30 - 9:00	Registration	
9:00 – 9:30	Workshop Opening: Day Two	
	Mr Emile Short <i>Chairman, GII</i>	Welcome
	Professor Patrick Twumasi , <i>Chair Civil Service Council</i>	Chairman’s Opening Remarks
	Mrs Angeline Kamba , <i>Facilitator</i>	Review of Day One Conclusions
	SESSION III: The Right to Information Bill: Overview and Critique	
	Session Objectives	
	<ul style="list-style-type: none"> • identify good practice for Ghana in access to information • identify areas where there is lack of consensus • make recommendations to carry forward work on the draft ‘bill’ 	
9:30 – 10:00	Mr Bernard J da Rocha , <i>Member, Institute of Economic Affairs</i>	The Draft Right to Information ‘Bill’: An Overview
10:00–10:45	Professor Tom Riley , <i>Executive Director, Commonwealth Centre for Electronic Government</i>	The Draft Right to Information ‘Bill’ in the Global Context
10:45–11:00	Coffee Break	
11:00–11:45	Professor T Riley / Break-out Groups	Break-out Group Discussion: <i>The Way Forward</i>
11:00–12:30	Professor T Riley / Break-out Leaders	Freedom of Information: <i>The Way Forward</i>
12:30–1:30	Lunch	
1:30 – 2:00	SESSION IV: Operationalising FOI: Administrative Considerations	
	Session Objectives	
	<ul style="list-style-type: none"> • identify administrative provisions needed to implement FOI (eg amendments to legislation, procedures, record systems, staff training, public awareness, institutional cultural changes) 	
	Mr Kofi Obeng-Adofo , <i>Chief Director, OHCS</i>	Civil Service Culture and Access to Information
	Mr Cletus Azangweo <i>Director, PRAAD</i>	Records Management and Information Delivery
2:00 – 3.00	Dr J Wamukoya / Break-out Groups	Break-out Group Discussion: <i>Implementing FOI</i>
3.00 – 3:30	Coffee break	
3.30 – 4:00	Dr J Wamukoya / Break-out Leaders	Reporting Back
4:00 – 4:45	Mrs A Kamba	Conclusions
4:45 – 5:30	Closing Ceremony	
	Mr Desmond Woode , <i>UK Department for International Development</i>	Closing Keynote
	Ms Yongmei Zhou , <i>World Bank</i>	Sponsors’ Remarks
	Mr Terence Humphreys , <i>British Council</i>	
	Mr Piers Cain , <i>Rights and Records Institute</i>	Organisers’ Closing Remarks
	Mr Emile Short , <i>Chair GII</i>	
	Professor Patrick Twumasi , <i>Chair Civil Service Council</i>	Chairman’s Conclusion and Vote of Thanks
5:30	Reception	

WORKSHOP FACILITATORS



Mrs Angeline Kamba

Angeline Kamba retired from the Zimbabwe Public Service Commission at the end of November 1998 after serving as a Commissioner for eight years. Prior to her appointment as a Public Service Commissioner, she was Director of the National Archives of Zimbabwe for the first ten years of Zimbabwe's independence. During this time she spearheaded its development and transformation, at the same time bringing it back into the international professional community. She ended by serving a four-year term as Vice President of the International Council on Archives (1984-88). Following that, she was appointed Zimbabwe's representative on UNESCO's Intergovernmental Council for the General Information Programme (PGI), becoming Chairperson of the Council, a position she relinquished upon her appointment to the Public Service Commission in November 1990.

Before assuming the position of Director of the National Archives, she spent many years in university librarianship, both in her own country and in the UK where she and her family lived in exile for fourteen years. During her tenure as Public Service Commissioner, she continued to serve internationally. From 1992-97, she was Board Member of CAB International – an intergovernmental organisation which provides information and scientific development services in support of agriculture, public health, environment and forestry.

Her most significant international assignment was her appointment in 1994 to the UN/UNESCO World Commission on Culture and Development (WCCD), a fourteen member commission headed by the former UN Secretary General, Javier Perez de Cuellar, which was tasked to explore the linkages between culture and development. Following the publication of the Commission's report: *Our Creative Diversity*, Angeline Kamba has been greatly involved in the international debate sparked by the report and its international agenda.

Currently she is nominal head of Riders for Health – a British registered charity working in outreach development programmes in a number of African countries. She is on the Board of the International Rice Research Institute (IRRI) in Manila, and has recently been appointed Council Member of the University of the Midlands, one of Zimbabwe's newer universities. She continues an active involvement in all areas of her interests – information, human resource management, culture and development.



Dr Justus Wamukoya

Justus Wamukoya is a Senior Lecturer and Head of Archives and Records Management in the Faculty of Information Sciences at Moi University, Eldoret, Kenya. Justus graduated with a BA (Hons) degree from the University of Nairobi before proceeding to the United Kingdom where he obtained an M.Litt degree in Oral Tradition and Ethnology from the University of Edinburgh and an MA and a PhD in archival studies from the University College London. He spent ten years with the Kenya National Archives and Documentation Service during which he worked as a research officer in the oral tradition division and later

on as provincial archivist in-charge of the Nairobi Records Centre.

Justus has worked extensively in The Gambia, Ghana, Kenya, Sierra Leone, Uganda and Tanzania as a resource person on records and archives workshops sponsored by the Association of Commonwealth Archivists and Records Managers (ACARM) in collaboration with the International Records Management Trust (IRMT). He is currently a consultant for IRMT on the Tanzania Records Management Project and a trainer for the United Nations Population Fund (UNFPA) on advocacy and communication of population information.

He has published a number of articles in refereed journals and is an active member of the Eastern and Southern Regional Branch of the International Council on Archives (ESARBICA). He has recently been appointed a member of the Kenya Public Archives Advisory Council (PAAC) for a period of two years.



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OPENING CEREMONY

INTRODUCTION

The Information for Accountability Workshop brought together key stakeholders, sharing a desire to develop better lines of communication between government and the public by improving access to information. Implementing Freedom of Information legislation is seen as a necessary step to fostering the accountability of government to the people in Ghana. The participants came from Parliament, public administration, information management, academia, the media and the legal and business professions.

The speakers, participants and invited observers were welcomed by Professor Nana Apt, Chair of Day One of the Workshop. Professor Apt focused her remarks on the timeliness of the debate, declaring that it was the right time in Ghana for a Freedom of Information Act.

Professor Apt invited Terence Humphreys, Director of the British Council Ghana, to speak as co-sponsor and host of the workshop. Mr Humphreys expressed his support for the workshop, on behalf of the British Council, and spoke about the role the British Council plays in enhancing good governance through their support to accountability and transparency initiatives.

Emile Short, Chair of the Ghana Integrity Initiative, the local chapter of Transparency International, and co-organiser of the workshop, was also invited to speak by Professor Apt. Mr Short welcomed participants, emphasising the importance of the topic of Freedom of Information and expressed his hope for practical outcomes for the two days that could be taken forward by a coalition.

Hon John Mahama, Minister of Communications, delivered the keynote address. In his presentation, Minister Mahama expressed the view that the Government was not averse to Freedom of Information legislation. He acknowledged the 21st century as the Information Age and emphasised the importance of information to citizens.

Following the keynote address, Craig Murray, Deputy High Commissioner, UK, was invited to say a few words. Mr Murray contributed some remarks on the value of public access to information in supporting transparency and accountability. He went on to stress the role of information in combating corruption and improving economic management.



Keynote Address by Hon John Mahama, Minister of Communications

**At the Opening of The Information For Accountability
Workshop, British Council, Accra, 30 August 2000**

Madam Chairman,
Colleague Ministers of State,
Honourable Members of Parliament,
Distinguished Workshop Participants,
Invited Guests,
Ladies and Gentlemen,

Hon J Mahama graduated in 1981 with a degree in History, and in 1986 from the School of Communication Studies, from the University of Ghana at Legon. He has held various positions including Information and Press Officer, Embassy of Japan; Sponsorship and Grants Manager, PLAN International. Hon Mahama was elected Member of Parliament for Bole/Bamboi Constituency in December 1996. Subsequently he was appointed Deputy Minister of Communications, March 1997 and Minister of Communications, November 1998.

I deem it a great honour to be invited to give the Opening Address for this all-important workshop.

There is a current global emphasis on good governance all over the world. Since the collapse of the iron curtain and the end of the cold war, international public opinion has been strongly on the side of establishing humane and democratic societies where the rights and freedoms of people are respected and protected. In Ghana the adoption of our 1992 constitution enshrined the concepts of probity, accountability and transparency in national life. Other provisions recognise the right of the people to know what is going on in government and chapter 12 literally appoints the media as the watchdogs of society. Certainly all these provisions can only be operationalised in an environment where people are provided with relevant information to empower them in the decision making process.

At no time in the history of mankind has access to information and knowledge been as crucial as in this present time - the 21st century, which is generally acknowledged as the "Information Age". Today developments in the communications and information technology sector are simply breathtaking. Access to gigabytes of information and knowledge are available at the click of a button. The digital divide threatens to widen the international and national societal and class gap not only on the basis of material differences but also on the basis of differences in access to information or knowledge.

Madam Chairman, historical developments in this country from the independence struggle to the heady events of June 4th and 31st December have endowed Ghana with a relatively more politically enlightened and conscious population than can be found in other countries at a similar stage of development. This has engendered in the people an insistence to know and participate in the process of governance. The decentralisation process through the District Assembly concept has satisfied a part of this need for popular participation in government. This process certainly needs to be accelerated by improving access to information at all levels of society in order to improve the basis of decision making.

Ghana is presently encumbered by conflicting legislation in respect to provision and access to information. The Official Secrets Act, the Oath of Secrecy and other regulations, which contrast with the more liberal constitutional provisions, put public officers in a situation where they are unsure how to proceed in response to requests for information from the public. Certainly there is a need to balance the public's right to know against the needs of national security and the protection of the economic and political interests of the country. This must be done through a comprehensive discussion and promotion of a consensus on all aspects of a Freedom of Information Act. Such an act must not be driven by sectional interests. A Freedom of Information Act must not be required simply because it has become a fashion to have one in modern societies. A comprehensive assessment of the information needs of our society must inform the measures we take to improve the access of our people to relevant information.



While paying attention to the need for improved access to information, it is necessary also to concentrate on issues related to the generation, storage and retrieval of information. We must improve our information gathering system. It is unacceptable as we find presently to be given statistics from a public institution that is not current. Often you are told by a nonchalant officer - “we have statistics only up to 1996. We are still compiling the figures for the remaining years”. Attention must be paid to the generation of up to date information, it must be properly stored and easy to retrieve when needed. In this regard we can use information technology to improve storage and retrieval of information.

Conscious of the fact that access to accurate and timely information is a critical prerequisite for national development, the Ministry of Communications has designed a National Information Clearinghouse Project to improve access and co-ordination of the nation's information flows. This will entail the development of a metadata base at the Ministry, the development of Web-based information systems at other participating institutions, the provision of access to the Internet at the Institutions, a training programme on networking and electronic information systems, data entry, information searching, reporting and presentation.

The project, that is presently in its pilot stage and requiring sponsorship, will in the long run help eliminate the hindrances to good governance, in terms of effective policy formulation and implementation. Most importantly, it will enhance the exchange of information required by the government, private businesses, NGO's and the general public. It will link all public institution websites. Also, after information is received, how it is treated and communicated is important.

Information is a two way street. While importance must be attached to the flow of information from government institutions and public sector organisations to the people, equal emphasis must be placed on the system of information feedback from the people. In this regard we do have a grave problem of mistaking the strident cacophony of the urban middle class whose concerns are articulated by the burgeoning media that has burst onto the scene, especially in the national capital, as the voice of the people. Orchestrated phone-ins to radio stations and sensational headlines in newspapers could confuse government into mis-judging urban middle class opinion and concerns as national opinion.

It is also important to dispel the perception that a free flow of information is important only for the media in its work. Certainly researchers, students and the general public stand to benefit from any improvements in access to information.

As I have said earlier, government is not averse to a Freedom of Information Bill, but certainly it is my hope that a comprehensive look will be paid to removing all the hindrances preventing free flow of information including strengthening the capacity of public institutions to generate, preserve and retrieve

information in a timely manner. If these issues are not addressed we may successfully pass a Freedom of Information Bill, but find out that there is no free information to be given.



Madam Chairman, I wish to thank the organisers of this workshop for having chosen Ghana to host this workshop. It is my prayer that this conference will move us further down the path of strengthening our democratic institutions and traditions by guaranteeing the access of our citizenry to abundant and relevant information.

On that note, Madam Chairman, distinguished Ladies and Gentlemen, I wish you all very fruitful deliberations and good morning.

Thank you.

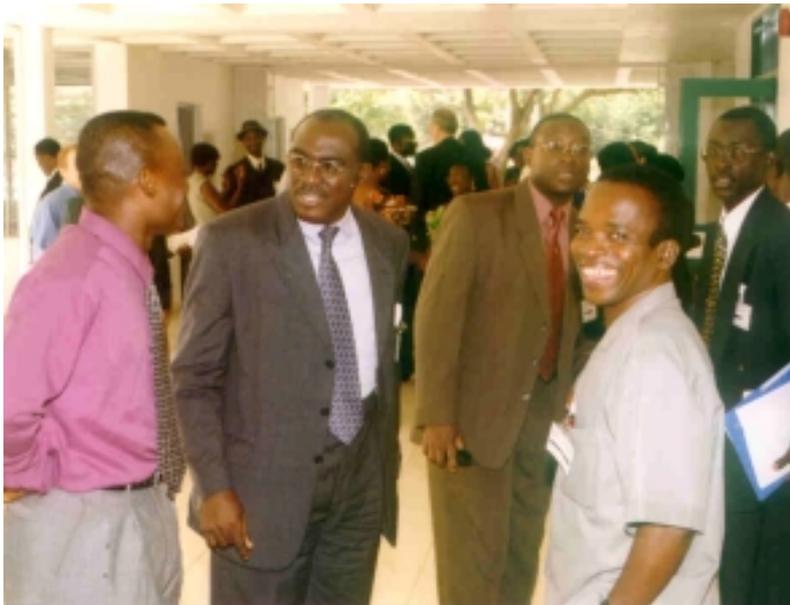
SESSION ONE

INTRODUCTION

Objectives

- orient participants to the position in Ghana
- develop a list of high level issues that need to be addressed.

Professor Nana Apt, Director of the Centre for Policy Studies, chaired the first day, which aimed to draw out the key issues that impinged on access to information in Ghana and to determine whether Freedom of Information legislation is needed.



Session One, entitled *Accessing Information in Ghana*, established the position of the civil service and the media on access to information in Ghana. Dr Robert Dadoo, Head of Civil Service, presented the civil service perspective. He discussed the legacy of the colonial administration and the legal system with particular reference to the State Secrets Act and the constraints it places on the disclosure of information by civil servants. In addition, he highlighted new initiatives arising from the Civil Service Performance Improvement Programme (CSPIP), intended to focus the Civil Service on delivering services to the public by instituting performance improvement plans, streamlining procedures and introducing a code of ethics. He confirmed that 'Parliament and the people have the right to the use of information, the right to be informed to enable them to take the right decisions and make well-informed choices.'

Mr Yaw Boadu-Ayebofoh, representing the Ghana Journalists Association, presented his paper on 'Access to Information: The Perspective of the Press'. He talked about the rights of people in many countries to freedom of expression, as established in the constitution, and the role of the press in delivering this. He also cited the Constitution of Ghana, which imbues citizens with both rights and responsibilities, emphasising that journalists, as citizens, share these freedoms and obligations. To allow journalists to pursue accurate and timely information, he urged the introduction of legislation to oblige government to provide information, and the repeal of legislation that restricts such freedom.

Professor Kofi Kumado gave a presentation on the current legal position on access to public sector information. The key laws impacting on access to information in Ghana are identified as the Constitution, the Criminal Code, the State Secrets Act and the Civil Service Act, along with elements of common law. Professor Kumado contended that good governance can only be achieved through the contributions of both the government and the people. For the people to play their part, they must have access to information. In addition he argued that access to information is a constitutional must.

Participants were divided into four groups to discuss the issues raised by the speakers. Groups were asked to focus on the question of why citizens have difficulty accessing information from public bodies, including:

- identifying the types of people who require information
- the types of information sought
- how citizens obtain information
- what people do if information cannot be obtained through formal channels.

Participants were also asked to prioritise the factors they identified. The groups reported back their findings at the end of the session.

Access to Information and Civil Service Reforms

Dr Robert Dodoo
Head of Civil Service, Government of Ghana

INTRODUCTION

Preamble

I am delighted and privileged to be invited to participate in this very important workshop on 'Information for Accountability' and to present a paper on 'Access to Information and Civil Service Reforms'.

I wish to congratulate the organisers and the sponsors – the Ghana Integrity Initiative (the local chapter of Transparency International) and the International Records Management Trust, Right and Records Institute for the relevance, timeliness and thought-provoking theme 'Information for Accountability', and for the choice of the topics and the high calibre of individuals selected for each of the presentations. Equally, I must acknowledge the support by the World Bank - Danish Trust Fund for Governance, the Westminster Foundation for Democracy and the British Council Ghana in funding this Workshop.

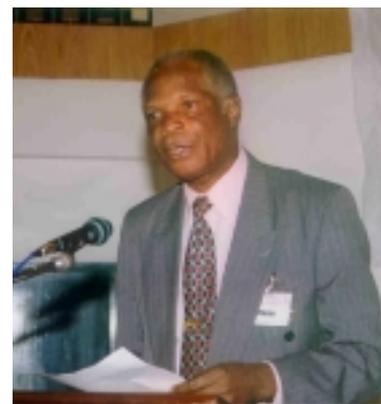
I am particularly pleased and honoured to share this platform with distinguished personnel such as Professor Kofi Kumado who will speak on 'State of the Law Relating to Access to Information' and Mrs Gifty Affenyi Dadzie who will speak on 'Access to Information: The Perspective of the Press' and not 'Gender Mainstreaming in the Press Houses or Businesses'.

THE BACKGROUND

The British Era

The Civil Service, as an administrative institution of Government, and the accompanying issue of Access to Information date as far back as the British Colonial Era in the then Gold Coast, now Ghana. The Civil Service, being a creation of the British, had its original functions, structures and value systems fashioned to serve principally the exclusive interests of the British Crown and people. It must be noted that the Civil Service then encompassed all the institutions of State which currently constitute the public service. It served then as a vital and powerful administrative arm of the colonial power as well as a vital instrument in the hands of the colonial agents for administering the colony and enforcing political, social and economic levers of the society.

The British, as is well known, were efficient in administering their widely spread colonies in the then British Empire. They depended, amongst other measures, on information and were adept in the gathering, documenting, classifying, using and strictly controlling data and information which it communicated to, and secured in, Britain. Information available locally was strictly controlled and classified hence access to vital information was almost impossible. At any rate, the Press/Media Houses and Journalists were very few and were preoccupied not with "bread-and-butter" issues but with local politics. This state of affairs persisted right through independence in 1957.



Dr Robert Dodoo is in the forefront of and mentor to the Ghana Civil Service Performance Improvement programme. He has been the Head of the Ghana Civil Service since 1993. Previously Secretary of the Prices and Incomes Board. He has also lectured in various universities in the USA and at the University of Ghana at Legon

Post-Independence: 1957-1983

The Civil Service was, at independence, an enviable institution for administrative efficiency, loyalty and commitment to duty. It continued to serve the post-independent Government of the day as loyally, obediently and efficiently as before but was, adamantly, too “conservative” and not amenable to change. Hence, even after Independence, the Government and the Civil Service persisted in adhering to almost the same administrative policies and practices: over centralised structures ie, the command and control structures and systems; outmoded inefficient rules and regulation-bound administrative systems; and to the stringent information classification systems and access to information culture that they inherited. They tended to be too cautious and stingy with information and shied away from releasing information of whatever kind.

Prior to 1983 ie, soon after independence to about 1983, there were some modest attempts to reform the Civil Service, by indigenising and Africanising its personnel; examining its structures and systems; and re-orienting them towards serving post-independence Ghanaian interests. But the British system of administration had been so effectively entrenched that the Civil Servant of the day found almost sacrilegious any attempt, by the Government, to even meaningfully tamper with the Civil Service and change it.

As a consequence of the economic decay; the political instability; and the almost progressively moribund administrative system of the period, the revolutionary regime of the Provisional National Defence Council (PNDC) in 1983 embarked upon the Economic Recovery Programme (ERP) and State Adjustment Programme (SAP) and then instituted the Civil Service Reform Programme (CSRP) of 1983-1992/3. Even then, the reforms were limited in scope to structures, and cost-saving measures and not to effecting fundamental changes and orientation in functions, operations and responsiveness to the stakeholders outside Government. The CSRP, however, terminated with the promulgation of the new Civil Service Law, PNDCL 327 of 1993.

THE TOPIC: THE CIVIL SERVICE POST 1993

I wish then, in examining the issue of ‘Access to Information and the Civil Service Reforms’ or the ‘Civil Service and the issue of Access to Information’, to begin from 1993 and for three main reasons. The Civil Service Operating Law was promulgated as recently as 1993 and had its roots almost embedded within the 1992 Constitution. I assumed office as the first Head of the Civil Service, to be designated a Public Servant, to have been appointed from outside the Service about the same time 1993/94 and to have no cabinet secretarial duties. I have to witness, since then, the Law in operation, within the context of the current political and constitutional system and access to information regime. The initiation of the new paradigm in civil service reforms also dates from the year 1993.

The Civil Service of today derives its existence from the 1992 Constitution of the 4th Republic; and its establishment to the Civil Service Law PNDCL 327 of 1993. The Service, now constituting one of the Public Service institutions, has about 76,000 employees and functions at the level of 23 Ministries, 38 Departments, 10 Regional Co-ordinating Councils (RCCs), 110 District Assemblies, and other extra-Ministerial Agencies.

It is essentially, then, that part of the Public Services that is concerned with service in a Civil Office of Government in both central and local government.

As the central administrative machinery of government it is charged with the overall responsibility for policy initiation and formulation, project and programme implementation through its various departments and agencies and co-ordination of government programmes and projects. Additionally, the Civil Service plays a key advisory role to Government on major issues of national importance.

Throughout the history of the Civil Service ie colonial past, independence and post-independence eras, civil servants, in the course of their day-to-day administrative functions, do generate, come into contact with, stumble upon, and handle large volumes of various kinds of information. The information could be sensitive and non-sensitive, classified and non-classified, restricted and non-restricted and marked or stamped secret - all variously designated for many reasons and intended to serve, obvious and less obvious purposes and interests.

These various kinds of information/documentation contain subjects, issues, and matters relating to:

- national development ie economic, social, including cultural and environmental, and political matters
- raw details of the budget and finances of Government
- high profile security information specifically those related to the State, national security, protection of vital resources and interests, etc.

The Civil Servant is expected to hold such variety of vital information jointly with Government and in trust for the State and people of Ghana and is expected to adopt the position of a custodian, to retain, to protect, as well as to use and to communicate the information as and when ordered to do so, or is deemed appropriate to do so.

Records Management ie, data collection, retention, storage and dissemination had been poor and hence information had been difficult to retrieve, and use for all-types of societal purposes.

Mr Chairman, at this stage let me draw attention to a few pertinent considerations:

- As late as 1993 the Civil Service continued to exist as a highly centralised and bureaucratic institution. In orientation, it was bound by and operating under rigid rules and regulations; with hackneyed terminologies, administrative procedures and systems which are hardly understood by the citizens and stakeholders.

- Traditionally the Civil Service and, by implication, the civil servant, had to be efficient, competent, loyal, honest and to exhibit a high sense of political neutrality and anonymity in the discharge of his/her duties. The civil servant, in the process and with time, had become reticent and cagey with regards to information disclosure. Seen from the outside then, the Civil Service was a ‘closed system’.
- This state of affairs, however, has had its own backlash. Indeed this has led to mistrust on the part of the citizens and stakeholders who are frustrated with the feet-dragging posture adopted by the civil servant in the delivery of services. The media in particular complained about being starved of information and in reaction has tended to resort to the use of half-baked information, the tabloids-type, to inform and at times to deliberately misinform the public and embarrass the Government and officials.
- Naturally public confidence in the Civil Service had been severely damaged and the image of a hitherto virile institution impaired.
- The reaction from the Civil Servant was to ‘dig in’ and to bemoan his/her plight as a victim of circumstances caught in the web of the intimidating legislation on information disclosure (eg State Secrets Act and General Orders/Administrative Instructions).

THE STATE SECRETS ACT

Mr Chairman, in the conduct of the work of civil servants, and with specific reference to the concept of freedom of information, attention must be drawn to the State Secrets Act 101, 1962, particularly Section 3 Sub Section 1-4, which deals with matters of ‘wrongful communication etc of information’. Some sections of this Law specifically impose limitations on the ability of civil servants to communicate, handle, retain and use certain specified official information in their possession or to which they are privy.

Since my colleague the eminent Law Professor, Dr Kofi Kumado, would be following with his presentation on ‘State of the Law Relating to Access to Information’, I deem it prudent not to delve deeper into this particular aspect of the Law. He would, as usual, do better justice to the issues contained in the Act than a layman so close to it and its implementation.

I would, however, wish to note the following threatening, perhaps disturbing, features of the Act under which the Civil Servant operates. Under the Act, it is:

- an offence to communicate the code, word, password, sketch, article, mode, document or information to any person, other than a person to whom one is authorised to communicate or a person to whom it is in the interest of the Republic
- an offence to use information in one’s possession for the benefit of any foreign power or in any other such manner

- not permissible for a public servant to retain a note or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it
- also a requirement to comply with the directives with regard to the return or disposal of the document
- similarly, an offence for a public servant to fail to take reasonable care of, or so conduct himself/herself as to endanger the safety of official notes and documents.

Mr Chairman, within the context of this law Civil Servants, as employees of Government functioning within the administrative machinery of the State, do contend with compelling, competing and conflicting interests and dilemmas. These dilemmas are:

- to be open, honest, loyal, committed and obedient to the Government and safeguard the interests of the State
- to assist the Government in its policy formulation and implementation of decisions, plans and programmes
- to uphold the laws of the land including, the Official Secrets Act of 1962, Act 101
- to serve as custodians of various categories of sensitive and non-sensitive information
- to be loyal and faithful to the Government of the day which, in our multi-party system, should be the political party in power. On the other side of the political equation or divide also are political parties in opposition which collectively or to be specific, the majority could be described, in effect, as the 'Government-In-Waiting' and which prey and pry into Government business and search for information of various kinds to enable them to contribute meaningfully to providing alternate solutions to national problems, and sometimes to enable them to gain or score pure political advantage
- there are also the business community, foreign powers, and donor agencies, NGOs, citizens, the media etc, who need information for various reasons
- the Civil Servant should be non-partisan and anonymous in the conduct of his duty within a political milieu. In reality, politics and political considerations necessarily and invariably affect, and influence decisions and conduct
- quite significantly, the Act carries a penalty of imprisonment, fine or both. The spirit and letter of the Act 101 naturally influence and bind the civil servants who subscribe to or take the 'Oath of Office' and the 'Official Secrets Oath'.

THE CHALLENGES AND IMPETUS FOR CHANGE

By 1993 it was becoming increasingly difficult for the Civil Service and civil servants to continue to do business as usual, and there was need for change. This had come about as a result of a number of challenges and pressures:

- Low public image and public perception of the Service and its employees
- Constitutional, multiparty system and democratic imperatives
 - ◇ good governance
 - ◇ human rights and administrative justice
 - ◇ the media and freedom of speech and expression
 - ◇ an independent judiciary and the rule of law
 - ◇ openness, transparency and accountability
 - ◇ customer sensitivity and orientation etc
 - ◆ an educated, elite core of Journalists and emergence of investigative reporters and reporting
 - ◆ proliferation of print (private) and electronic media
 - ◆ private sector
 - ◆ the emergence of an equally vocal and informed public demanding, quality and timely delivery service.

The Service also faced some mounting and persisting problems:

- motivation
 - ◇ low productivity
- scarce resources
 - ◇ financial
 - ◇ material and equipment
- skill shortages in key areas
 - ◇ brain drain
 - ◇ lack of professionalism
- decline in discipline and work ethics and the need to improve upon this situation for effective performance and good governance

- government functions expanding, becoming more complex and demanding by the day:
 - ◊ Ghana Vision 2020
 - ◊ private sector, etc
- the country was characterised by poor record keeping and management
- the Civil Servant had to confront compelling, competing and conflicting interests and dilemmas vis-à-vis the 'nature of work, loyalties, good governance' and the 'Oath of Office' and the 'Official Secrets Act'.

In the face of all these compelling challenges and pressures emerged a number of realities:

- overwhelming pressure for change, for improvement in their services and responsiveness and an imperative to reverse the negative trend
- there was the urgent need for the Civil Service to change, to reform and for a new paradigm shift.

THE CSPIP (1994/95)

Objectives

Mr Chairman, the Civil Service Performance Improvement Programme (CSPIP) commenced in 1995 was in response to these pressing challenges and pressures and the need to develop a new paradigm shift in the conduct of our work. CSPIP, then, is intended:

- to enhance the delivery of services to the Government, public and other stakeholders
- to strengthen and build Institutional capacity
- to institute a Good Governance Culture and Best Management Practices.

The Paradigm Shift involved:

- the re-examination and re-definition of vision, mission, functions and role, stakeholders, and re-orientation of our focus and priorities
- the adoption of a participatory approach to problem solving and new forms of management and leadership styles
- the involvement of clients and stakeholders in formulating, designing and developing performance improvement initiatives
- focusing on improving service delivery and performance management

- making the Civil Service more open, more transparent and accountable, and sensitive to the needs of our stakeholders, including being pro-active towards the private sector.

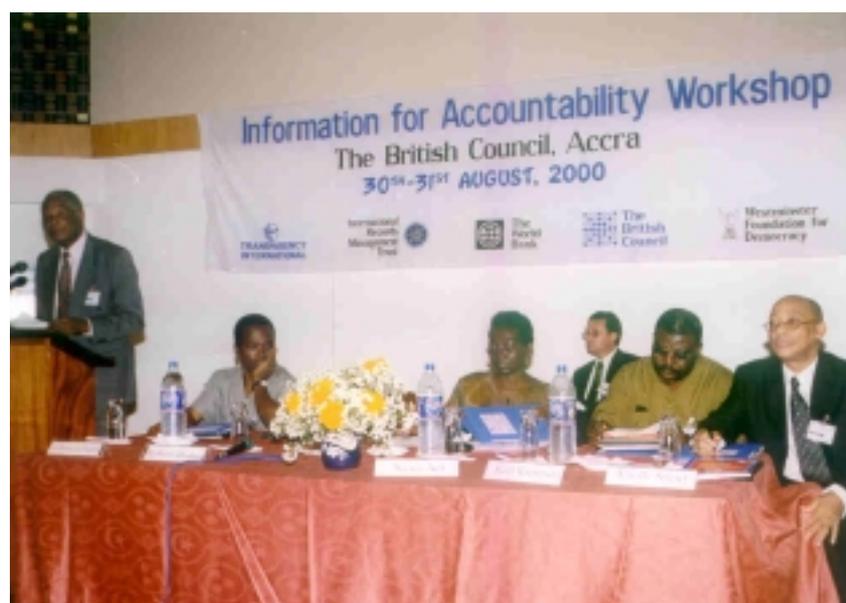
In short, in emphasising the above and being guided by the principles of consensus building, ownership, participation, commitment and involvement, and taking into consideration the re-establishment of constitutional rule and liberalisation of the economy it was clear that:

- the Reforms had to influence and affect the structure, systems, rules, procedures and the mind-set of the civil servants in order for it to be sustainable
- the Civil Service had to be more responsive to the needs of the general public and the private sector; provide information to investors and the general public to aggressively market the investment drive; and recognise the role and involvement of the media, (which hitherto the Civil Servants had shied away from) in disseminating and marketing Government's policies and programmes.

These and other demands inform us that the flow of and access to information are imperatives, indeed vital ingredients which oil the engine of development and progress. Consequently, the Civil Service must respond to these demands by ensuring timely, credible and easy access to information by the Government, the public and stakeholders.

THE CIVIL SERVICE PERFORMANCE IMPROVEMENT PROGRAMME (CSPIP)

Mr Chairman, within the context of 'Access to Information' the Reforms, through a number of strategic interventions, sought to enhance the knowledge and competence of the Civil Service and thereby enable him/her to confidently and responsibly react to all its stakeholders, including the Media.



The institution of the process of undertaking an **Institutional Self-Appraisal (ISA)** exercise enabled the Civil Servants to undertake internal and objective discussions; and analysis and review of mission, objectives, functions, performance and capacity development needs of the organisation within the context of the current development agenda and specific mandates. The Civil Servant thereby gained factual and current insight into the institution and placed him/her in a better position to respond to enquires and function effectively.

In support of the Institutional Self-Appraisal, each Ministry, Department or Agency (MDA) is expected to conduct a **Beneficiary Survey (BS)** whereby it systematically consults its clients, users and customers about their perceptions of the functions, performance quality and quantity of services which the MDA provides.

The CSPIP Technical Team at the Office of the Head of Civil Service (OHCS), serving as a referee, facilitates a **Diagnostic Workshop** for each institution that completes the Beneficiary Survey, to identify its capacity building priorities. Stakeholders participate in these workshops in order to encourage openness and democratic decision-making, and achieve consensus usually on improving access to services available and enhancing the relevance and effectiveness of programmes.

A **Performance Improvement Plan** usually is the end result of activities in which the institution formalises what capacity building action needs to be taken. The plan clearly delineates for each programme the objectives, outputs/targets, inputs required, target dates, risks and assumptions and provides a monitoring matrix.

The Pillars of the Reforms

Mr Chairman, let me now focus on the other key pillars of the Reform Programme and the performance/output-oriented measures we have introduced and their impact.

- **Capacity Building and the Performance Improvement Plan**

The Performance Improvement Plan and its implementation is one of the pillars of our reform agenda. With its introduction we have instituted in the Civil Service the concept of efficient design, planning and implementation of programmes and projects aimed at making top executives more aware, alive and responsive to their mission, functions and tasks. The plan is also to help executives meet public expectation and demands. In this new paradigm, each top executive is expected, for each programme or project, to set out clearly the objective(s), the targets or outputs, the expected results, the actions, individual responsibilities, time-scales for achieving set targets, individual performance, success criteria etc.

Underpinning this strategic tool is the in-built mechanism for skills training, performance orientation and leadership enhancement. It is a means of making top management more accountable, efficient and effective. We have found this to be one of the potent means of

developing and enhancing leadership competence, building institutional capacity and making leadership operate in a more cost-effective and efficient manner.

- **Focus on Service Delivery**

Over the past few years, we have made special efforts to be relevant and pro-active, towards satisfying the needs and meeting the concerns of the private sector, and most importantly, being sensitive and responsive to the concerns and needs of the public. In this regard, we are engaged in re-orienting our structures, attitudes and behaviours in order to enhance service delivery. This includes the following measures:

- ◇ setting of standards of service delivery
- ◇ streamlining cumbersome procedures
- ◇ facilitating the establishment of client services units which are to see to on-going improvements in service delivery
- ◇ facilitating the development of service delivery standards brochures. To date, 23 brochures have been developed and 23 Client Services Units established.

In effect, we are institutionalising quality management assurance in the Civil Service, conscious of the fact that the taxpayer deserves value-for-money services. In this regard, we have put in place the necessary mechanisms for consultation, dialogue and consensus building with our stakeholders. This provides a healthy working relationship in which the views, concerns and needs of the customers are taken into consideration in setting standards and developing strategies to help improve on the quality of services.

- **Performance Agreements**

This is another mechanism we have introduced in order to improve the performance of Civil Servants and render them more accountable, results and output-oriented. This is a form of contractual arrangement designed for Chief Directors, Regional Co-ordinating Directors, Directors of Ministries, Departments and Agencies and the District Co-ordinating Directors with the aim of making top executives focus on their mission, objectives and key predetermined, programmed or expected outputs or deliverables.

- **Code of Conduct and Work Ethic**

Underpinning the performance-orientation measures undertaken and human resources management in the workplace, has been the promulgation of a new code of conduct and accompanying work ethics which emphasises:

- ◇ loyalty to the Government of the day
- ◇ delivering work outputs on time
- ◇ customer sensitivity/orientation

- ◇ efficiency and cost-consciousness
- ◇ punctuality
- ◇ integrity and selflessness
- ◇ anti-corruption practices etc.

CONCLUSION

Ladies and Gentlemen, I have taken you through this evolutionary transformation of the Civil Service and to establish that the flow and access of information is a process activity. We have, through the Reforms, strengthened and developed institutional capacity, developed and enhanced the knowledge and competence of Civil Servants; established and redesigned structures and systems, streamlined procedures, embarked on a mind-set change and evolved new management tools all designed to improve performance and output. These and the major pillars of the reform initiatives directly and indirectly should enhance access to information as well as meet other stakeholder concerns.

Mr Chairman, permit me at this stage to refer to the concluding sections of a paper I read on *'Freedom of Information and Civil Service Reforms in Ghana'* during the Media Foundation for West Africa Forums contained in the Ghana Free Expression Series No. 1 (1999).

'Information in the public domain which is locked-up, un-touched and unused is wasteful. Parliament and the people have a right to the use of information, the right to be informed to enable them to take the right decisions and, make well-informed choices.

The media, as an important estate of the republic has the enviable tasks of being the harbinger of news and information essential to our democracy. I believe the Civil Service has a duty in furthering this desirable development.

Considering the fact that we have embraced the concepts of an open and transparent society, democracy, the rule of law and human rights etc; and viewing the current and developing trends in communication and Information Technology, the days of a secretive and closed bureaucracy are coming to an end. As we empower and educate our citizens they will demand and expect an increasingly transparent Government and Civil Service in the next millennium.

However, in the process of implementing the current reforms, I do not think we have effectively targeted the media practitioners and administrators by taking them on board as stakeholders and beneficiaries. We are aware that the media has the powerful weapon to disseminate available information and market the activities of the Civil Service and thereby, ensure transparency, accountability and good governance.

The trend towards a free flow of information between the Civil Service and the public is likely to be an irreversible development in this century and next millennium. There is hope for the achievement of total partnership between the Civil Service, the Media, Government and the public to enable the free flow of information to become an important aspect of our national development'.

Thank you.

Access to Information: The Perspective of the Press

Yaw Boadu-Ayeboafoh on behalf of the Ghana Journalists Association

The media is a double-edged sword and that is captured by Mahatma Ghandhi in his observation that 'The sole aim of journalism should be service. The press is great power, but just as an unchained torrent submerges the whole countryside and devastates crops, even so uncontrolled pen serves but to destroy'.

Former President, Joseph Momoh of Sierra Leone is quoted by *West Africa* as having said in 1980 that 'we believe the media must be given every amount of freedom. If you muzzle the people for too long, it will get to a point when they will not be able to absorb it. They will explode and there will be development similar to what is now taking place in Eastern Europe. However, the media should realise this in going about their duties. They must be responsible, they cannot afford to be reckless. My argument has always been that the journalist's pen is as lethal as the rifle in the hands of a military marksman'.

The media serve as bulwarks against corrupt and oppressive governments, protect and safeguard the rule of law, and defend the fundamental human rights of the people. These are the only means to give function and meaning to democracy and render relevant the freedom of the people.

If these objectives are to be achieved, then information should go unfettered. To make information meaningful to human development the process must be free and available to all peoples. This is important because there are crucial relationships between communication and power, and between communication and freedom.

Generally, it is held that freedom must be reconciled to an obligation and that freedom must be exercised responsibly. This in mass communication demands the search for the truth and the legitimate use of power to transmit information.

The presence or absence of freedom of speech is a key indicator of the general respect for fundamental human freedom. Any obstacle to any of the rights of freedom of assembly, association and demonstration results in suppression of freedom which is central to all political dissent in the modern society. When dissent is silenced, the media suffer the problem of credibility.

The question then is, can any medium of mass communication be responsible in an era of restrictions, is freedom irrelevant to the exercise of responsibility, or how responsible could one be without freedom?

If individuals are to play their roles effectively in society, then they must be adequately informed, with sufficient facts upon which to make rational judgements and decisions. It is only when the individual has been provided



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with all that he needs to know and enabled to freely make a choice that the individual could be held liable for the action. In other words, it is only when one makes a free and informed choice that one can fully take responsibility for one's action.

In the words of the UNESCO Report on Mass Communications, *Many Voices, One World* 'for the journalist, it is necessary to think of rights and responsibilities, in their relationship to each other. Anyone, who acts without responsibility weakens his claim to freedom, while anyone who is denied freedom cannot be called upon to exercise responsibility. The situation is most healthy when neither of these values is felt to be jeopardised.'

It is in this context that we would want us to look at the need for a Freedom of Information Act, since freedom of the media in its widest sense, represents the collective enlargement of each citizen's freedom of expression which is accepted as a fundamental human right.

Professor Carlos Morales of Costa Rica in an article on journalism and democracy in *Media Development* 3/1997 argues that 'If information is a human right pertaining to human beings, the mechanism that fulfils it must be a typical public service and nothing that comes between that service and its addressees can take advantage of it. This thesis underlies the overriding aim of the common good inherent in professional journalism and hence we might deduce that its mission consists in disseminating, contrasting, classifying, analysing, clarifying and interpreting for society all knowledge with a view to improving social co-existence, which is the same as bettering or improving the state.'

'Journalism in a democracy should be critical, overseeing, free to the point that its most honest commitments allow it to be and also varied so that it represents the normal divergences in any social grouping and so that it can offer the necessary checks and balances that modern democracy requires.'

He notes further that 'if the press points out mistakes, if it indicates new routes, it carries out its true role for the public good. If not it will simply become one more tool of the exploiter of the status quo and may even assist oligarchy, tyranny, anarchy and violence — but not its people.'

The responsible use of the media can best be safeguarded only in an atmosphere of freedom, because it is only when people are free that they can reconcile their decisions to their attitudes. One might not be too much bothered about any misdemeanour if one has no say in how one operates within the environment. Studies in social research on attitudinal change, have established firmly that people take responsibility for their actions depending on the level of freedom within which they operate.

Mr Justice P B Sawant has noted that 'the right to receive information affecting the interest of the society from all sources, whether private or public and the right to free and unobstructed flow of information from as many local, national and international diverse sources as are or can be made available, is the foundation of the democratic rule. Any unreasonable constriction of these rights is antagonistic to democratic ways of life.'

Article 21(1)(f) of the 1992 Constitution provides that all Ghanaians have the right to information but subject to such qualifications and laws as are necessary in a democratic society.

Article 41 provides among others that the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, ‘it shall be the duty of every citizen to work conscientiously in their lawfully chosen profession and to protect and preserve public property and combat misuse and waste of public funds and property.’

These are general constitutional obligations imposed on all of us, but since the constitution demands complementarities between rights and responsibilities, the guarantee of media freedom enjoins ‘all agencies of the mass media at all times to be free to uphold the principles, provisions and objectives of this Constitution and shall uphold the responsibility and accountability of the government to the people of Ghana.’

These are enormous responsibilities that can be discharged where there is free flow of information. Public opinion depends on information and freedom becomes functional to the growth of democracy. For the journalists and those in the media, they must be adequately informed to carry out their duties. Where the media have easy access to information and act with responsibility, there is a high standard of knowledge and informed debate or discussion.

The problem with us is that most often, people in leadership, especially government, business, religion and tradition, will often like to tell their stories in their own ways that portray them in the most positive manner. This is at variance with what the journalist is trained to do, telling the truth.

Actually for these groups, including civil and public servants spin may not be enough in telling their story positively. Half-truths and even lies can be their side of the story.

In this respect, the journalists working for the state-owned medium who want to stick to journalistic ethics of upholding the truth at all times will find themselves as much in need of information from even government and other public sources as their counterparts in the private media. In the case of journalists working for the private media, their roles are often considered adversarial by the state establishment which then employs all the tricks to deny them access to official information.

In the face of constitutional obligations for journalists to ferret for news against official impediments and obstructions, it becomes imperative to design legislation that would compel government and public officials to readily provide information to journalists on request which must be justifiable.

Doris A. Grabber, in *Mass Media and American Politics* postulates that ‘the mass media are regarded as objective reporters of good and evil who scrutinise the passing scene on behalf of the public that can and must appraise the performance of its officials. Journalists serve as the watchdog fourth branch of government, which monitors excesses and misbehaviour of the executive, legislative and judiciary branches. Through playing an adversarial role, journalists provide the feedback that democratic systems need to remain on course. If as a result of their scrutiny governments fall and public officials are ousted, this is as it should be.’

Again, a noted Kenyan lawyer/journalist, Mr Gitobu Imanyara has noted that it is only when the frontiers of freedom of speech are expanded that we could hope to minimise and virtually eradicate corruption because ‘it is the exposure of the rights and wrongs, of the strengths and weaknesses, that provides the essential bulwark against the ever-encroaching tyranny that is the handmaid of corruption and the smouldering oppression that has been the scourge of Africa.’

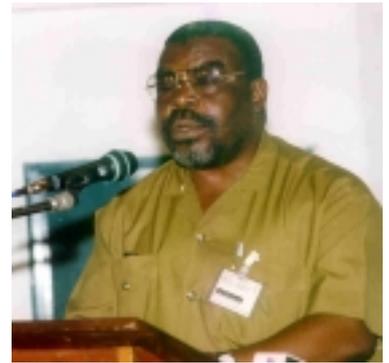
In canvassing for a Freedom of Information Act, I agree absolutely with Imanyara when he submits that ‘for freedom of expression to gain meaning, all laws that limit the freedom of the access of journalists to information must be removed since for the journalist to meaningfully participate in the expansion of freedom, the Official Secrets Act must be repealed.... for the journalist to fully participate in this expansion, the laws that enable corrupt governments to detain journalists under the guise of state security or criminal libel must be repealed. A journalist cannot give full meaning to his profession while he risks imprisonment under an archaic sedition law or an arbitrarily applied and undefined law of contempt of court’.

Let me conclude by quoting Mr Kofi Annan, UN Secretary General, in his message to mark World Press Freedom Day on May 3, this year when he stressed that ‘in every society, freedom of the press is essential to transparency, accountability, good governance and the rule of law. It cannot be suppressed without dire consequences for social cohesion and stability. When it is sacrificed, whatever the reasons involved, the chances are that conflict is not far down the road.’

I am hopeful that Ghanaians will take the route to peace and stability, by providing an enabling legislation to provide for lawful access to public information that are meant to enrich the enjoyment of their fundamental human rights.

The State of the Law Relating to Access to Information

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INTRODUCTION

Over the several centuries of human existence on this earth, interest in the conditions that enable the human being to live in peace and with dignity has proved to be cyclical. The discourse which provides the framework and context through which this interest is articulated is also repeatedly recycled.

Our contemporary discourse is overwhelmingly dominated by what is labelled ‘good governance.’ This is the new ‘Mecca’ for all states, particularly developing countries. Without seeking to breach the late Kwame Nkrumah’s ‘moral rights’ as an author, one can reflect the rediscovery of good governance by noting that new states are counselled thus:

‘Seek ye first good governance and all other things shall be added unto you.’

The preceding two paragraphs are not intended to belittle the current pre-occupation with issues of good governance. Rather, the objective is to show that the recurrent nature of the quest should underscore the importance of the product to the human enterprise.

The two key players in this enterprise are the people and the governors. For the enterprise to stand a chance of success, these two players must be placed at the same level. Information is an indispensable ingredient in decision-making. For the people to be able to play their part they must have the information available to the governors.

A sober reflection on Article 1 of our current national Constitution reveals an interesting conception of the institution of government; it is an image which political scientists have tried to educate us on in the past with, perhaps, only partial success. Government is represented in that Article as merely part of the institutional arrangements put in place by the people, the sovereign, to act on their behalf and for their welfare.

Viewed from this perspective, access to information becomes part of the strategy for making government open, accountable and available to the people - a process which enables the people to become more closely involved in the making of the decisions which affect their lives.

SCOPE OF PAPER

After reflecting on the time allotted to the Session and the number of speakers listed, two considerations have shaped my present contribution. First, that I am only required to provide a legal inventory, perhaps with some passing

commentary, on access to information. Second, I define the key word access loosely as a process whereby or a state of affairs which creates or provides opportunities for the people to get at or receive, either through their own initiative or governmental action, information generated, received, collected or stored by or available to government.¹ In this context, government refers to all public authorities and public officers.

Operating within the defined scope, the inventory will cover the Constitution, statute and possibly the common law. But, perhaps, to assist in a proper appreciation of this paper, it is helpful to point out that, for the present writer, there is a difference between (a) the right to information and (b) the right of access to information. The right to information provides the substantive protection. The right of access to information relates to the vehicle or the means for satisfying what is recognised in substance.

THE 1992 CONSTITUTION

The starting point to our inventorising is the 1992 Constitution. The relevant provisions are Articles 1, 14², 18, 19, 21 and 135, apart from the structure and spirit of the Constitution.

Article 1 acknowledges that ultimate authority vests in the people. Government has been instituted by the people to act on their behalf and for their welfare. Data or other information held or available to government have been collected with the taxes paid by the people and by the exercise of the authority derived from the people. Therefore, the information in government hands actually belongs to the people. This Article thus makes it difficult to justify holding back information from the people, to whom it belongs.

Until the coming into force of the 1992 Constitution, it was unclear whether our law recognised the right to privacy as such. Article 18 of the Constitution has changed all of that. As formulated, Article 18 can be used both as a shield and a sword by the individual and government alike. Thus access may be denied on the grounds that it will violate the privacy rights of others. On the other hand, one may deduce from the article a right of an individual to know (a) what information government has collected on him/her; (b) why it is collecting it; (c) who has access to this information and (d) who has accessed it. Another issue which has arisen from the recognition of privacy as a right by the Constitution concerns the publications by the mass media about the lives of public officials. This relates to the difficult and complex question of privacy versus the public interest. Does holding public office render a person's life an open book to be read and or serialised at all times by all persons?

Two provisions of Article 19 appear relevant here to the present writer. The first provision deals with the rule against self incrimination (akin to the 5th Amendment plea under the American Constitution). This provision will deny access to information whose disclosure will be prejudicial to the officer

¹ I first employed this definition in a paper presented at CDD in November, 1999.

² Articles 14(2) and 19(2) relate more to the right to information and are therefore beyond the scope of this paper.

holding it.³ The second concerns the presumption of innocence. The combined operation or effect of these two provisions may prove a formidable barrier to access to information in appropriate cases.

Article 21(1)(a) and 21(1)(f) usually come to people's mind when we discuss information issues. The first recognises freedom of expression and the second, the right to information. The basic strategy provided by the Constitution for the satisfaction of the second is legislative. Indeed the purist might argue that freedom of expression necessarily entails information rights. For it is usual to conceptualise freedom of expression as the right to receive and to impart ideas and information. We can assume that the presence of the two provisions in the constitutional document is to give due recognition to the empowering character of information.

Article 135 deals with access to information in relation to the judicial process and the administration of justice. It gives the Supreme Court the final say where the needs of the judicial process conflict with the desire of government not to disclose information. The Supreme Court is to order disclosure unless, in its opinion, disclosure will be prejudicial to the security of the state or injurious to the public interest. The Supreme Court proceedings for the determination of this issue are to be held in camera. The critical point to note in relation to Article 135 is that disclosure is incidental to on-going litigation. Perhaps it is helpful to observe that the 1992 Constitution, through the provisions discussed above, has revolutionised the law on access to information in Ghana by elevating the issues of access to the level of constitutional law - the supreme law of the land.

STATUTE LAW

Ghanaian statute law is very restrictive as far as access to official information is concerned. Various pieces of legislation make it an offence to give access to information to unauthorised persons. Factors such as politicisation of the public services, career insecurity and displeasing superiors have conspired to make the public servant, most senior, extremely cautious in matters relating to information.

The most important of these pieces of legislation may be listed as:

- 1 The Criminal Code, 1960 (Act 29) especially sections 183 and 185
- 2 State Secrets Act, 1962 (Act 101)
- 3 (a) Civil Service Law, 1993 (PNDCL. 327)
(b) Civil Service (Interim) Regulations, 1960 (L.I. 47)
- 4 (a) Armed Forces Act, 1962 (Act 105)
(b) Armed Forces (Court Martial Appeal Court) Regulations, 1969 (L.I. 662)
- 5 (a) Police Service Act, 1970 (Act 350)
(b) Police Service (Administration) Regulations, 1974 (L.I. 880)
- 6 (a) Prison Service Decree, 1972 (NRCD 46)

³ A High Court Judge (Asare Korang) has held that the rule applies only to criminal proceedings. Whether this view is correct is yet to be established by the Supreme Court.

- (b) Prisons Regulations, 1958 (L.N. 412)
- 7 Security and Intelligence Agencies Act, 1996 (Act 526).

To underpin the operation of these statutes, PNDCL. 327 requires all civil servants to take three oaths namely: Oath of Allegiance, Oath of Secrecy and the Official Oath.

Of these pieces of legislation, the most crippling are the State Secrets Act, the Criminal Code and the Civil Service Law. It may be argued that the Constitution has laid the ground-work for relaxing this restrictive legal regime. However, in the absence of the freedom of information legislation envisaged under Article 21 of the Constitution, the Supreme Court has held repeatedly that these draconian enactments have survived the coming into force of the Constitution by reason especially of Article 164 of the Constitution.

Mention should be made of legislation which seems to have as its primary purpose the regulation rather than restriction of access to officially held information. Among these may be included (a) the Public Archives Ordinance, 1955 (No. 35); (b) Copyright Law, 1985 (PNDCL. 110) and the High Court Civil Procedure Rules which contain some tools for accessing information generally e.g. interrogatories.

Discussion of the statutory regime may not be considered complete unless one adds the Evidence Decree, 1975 (NRCD 323). This decree creates certain privileges and immunities in relation to certain categories of persons. Briefly (a) between a person and his/her physician or psychologist (s. 103); (b) between a person and a professional minister of religion who has been consulted in his/her professional role as a spiritual adviser (s. 104); (c) in favour of the owner of a trade secret (s. 198); (d) in relation to spousal communication during marriage (s. 110). There is no doubt that the decree creates these privileges and immunities because they are considered essential for the proper functioning of a democratic and civilised society. However, that they also impact adversely on access to information cannot be denied.

A close examination of our statute books reveals then, that one does not need to be a radical to realise that what we have here is a legal environment which is inhospitable to access to information. It is thus not surprising that one of the most frustrating experiences in Ghana today is trying to access officially-held information. It is interesting to note that these laws do not only affect the private citizen's access to information. The government machinery itself sometimes suffers adversely. At the First National Governance Forum in 1997, which was held under the auspices of Parliament, it was revealed that the government economic decision-making process is hampered by the unwillingness or inability of the relevant government agencies to share information generated and held by them!

COMMON LAW

The expression 'common law' is used in this paper loosely to refer to a combination of the systems of customary or native law of the respective ethnic groups that constitute modern Ghana and the received principles of law introduced by our British colonial masters. Two areas of law are relevant here - defamation and contract, especially the rules dealing with employment-related confidential information.

CONCLUSION

What the inventory shows is that the state of the law relating to access to information in Ghana today is grim.

Perhaps, the present writer can do no better than repeat the concluding remarks of a contribution in an earlier workshop on the same subject.

‘There are two key words in a constitutional democracy - vote and voice. The vote is a basic and essential element of freedom. The voice makes the exercise of the vote meaningful because it is concerned with our right to receive and impart ideas. We have the vote. For the voice to play its rightful role, access to information must become a routine part of the political menu. Promoting access to information therefore does not only make political sense. It is a constitutional must.’⁴

Thank you.

⁴ Contribution at CDD already referred to.

DISCUSSION SUMMARY

Session One

Wednesday, 30 August (am)

Participants were divided into groups to consider the obstacles facing citizens seeking information from public sector bodies. Discussions revealed that obstacles faced fell into two broad categories - legislative and operational issues.

A key area was the restrictions the legal framework placed on the civil service, in spite of the reform measures that are taking place. The law does not facilitate



the release of information and may generate fear on the part of those who give out information. For example, prosecution under the State Secrets Act 1962 carries a penalty of 14 years in prison and, as one group stated, the fear of retribution from authority for releasing information. It was suggested that this

latter point may result in a blind obedience to authority as officials fear painful sanctions. In addition to this, it was argued that there is a tradition of cultural practices that demand obedience without asking questions. A Freedom of Information law was seen as a first step in breaking this tradition.

The groups also highlighted the lack of a law to compel the release of information. There was also recognition that there was no effective appeals procedure established in law. It was recommended that regulations should determine the levels of responsibility for civil servants charged with releasing information.

Key operational issues identified included both practical obstacles and other, less tangible, questions. These include logistical difficulties such as the distance that may have to be travelled to obtain information, bureaucratic procedures and the availability of recorded information in English only.

Less tangible issues raised were the culture of secrecy in the civil service. It was suggested that this might stem from a lack of guidance on what information can be given out. In addition fear of retribution for the release of information on the part of civil servants, and mistrust of the purposes for which the information will be used were also seen as deterrents. One example given was the treatment of researchers with suspicion because they are thought to be engaged in subversive activities.

The lack of established appeals procedures and inadequate public education about what information is available and how to access information were also seen as important operational issues. It was suggested that there is a general ignorance in the population about citizen's rights, even where the law does not restrict information. This applies to both literate and illiterate members of the citizenry alike. To address this there must be sustained nation-wide programmes focusing on raising awareness amongst the public. This is currently lacking.

Even where information is requested, participants argued that poor records management made information retrieval very difficult. Complex bureaucratic procedures compound the problem of access by making the process of obtaining information unclear. The chain of authorisation is similarly unclear.



A number of other issues emerged from discussions. Participants pointed out that there is a problem of unequal access to information. The reliance on informal networks to obtain information creates information 'haves' and 'have nots'. Along with this is a problem of bribe-payers and bribe-takers, which creates an unofficial cost attached to information. In this environment, information disclosure becomes discretionary leading to a lack of transparency.

See the section on **Workshop Outcomes** (page 120) for a summary of the findings of the two days.

SESSION TWO

INTRODUCTION

Objectives

- Identify issues for consideration for implementing FOI - including operational issues, institutional culture, political will, public support, protecting the public, protecting the state, anti-corruption.

Dr Justus Wamukoya, a Workshop Facilitator, began the session by presenting a preliminary summary of the results of the attitude survey, completed by participants in the morning. A full analysis of the findings along with quantitative results can be found in the section on **Workshop Outcomes** (page 118).



The second session, *Freedom of Information (FOI): A Roundtable Discussion*, was also chaired by Professor Nana Apt. A panel of four experts contributed different perspectives on Freedom of Information. The broad topic for discussion was whether Freedom of Information legislation is appropriate for the Ghana context. Specific issues included:

- Why does Ghana need a Freedom of Information Act?
- Why is it necessary to change the law? Why not simply introduce a non-statutory access to information policy?
- What would FOI mean for the man in the street?
- Should this be a priority for the Government?

- Is there potential for misuse of FOI by opposition parties and/or the press?

The four participants in the Round Table were drawn from the Centre for Democracy and Development (CDD), the Ghana Journalist's Association and the Ministry of Communications.

Professor Gyimah-Boadi of the CDD gave two examples of incidences in which he had been refused access to harmless information. He went on to discuss the damaging impact of secrecy on the competitiveness of Ghana, as measured against other countries with more open information regimes. Professor Gyimah-Boadi felt that replacing the State Secrets Act with a Freedom of Information Act is a way to demonstrate the commitment of the government to a liberal democratic culture and to support the duty of citizens to hold government accountable. He argued that a key tenet of this law should be to impose a requirement on officials to maintain supporting documentation for policies and decisions taken.

Dr Yao Graham of the Third World Network carried forward these arguments, adding also the idea that Freedom of Information would help to improve press standards, not enhanced by an environment of secrecy. He argued for the need for a statutory measure, to ensure that rights are enforceable, addressing the issue of a weak citizenship culture which results in institutions assuming that they are unaccountable. To combat this, he suggested that there should be an obligation for public institutions, which have an impact on citizen's lives, to disseminate information.

A different view was presented by Mr R B Arthur of the Ministry of Communications. He argued that the focus should be shifted away from the media as the beneficiary of Freedom of Information. He emphasised the progress the Government is already making by instituting new measures to improve openness, particularly through decentralisation initiatives. This presentation was followed by Mr Yahaya, also from the Ministry of Communications, who highlighted a new project within his Ministry, the National Information Clearinghouse Project. This is intended to utilise information technology to enhance the dissemination of information by public institutions.

Following the discussion, participants were able to present questions to members of the panel. Afterwards, participants were divided into four groups. They were asked to consider the advantages and disadvantages of implementing Freedom of Information legislation in Ghana and findings were then presented back to the group.

With the exception of Professor Gyimah-Boadi, the following presentations and questions were transcribed from taped recordings of the Session. Every attempt has been made to present views expressed accurately.

Roundtable Discussion: The Need for A Freedom of Information Law in Ghana



Professor E Gyimah-Boadi is the Executive Director of the Centre for Democracy and Development and is currently Associate Professor in the Department of Political Science at the University of Ghana. He is a member of the Governing Council of the Ghana Integrity Initiative (local chapter of Transparency International); the Research Council of the International Forum for Democratic Studies; the Editorial Board of the Journal of Democracy; and part of an international research group based at the Institute of Development Studies in the UK. He recently led the team that conducted the study on Good Governance and Corruption in Ghana for the World Bank and the Anti-Corruption Coalition.

Professor E Gyimah-Boadi

**Executive Director, Center for Democracy and Development (CDD),
Associate Professor, Department of Political Science, University of
Ghana**

WHY GHANA NEEDS FREEDOM OF INFORMATION LEGISLATION?

Two incidents in my life as an academic researcher and policy analyst are highly pertinent to this discussion:

One, in late 1993, I am researching the political economy of SOE reform in Ghana. In an effort to get accurate information on the turnover of CEOs of that parastatal agency, I am directed to the incumbent Managing Director.

I state my request in the most modest and suppliantly manner at my command, but the Managing Director informs me that the information I am requesting is confidential and can only be released upon approval by the Board!

The irony of this was that the information I was looking for - the list of CEOs of Ghanair, dates they assumed their positions and dates their tenure ended, along with their portraits - were on display on the wall behind the officer, and I was staring right at it. Under the circumstances, I engage in the criminally subversive act of mentally photographing the information for later and apparently unauthorised use.

Two, in April 2000, the Center has been commissioned by the World Bank, acting upon the request of the President of Ghana, to conduct a diagnostic survey on corruption. To ensure a maximum level of representativeness for the firms to be covered in the survey, we write a letter to the head of Value Added Tax (VAT), requesting the list of VAT registered firms in Accra. The intention is to add this to the list of Accra based firms obtained from other sources - the Chamber of Commerce and other business directories.

The VAT Secretariat informs us that the information requested is confidential; and our request has been passed on to the Minister of Finance for authorisation. The Minister of Finance writes, through the Chief Director of the Ministry, to inform us that our request has been turned down. This is all in spite of the entreaties of some of the agencies in the Ghana Anti-Corruption Coalition.

Again, the irony here was that the information declared to be confidential was, at least partially, in the public domain. In late 1999, the Secretariat had caused the list to be published in all the major newspapers! What we needed was only the updated version of that list!

From the standpoint of research, information gathering, analysis and dissemination, the state of affairs that leaves a citizen and taxpayer helpless in the face of such unreasonable and gratuitous denial of information by public agencies and public officials cannot be healthy for national development.

This is also contrary to the spirit of engendering good governance and concomitant well-informed citizenry.

And from the standpoint of operating in a knowledge based and highly competitive global order, it is simply not good for government officials to habitually and without justification deny information to its citizens. It deprives its citizens and disadvantages the nation in its competition with other nations who operate a more open information regime. How can Ghana make strides in economic and technological development when sons and daughters of Ghana cannot access data on public institutions in Ghana, and when it is easier to obtain information on Ghana from foreign than local sources?

I will sum up my arguments as follows:

- **Firstly, governmental secrecy is incompatible with the principle of ‘popular sovereignty’ that undergirds our constitutional democracy.** (Article 1, section 1: ‘The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised...’). Thus, the public has ‘a right to know’ how and for whose benefit government operates. A Freedom of Information Act (‘FOIA’), in place of Official Secrets Act, is therefore among the key legal institutional evidences that would show that our country has indeed embarked on a transition from an authoritarian, ruler-centred system of governance/political culture to a liberal, people-centred political culture. Indeed, it is important for us to recognise that we have come from pre-colonial, colonial and post-colonial authoritarian political culture. Pro-active measures are needed to overcome this legacy. Citizens must be given the legal instruments for compelling public authorities to provide information and for the realisation in practice of the ideals of transparency and accountability.
- **Secondly, the relationship between the people and the government in a representative democracy may be likened to the principal-agent relationship, in which the people are the principals and the government their agent.** In any such agency relationship, the agent must act in the interest of the principal and would be in breach of a fiduciary duty if it were to act otherwise. The principal, however, must have information pertaining to the conduct of the agent or else the principal would not be able to tell whether the agent is indeed acting in the principal’s best interest or engaging in self-dealing. If public *servants* are, indeed, the public’s *servants*, then the public, as the *masters*, must know and be kept informed of the conduct of their paid servants. A Freedom of Information Act would ensure that.

A FOIA will help affirm and practicalise the basic principle of democratic governance that: ‘holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to the office.

- **Thirdly, a FOIA is needed to enable public and media to police and give practical meaning to many provisions of the Constitution that impose duties or standards of conduct on government and other entities.** For example, *Code of Conduct for Public Officers* (Chapter 24) - especially, rules against conflict of interest in conduct of public

business. Indeed, Article 162 (5) *obligates* agencies of the mass media to perform this policing function, by providing that, ‘All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and *shall uphold the responsibility and accountability of the government to the people of Ghana.*’

Indeed, a FOIA will help to give meaning to the liberal democratic idea that: ‘holders of public office should be as open as possible about all decisions and actions they take. They should give reasons for their decisions and withhold information only when the wider public (not party political) interest clearly so demands.’

Again, it is difficult to imagine how the media can be expected to discharge this constitutional mandate without the benefit of a Freedom of Information Act. In fact, together with Article 21(f) (providing for a ‘right to information subject to democratic qualifications), Article 162(5) provides the strongest legal argument yet in support of the proposition that a Freedom of Information Act is required under our Constitution.

Developments arising from the sinking of the Russian submarine (the Kursk) in the Barents Sea near Norway, dramatically but tragically underscore the need for a legal, political and cultural regime of compelling public officials to provide information. In this incident, officials are the sole source of information; only state controlled TV is allowed near the scene of the accident; state TV simply repeats the claims of Russian officials that ‘everything is under control’; the independent media and the public at large get no opportunity to cross check official information and determine their veracity.

Motivated principally by a desire to avoid embarrassment and to justify their reluctance to accept available external assistance, Russian officials play down the magnitude of the crisis and exaggerate the efficacy of their rescue efforts.

In the end, action is taken too late, external assistance is accepted too late; over 100 sailors perish in the most horrific circumstances.

Silence, lies and non-transparency (intended to protect officials from having their incompetence and negligence exposed and from embarrassment) are dressed up as assertion of national pride and protection of vital national security interests. The cost is avoidable national tragedy, greater national embarrassment, and wider exposure of national security lapses.

Thirdly, a FOIA should enhance the quality of journalism. By giving journalists timely and inexpensive access to certain relevant facts, context and detail surrounding certain matters of public interest, a FOIA would discourage excessive reliance on rumour, speculation and fabrication in the practice of journalism. In fact, in the absence of a FOIA it is unjust and unfair to impose punitive sanctions, such as criminal libel laws, on journalists who are left to rely on gossip and rumour to get to the truth. Given the huge information gap or asymmetry that exists currently between public officials (who possess the relevant information) and the media/public (who need to know), it is unreasonable, and somewhat

hypocritical, for public officials to withhold such information (on grounds of governmental secrecy) and yet expect journalists to publish only truthful and objective stories. Government and public officials cannot have it both ways: if they want truthful journalism, they must supply the necessary facts and background or else hold their peace when rumour, gossip and falsehoods fill the void. By replacing rumour with fact and ‘clearing the air,’ a FOIA could also give the government credibility in certain situations where the public would tend to infer a hidden agenda and improper motives from governmental secrecy.

- **Fourthly, a FOIA could promote discipline and rationality in government.** An awareness on the part of public officials that certain actions and decisions could be subject to public disclosure might cause public officials to weigh their actions and decisions more carefully and with the public interest in mind.
- **Fifthly, a FOIA is likely to save the taxpayer some money, by revealing scandals and waste in government and other public institutions.** If countries with long traditions rule by consent, high levels of trust between government and its citizens, and governments and opposition, and normally well performing governments see the wisdom in freedom of information, what justification can we have for not having a FOIA in a country like Ghana? The tradition of rule by consent is weaker, there is a higher degree of mistrust between citizens and government, and between government and opposition, and the government is far less than well performing.

PRECONDITION

A Freedom of Information Act, unless backed by a ‘documentation requirement,’ could cause public officials to avoid documenting and storing certain important matters. Thus, a FOIA should also impose a duty on public officials and government to maintain supporting documentation for policies, decisions and actions taken by government and public officials. A FOIA that is not backed by a requirement of documentation of relevant official acts and decisions and, instead, leaves public officials free to document or not to document their acts and decisions will lack bite. The ‘documentation requirement’ is indeed critical to promoting discipline and rationality in official decision-making and actions.

CAVEATS

To be sure, there may be objections to a FOIA on grounds of threats to national security and the costs of providing information. These are normally taken care of under a schedule of exemptions under the FOIA. However, to conform to democratic and good governance ideals, such exemptions must be narrowly drawn, well justified, based on real (not speculative) harm and clearly in the public interest (and not partisan political or individual public official interest).

In addition, the Act must prevent public officials from denying request for official information through the employment of delaying tactics. To avoid such delays, the Act must provide guidelines about categories of information and the maximum amount of delay allowable.

Secondly, considerations of the cost of providing information (however well founded) must always be balanced against the need to have a citizen friendly information regime and developmental gains associated with an open information regime. At any rate, cost schedules must be attached to different types of information and the maximum amount of time for providing that information must be worked out in some detail.

Thirdly, there must be an independent authority to adjudicate disputes arising from the claims of those who seek access to information and those who seek to withhold such information (ie an information court).



Dr Yao Graham
Africa Co-ordinator, Third World Network

I agree with many of the points raised by the previous speaker. Getting information from the public service is like having all 32 teeth pulled!

In answer to the question, does Freedom of Information make the press more irresponsible? The current climate makes it routinely very difficult to verify and develop a story. There is the sense that the climate of secrecy makes it much more likely that half-truths will be published. Introducing Freedom of Information legislation would make it possible to enforce higher standards of press behaviour because it would allow the public to identify those journalists and publications that publish fair and accurate stories from those that do not. At present, owing to the difficulty in obtaining access to information, people assume that everything that is published must be true. Thus unaccountable public officials are balanced by an unaccountable sensationalist press.

Why is it that we need a change in the law for this policy to be effective? Why not have a simple non-statutory arrangement? Now, from what Gyimah said, quite clearly what you simply would do is add another layer to the discretion that people who have a reflex of silence - when in doubt do not disclose. There is no compulsion to disclose. So the statutory basis then becomes the way in which the right is defined.

Let us put it this way - if freedom of access to information is a right, then its legal character must recognise it as a right. Rights must be enforceable. If it is a right and it is not formulated legally so that you can enforce it, there is a derogation from its essence. Even putting aside the question of whether or not discretion would be exercised properly, or abused, the definition of the matter as creating or enforcing a right necessarily means this must be obtained by possible provisions that also lay the basis for the institutional mechanisms of activating that right. Now it is important to make the point because in the end it is a situation where it is an informed citizen who activates a response. So in fact a right is a right which is rooted in a responsive situation. It is not a proactive obligation on the institutions to provide information.

Dr Yao Graham has been the Africa Co-ordinator, Third World Network since 1994. He was the Editor of *Public Agenda* - a Ghanaian national weekly newspaper, a member of the Technical Committee for the Ghana Human Development Report, and a member of the Co-ordinating Committee of Social Watch - a global coalition of civil society organisations. He has published widely in journals, magazines and newspapers - particularly in Ghana and the UK.

Which leads me to my next point - that parallel to, and actually hand in hand with, the business of freedom of access to information is also the question of what level of an obligation to disseminate should we demand of public institutions. If we take the political culture of a weak citizenship culture, of a weak notion of rights, and a political culture of institutions assuming that they are unaccountable; if we do not have a related conception of the right to disseminate, not the right to educate the public (because the Ministry of Information does a lot educating the public, which means that facts, opinion are rolled into one and disseminated) but the right to disseminate. Just to give you some examples, say documents are regularly published by public institutions, the manner in which they are available truncates the dissemination. There are some things which are not disseminated at all - you go to the police for crime statistics, things that will allow me to form an opinion. So I am saying that for the person in the street there is actually a further question of what standards of a right to disseminate and the mechanisms for actualising those which we need to go with them, for we need to build a culture, and I think we must see that these rights are extremely important.

I just want to make one last point. That leads us also to the question of machinery that makes this possible, and then also in our context, what do we define as public bodies and institutions who have the responsibility to disseminate? I think that we need to look beyond the core state institutions and begin to ask questions about which institutions are powerful in the wider world and have public policy effects, or effects on peoples rights and impinge on their rights. To what extent could they come within the scope of an information policy? It is only this kind of conception that I think that, not only do we underline the belief that freedom of information is important, but also begin to think through the totality of steps and processes that will allow us to experience it. There is a famous saying in jurisprudence - that one more law does not make one more blade of grass grow unless we think through actually how it works.

Thank you.

R B Arthur
Director, Policy, Planning, Monitoring and Evaluation,
Ministry of Communications

It looks like I have a very tall order. Having listened to two very good speakers, on the other side if I may say so, I have one or two observations to make stemming from this morning's presentations and my own observation. It looks like, unfortunately for some of us, the emphasis on the need for freedom of information, has been skewed more in favour of the mass media and to me this should not be the case. Yes, the mass media have a right to information, but the emphasis should not be on the need for only the mass media. Because what is information? Information is the bedrock of any serious policy formulation. So the government needs information, the ordinary citizen on the street needs information. So when we are talking about freedom of information, lets look at it in its entirety and not look at it from our own parochial professional angle.

Having said that, I also want us to look at the present day environment with all the limitations, negativity that we have. What are we doing now? Are we making a progressive development to a more open and transparent society or



Mr R B Arthur is a graduate of Political Science and Law. He has also been awarded a Master of Arts Degree in Public Policy. He has been in the Public Service in Ghana since 1977. He was appointed Director, Policy, Planning, Monitoring and Evaluation in the Ministry of Communications in 1993.

are we going back the other way? I am saying this because, if you look at the situation now, even without the Freedom of Information Act, we've instituted certain measures. Speaking from the Ministry of Communications - some days past we never had Cabinet briefings. Now after every Cabinet session the Minister of Communications calls a press conference and briefs the press about decisions that have been taken at these Cabinet meetings. We have instituted 'Meet the Press' and every Tuesday, unless something else happens, we have one institution or another meeting the press to answer questions and I think this is a very useful innovation. Then we have decentralised the system of administration - we have district assemblies. If you read the papers, if you read the sort of questions people ask at the district levels, these were not there some years past. I think these are serious developments that we have to look at.

And I also want to add to this list: if you take the Ghana highway authority, the Ministry of Roads and Transport, they have instituted public hearings for their projects. If they are going to construct Accra-[Kumasi] road the design is exhibited, views and comments are invited not only from the professional groupings but from the ordinary man who will be affected by that development. And it is very interesting to attend some of these hearings because questions are asked, opinions given, and these are taken into consideration before the final design is put together. And I think that this is a very important addition to our list.

But this is not to say that we don't need to open the door wider. There is a need to open the door wider but that is not to say that it is so bleak that nothing is happening.

And on that note, I thank you.



Mr Issah Yahaya graduated from the School of Administration, University of Ghana in 1978. He is participating in the Telecommunications Senior Management Programme 2000. He has previously worked for the Ministry of Trade and Tourism. He is currently Assistant Director, Ministry of Communications – Research, Statistics and Information Management Division and also Project Manager, National Information Clearinghouse Project.

Issah Yahaya
Assistant Director, Research, Statistics and Information Management Division,
Project Manager, National Information Clearinghouse Project,
Ministry of Communications

To add to my colleague's presentation, we want to inform you that as part of our concern to improve the access to accurate and timely information from the public sector, the Ministry of Communications has gone further to integrate information technology and the way we disseminate our information. It is our programme to develop electronic data collection systems in all the key government departments and then network them for the public's accessibility. We have started with a pilot with the Ministry of Education presently. Indeed, as the Minister mentioned, on 7 September it will be formally announced that the pilot project has begun. Gradually we hope all the other key government institutions that have developed their own electronic information systems will be linked to a central database. So that using the Internet anybody elsewhere can tap into the information that he requires without necessarily having to walk up, to physically encounter the frustrations we were discussing this morning, which is the beginning that we are introducing. Let me also add that it will require support, because of the large investment. Granted our situation now is a small project. If the resources are made available we should be able to cover as many public institutions as possible.

Thank you.

QUESTIONS TO PANELLISTS

Audrey Gadzekpo, Lecturer, School of Communication Studies

Freedom of Information is very necessary and the presentation by Mr Arthur confirms this point for me. The point of having a free information environment is not top-down. It should not be at the behest of the magnanimity of the Ministry of Communications, of a Minister who decides that today I am going to tell you what happened in Cabinet. We should be able to access information at our convenience when we think it necessary, and without it being sifted or controlled in that manner. I think that the Ministry of Communications has come far with these press briefings, but they are wholly inadequate. I think that we should be able to directly access information when we want to and not when you set up an opportunity to do that.

RB Arthur, Panellist

Thank you. It looks beautiful when you say you want to access it at your own leisure. But lets look at the totality of Ghana. We are in Accra, some are in Kumasi. What about those who are in [Kittyiwira] and others? There they don't have that easy access, as you may want us to know. So they need to be informed. I also drew attention to the existence of the District Assembly concept. It is not top down; it is also bottom up. Let us be very pragmatic in this. There is a need for us to pass this legislation. As my Minister said, the Government is not averse to it. But then, can we not improve what we have as we think about what we want to introduce? If you read the literature available, in the United States, the information environment did not change with the introduction of the Freedom of Information Act, it needed the Watergate scandal to change the culture. So let us look at what we have and see what we can do to improve the situation even within our limitations.

Tim Acquah-Hayford, National Media Commission

Mr Arthur, in my opinion you missed the point. The issue is not about what the Ministry of Communication is doing to inform the public. We have been enlightened this morning about the fact that there are certain statutory requirements that have turned out to be inhibitions in the way of the public servants giving out information. You are made to swear an oath of secrecy, and we heard Dr Dodoo giving a typical example of even he himself at that level finding it difficult to get certain small information from the Accountant-General. Professor Boadi has given us typical examples. So what are we trying to do by saying 'Oh, we should see how we could improve'. And I believe that this is a very beautiful way of making the effort. We are trying to improve. How do we ensure that the laws that make it difficult for the public servant to release harmless information to the public is done away with? And I believe that this Freedom of Information Bill that is being propounded is an attempt in this direction. So the issue of what the Minister comes to tell the public from Cabinet and decentralisation is neither here nor there in my opinion. There are certain basic problems - how do we resolve that? Thank you.

Hon Nii Adjei-Boye Sekan, Member of Parliament

It seems to me as if representations by the public servants represents the difficulty which we as a nation are facing. I don't think that in these situations we should be on the defensive. Nobody has really accused the public service of hiding information. But the fact is, I as a Member of Parliament, have written a letter to a ministry asking for information. It has taken two years. I have asked.

a parliamentary question - according to the Standing Orders it takes 10 days. As an ordinary citizen or even as a Member of Parliament, I requested information affecting the benefits of some employees of a diverse state enterprise in my constituency. No-one has bothered to give me an answer. And why did the people come to me? They were going up and were not given the information.

In these circumstances it is 'as and when' a public servant desires he will do you a favour and answer your question. Now there is a need to have a law that will guide us so that if I write a letter, if a citizen wants information, you are bound within a timeframe and at your own expense to give the answer. If the answer is not given, you can also take legal action to compel you. There are rules guiding restricted information. Public servants should be grateful that inhibitions are being removed to enable them to serve the people, and ensure that the very tenets of our Constitution are adhered to. Let us appreciate the problem and let us solve it rather than trying to find excuses and justifications. You are doing a wonderful job, please go on. As and when you want to give information please continue doing so. But when I want information I want it promptly, not as and when or at the behest of anyone. Thank you.

Ferdinand Ayim, The Statesman

It is unfortunate that Mr Arthur is talking like the real civil or public servant, failing to appreciate the role of the media in nation building. Apart from the constitutional obligation of the media to hold the government accountable to the people, the media exists as a partner in nation building. Government policies will remain at that level if it is not carried to the people by the media. This has been one of the problems we have been facing over these years - the lack of appreciation of our role by public servants. There is no gainsaying the fact that we need a piece of legislation to make those who have information [make it available], there have been several occasions as a journalist when you go to someone for information and he hides behind the Official Secrets Act. The people are looking for information, they have the right to what you have. So at the end of the day you go public with what you have regardless of the fact that you may not be sure because the people need to know what is happening. You can't wait for the public servant who uses the excuse of the Official Secret Act to deny the information to also deny the people that information. The earlier the public servants appreciate the need for the media to access information easily and not to wait until it is massaged for public consumption, the better it will be for this country. Thank you.

Alhaji Muhammad Abdullah, Serious Fraud Office

In addition to all that can be done, including the legislation, we should also consider these efforts that are being put in. Since pre-colonial days and Independence, we have travelled through so many turbulent waters. He [Mr Arthur] thinks that we are making some progress and we can not only say that by enacting this particular law we will be addressing all the problems we have identified. Indeed our discussions today have proven clearly, it is not that government or state officials wilfully hold back information. I think the consensus has come out clearly. We also suffer the same fate as journalists, or the honourable colleagues, Members of Parliament, were expressing today. Even intra-government relations suffer these same difficulties. I agree with Dr Yao Graham, the fact that the thing is not available is a recipe for some of the

difficulties we get into as far as pressmen are concerned, as far as state officials are concerned. Whatever we can do to address the difficulties we have identified must be a collective responsibility of all of us and not only government or state officials. Sometimes in our homes or our management positions things happen right under us that we do not even know. It is when somebody comes up to, let's say the manager, and says this is what I want to do and these are the difficulties, that the attention of the supervisor or the highest authority of the place gets to the issue. I am happy that we are working together to identify problems. Apart from the legal limitations, we have other operational problems which is not the doing of a state official or a government appointee. So let us identify our roles in making sure that these problems can be addressed.

Hon George Buadi, Member of Parliament

Since the subject of Freedom of Information started, the impression has always been that the press needs information more than the rest of us. The people, who for a very long time have not accepted this view, also feel that we have had a very irresponsible press. Because of the constitutional responsibilities we have given the press, the press has taken upon itself a laissez faire attitude, or careless attitude to what they write in the newspapers. Even when they have the correct information, they embellish the information to such a point that even those who give it to them themselves get scared. We need to consider to what level of responsibility should be required of our mass media. If they would address that first, people would be amenable to giving them a Freedom of Information Act.

Dr Yao Graham, Panellist

May I say that there is something about power, whether exercised by journalists or by public officials. And I think it is important for all of us to remember that we will not be in power forever. There are different situations where we are powerless vis-à-vis another person. So that in seeking to level the landscape on access to information we are talking about a facilitatory process. Let me simply say, when you have lived for a long time without people even being able to say the colour of the dress the emperor is wearing, when they get the chance, at least for a while, they will be interested in what is under the emperor's skirt. It loses its attraction after a while.

I made the point and I want to repeat that there is an interactive relationship between the absence of information and the behaviour of the press. Let us look at the culture of public relations as practised by many institutions. It is a defensive practice. It is only when there is trouble that they begin to put out press releases. So let's move beyond government, we are talking about the culture of how we manage information. A Freedom of Information Act, when people begin to activate it, has the potential to improve the general culture of information. I mean you buy goods, they are not properly labelled. There are so many different ways in which the information climate undermines all of us as citizens. The focus on the state, as I understand it the public space, because the citizenry are supposed to be the foundation of sovereignty. And the accountability of the state and its transparency is important for how other institutions behave. A state which becomes illegitimate in how it behaves loses the moral authority to enforce. So I think we must see the totality of the problem.

Prof E. Gyimah-Boadi, Panellist

Listening to the discussion and the comments from the floor, I actually wish the question for this panel had been posed differently, whether there is any sense in which Freedom of Information legislation would be inappropriate for Ghana. I think the case for appropriateness is clearly there. Now, we may assume that there are some senses in which it may be inappropriate but we are dealing, as Yao said, with power, and people who have power, and people who exercise power and who are supposed to do so on behalf of the public. You all heard about the Soviet submarine that sank - in that incident, it seems to me that the operating principles of public information were silence, lies and non-transparency dressed up as assertions of national pride, protection of vital national security interests and so on. But the cost, of course, was avoidable tragedy, greater national embarrassment and wider exposure of national security lapses to the whole world.

Issah Yahaya, Panellist

We hope that this new facility we introduce will go a long way towards providing better access to public information.

R B Arthur, Panellist

I would like to emphasise what Mr Acquah-Hayford wanted me to negate. The Government is not averse to a Freedom of Information Act. What I sought to say, even whilst waiting for the Act, the environment is being softened whether it is from bottom-up or from top-down. We should appreciate what we have and seek to improve it.

DISCUSSION SUMMARY

Session Two

Wednesday, 30 August (pm)

Following the Round Table discussions, breakout groups focused on identifying the advantages and disadvantages of implementing Freedom of Information in Ghana. Participants were clearly in favour of Freedom of Information legislation although they recognised that there were issues that would need careful handling.



FOI was seen as having widespread public support. It is hoped that this support would in turn increase the public's confidence in government and consequently lead to more trustworthy government. An improvement in trust could be brought about through the government's willingness to provide credible information on policies and programmes. It is hoped that FOI would increase the public's participation in government, and necessitate government to demonstrate accountability and transparency. Participants felt that this would be demonstrated most at the local level where citizens would be empowered to question local government expenditure. It was suggested that a more informed public would lead to a more responsible and law-abiding citizenry who would be an asset in protecting state interests.

The cost of the infrastructure needed to effectively deliver FOI was highlighted as a disadvantage. This was countered by the view that the social benefits outweighed the costs. Moreover, the increased exposure of fraud would reduce costs to the public purse, complementing the work of the Serious Fraud Office.

Advantages would also accrue to the operations of government. A better-informed Parliament will enact better laws. The political will to implement FOI will help to ensure leaders are more accountable, and help to build international confidence in the government. Enhancing and promoting the education of the public about their rights and responsibilities will greatly assist the implementation of public policy. Participants also suggested that the FOI law would come with a 'training package' for the civil service. By codifying information access provisions in one document this would help to improve information flow by streamlining responsibilities and procedures. They felt that through the law, distinctions between those interests that are protected and those that are not would be clarified.

Disadvantages were seen as ‘challenges’ that must be faced. The key challenge was identified as cost - both of setting up and maintaining the required infrastructure and operational changes, and also of the accompanying public awareness campaign that would be necessary. The importance of protecting the interests of both the state and the public was highlighted as another consideration. It was suggested that FOI could, at worst, endanger state security, particularly through irresponsible journalism. There was also concern about protecting ordinary citizens and members of the government from invasions of their privacy.



Other challenges to be faced include:

- raising awareness amongst the public
- civil service culture of secrecy
- slow court system
- political inertia
- low prioritisation in public programmes
- lack of sanctions to make FOI effective.

See the section on **Workshop Outcomes** (page 120) for a summary of findings from the two days.

Chair's Closing Remarks

Professor Nana Apt Director, Centre for Social Policy Studies

This is the end of the day and I just thought that I should give you my own perspectives, my feelings, and my observations of the day rather than summarising everything that has gone on today. For me personally I think it has been a very educative day and very exciting. When I moved from one discussion group to another it was fantastic. I have learnt a lot and I am sure you have also.

We are all agreeable since this morning that a law like this is needed in this country. We know that there are the beginnings of it, and we have been told that government is not averse to a law like this coming. All I know is that both the private sector and Government appear to think that it is necessary. We have also been told this morning, by the Head of the Civil Service, that the civil service is constrained: being bureaucratic, anachronistic and inefficient in many ways. He himself has given us an example of difficulties in trying to access information that is needed.

But also we have learnt that it is not just, when we talk about a free flow of information, a matter of the press, but in fact information is very important even for research. We have heard examples of the frustrations of a research person trying to get basic information that is really not of any consequence. And I myself can give you a lot of examples from when I was doing my PhD and it was just amazing, going to a national statistical centre and what you went through trying to extract information, that is really not of any government secret. It is something else to contend with. Here we are supposed, and when I say 'we' I am talking of the academic and the policy planner working together, and we are being asked "How relevant are you?" at the university. All the time we are being told "How can you be relevant if you cannot go and get information that you can throw back to government, throw back to organisations so that they can be more efficient?" My own students of sociology, they have problems, they are unable to finish their long essays. They cannot finish because it is next to impossible to collect information, based on this reason of holding on to this information for whatever reason.

For power, we have been told that it is for power, and also of course we have been told that the civil servant is constrained because of being in a legal bind. Who wants to go to gaol for fourteen years? So these are areas that make the civil service less efficient, because there are also constraints. You cannot talk even if you want to, because of the clause of being gaoled for fourteen years. So altogether we know that if we are able to pass a law like this it will help us. It will make for efficiency, it will bring transparency, and good governance. So this is something that is good for us.

So, the conclusion is that we here who have gathered today, we are in a good position and we are doing a good job. As I said this morning, the time is now and it is the right time to begin to think about these issues.



Professor Nana Apt is a graduate of Queens University and University of Toronto, Canada. She is presently Head of the Department of Sociology, University of Ghana and the Director of the Centre for Social Policy Studies at the same University. Professor Apt is a well-known writer and activist, local and international, on social policy and family welfare issues. Her discussion programme on Radio Universe: Let's Reason Together, has a very large patronage. For her advocacy work on aging in Africa she recently received an award of recognition from the United Nations Secretary General. Professor Apt is a member of the local chapter of Transparency International and a founding member of Amnesty International, Ghana chapter.

I thank you all for being here - the lecturers that came this morning, the panellists, you who have a lot, and I am sorry that I could not allow everyone who had something to say to come out and say because of the time. Tomorrow is another day and I am sure that the chairperson will be much more understanding of your needs. I thank you very much, I have enjoyed being here.

SESSION THREE

Chairman's Introductory Remarks

At the Second Day of the Information for Accountability Workshop

Professor Patrick Twumasi Chair, Civil Service Council

Distinguished ladies and gentlemen, I wish to thank the organisers for inviting me to chair this very important conference on "Access to Information" for Accountability.

The 1992 Constitution of Ghana is unique in conferring on all persons the right to information, as seen in Article 21 of the 1992 Constitution. It states among other issues freedom of speech and expression, which shall include freedom of the press and other media. It discusses freedom of thought, conscience and belief which shall include academic freedom, freedom to practice any religion, freedom of assembly, etc.

We also know of the 1962 State Secrets Act which deals with wrongful information. It must also be mentioned as an example to our discussion the reforms taking place in the Civil Service, especially CSPIP (1995), that is the Civil Service Performance Improvement Programme.

It must also be said that good governance is predicated upon transparency, accountability, probity and access to information on the part of the governed and the governors.

In analysing such issues we must take a critical look at the type and nature of the information flow. We must take into consideration all sectors of the economy and indeed the different sectors of our institutional memory. We must look at industrial, commercial legislature, judiciary, executive, etc and determine the position of the state vis a vis information flow.

We know that the public is entitled to have access to official information, unless there is good reason in a particular case for withholding it. We must begin to analyse at which point do we draw the line in the interest for the security of the state.

In the household system, in the family in other institutions, how far can we share information for the good of the system? We need a serious look at the topic devoid of sectoral interest because what we come up with will help to generate interest in our democratic institutions in the growth and development of the nation. I wish you a successful deliberation.



Professor Patrick Twumasi is Chairman of the Civil Service Council, Statistical Service Board and Prison Council. He also currently serves as a Member of the Policy Management Group and is a Presidential Staffer in the Office of the President. Prior to this he was Ghana's High Commissioner in Zimbabwe from 1994-97. Professor Twumasi was appointed a member of the National Council on Higher Education from 1993-94 and has taught in many universities, including as Dean of the Faculty of Social Studies and Full Professor and Head of the Department of Sociology at the University of Ghana at Legon. Other academic appointments include: visiting Professor, University of Copenhagen, Denmark (1990); visiting Associate Professor, Brown University, USA (1986-87); visiting Associate Professor/Scholar, Cambridge University, UK (1984-85); and visiting Associate Professor, Johns Hopkins University, USA (1979-80). He graduated from the University of Ghana in 1965, and completed degrees in Canada from McGill University in 1969 and the University of Alberta in 1971. Professor Twumasi has published widely and is the recipient of several distinguished awards.

INTRODUCTION

Objectives

- identify good practice for Ghana in access to information
- identify areas where there is lack of consensus
- make recommendations to carry forward work on the draft 'bill'

Professor Patrick Twumasi, Chairman for Day Two of the Workshop, welcomed speakers, participants and observers back to the workshop. Building on the issues raised during Day One, Day Two aimed to review the draft Right to Information 'Bill', produced by the Institute of Economic Affairs, and then make recommendations to facilitate its implementation in government.

Mrs Angeline Kamba, a Workshop Facilitator, then began the first session with a review of the main findings from the previous day. These included:

- The Government is not averse to introducing a Freedom of Information Law.
- The colonial legacy of strict control over government information and a conservative civil service tradition makes it difficult to obtain information. Participants agreed that this situation must change.
- The Government recognises that information is essential for a healthy democracy.
- The Civil Service Performance Improvement Programme and the National Information Clearinghouse project are only two initiatives that demonstrate the government's recognition of the need to improve access to information to its citizens. However, the legal framework may hinder such reforms.
- Much has been said about the press mis-reporting information. However, lack of access to information feeds sensational journalism.
- There is a need to develop a culture for both requesting information and disseminating information.



The focus of the first session of the day, *The Right to Information Bill: Overview and Critique*, was on identifying strengths and weaknesses in the draft Right to Information 'Bill'. A copy of the draft 'Bill' can be found at **Annex One** (page 129).

A fellow of the Institute of Economic Affairs, Mr Bernard J da Rocha provided the background to the Bill and an overview of its main provisions. He explained the

three main reasons for commissioning the draft: to raise awareness of the importance of freedom of information, to raise awareness of the role of Parliament to make laws, and to raise awareness of the need for Parliament to pass a law to enable citizen's right to information. It is hoped that this draft will provide the basis for stimulating Parliament to act on the question of Freedom of Information.

Professor Tom Riley, Executive Director of the Commonwealth Centre for Electronic Governance and an expert on Freedom of Information from Canada, gave a review of the bill in the global context. He discussed the evolution of the terms 'freedom of information' and 'access to information' linked to the legislation and the premises of access to government information that they denote. He also explored the legitimate exceptions that are incorporated into access legislation to preserve the ability of governments to function effectively. A list of typical categories of exemption is provided, including both mandatory and discretionary exemptions. Professor Riley argued against incorporating fees as part of access legislation as he suggests this deters individual requesters. The value of access laws is in their usage: in the United States and Canada have shown that the primary users are businesses.

This presentation was followed by a period of questions from participants before they were divided into four groups to discuss the bill in greater detail. In addition to identifying existing sections of the draft bill that require strengthening, the groups were asked to suggest additional areas that should be added and recommend suitable oversight arrangements applicable to Ghana.



Mr B J da Rocha is currently a Fellow of the Institute of Economic Affairs. He was Chairman of the New Patriotic Party from 1992-95. Prior to that he was Director of Legal Education at the Ghana School of Law between 1989 and 1992. He was self-employed as a solicitor and advocate from 1957 until retirement from legal practice in 1994.

Information for Accountability Workshop

Bernard Joao da Rocha **Fellow, Institute of Economic Affairs**

Mr Chairman, distinguished ladies and gentlemen. Permit me to begin by saying a few words about the Institute of Economic Affairs (IEA for short) which commissioned the production of the draft Bill before us. The IEA was founded in October 1989 as an independent non-governmental institution dedicated to the establishment and strengthening of a democratic, free and open society and good governance in Ghana. Over the past decade IEA has supported research and promoted studies and publication about important economic, socio-political, constitutional and legal issues in order to enhance the role of civil society in understanding and influencing the formulation of public policy.

The right to information has engaged the attention of the IEA over the past few years. A series of roundtable discussions have been held on this subject under its auspices. Last year an occasional paper was published containing contributions from the late Justice P D Anin, Justice R J [Hayfron] Benjamin, Prof Kofi Kumado, Mr Kwasi Prempeh and myself.

As a follow up to these discussions IEA decided to commission the late Justice Anin to produce the draft 'Bill' which it has published as an occasional paper and distributed widely to the general public. In commissioning the draft, IEA was motivated by three reasons. The first was to draw attention to the importance of the free flow of information in a democratic society. The second was to make civil society aware that under our Constitution there is a separation of power between the Parliament and the Executive. The power to make laws is vested exclusively in Parliament although a law passed by Parliament must receive the assent of the President. The third was the realisation that without a law passed by Parliament the enforcement and enjoyment of the right to information conferred by Article 21(1)(f) of the Constitution will be fraught with doubt and difficulty.

I will now touch briefly on each of these reasons and then consider the draft bill.

FREE FLOW OF INFORMATION

I do not think that the need for a free flow of information and ready accessibility to it by all citizens is a matter for debate. This is a matter on which we are all in agreement. I will not therefore repeat what had been ably articulated by other speakers. I wish, however, to emphasise the damper which is posed by secrecy which is the inevitable result of suppression of information. Secrecy is the greatest ally and protector of the corrupt, the incompetent and the oppressors and abusers of human rights. Participatory democracy is not possible if secrecy keeps the general population in a state of ignorance. It breeds fanciful and sometimes malicious speculation and rumour mongering. It creates suspicion, lack of confidence, apathy and fear. One great benefit of a right to information law is that it will help to dispel the culture of secrecy, which is entrenched in some of our public institutions.

LEGISLATIVE POWER OF PARLIAMENT

Article 93 (2) of the Constitution of 1992 vests in Parliament the power to make laws. Article 106 of the Constitution spells out the mode in which Parliament may exercise its law making power. Article 106 does not require that all bills should be introduced and promoted in Parliament by the President or the Executive. It is only in one instance that the Constitution confers on the President the exclusive perspective of introducing and promoting a bill in Parliament. This is where the bill is of the kind described in Article 108. These are what may be described as money bills, that is bill to raise taxes or to pay or withdraw money from the Consolidated Fund or any other public fund of Ghana or make composition or remission of any debt due to the Government of Ghana.

I think that by clear implication any bills apart from money bills may be introduced into Parliament by persons other than the President. There is a perception that civil society generally, and perhaps even the members of Parliament do not fully appreciate that the initiative for introducing such bills can be taken within Parliament itself or by civil society organisations through members of Parliament. Since our new Constitution came into force every bill which has come before Parliament has been introduced on the initiative of the Executive. This trend must not be allowed to continue. The publication of this draft bill by IEA is a bold attempt to break this trend.

NEED FOR LEGISLATION BY PARLIAMENT

The Constitution in Article 21(1)(f) confers on every person the right to information subject to such qualifications and laws as are necessary in a democratic society. It does not however define or specify such qualifications. There is no existing law, which does so. It can therefore be reasonably inferred that the Constitution intends that Parliament should pass the requisite law, which shall define the qualifications subject to which the right to information shall be exercised. The draft bill before us is an attempt to provide a model for such a law.

PROVISIONS OF THE BILL

I do not think I should subject you to the tedium of going through the provisions of the draft, copies of which have been circulated to all of you. The document speaks for itself. I should, however, wish to draw attention to the part of the bill, which deals with exempt information, that is Sections 7 - 18. It is a long list and there may well be differences of opinion about what has been included and what has been left out. I think that on the whole the bill contains most of the ingredients required in a law on the right to information, but it is there for participants to read and scrutinise critically.

The IEA has published this draft for discussion and appraisal by civil society. It is expected that there will be differences of opinion about its structure and some of its provisions. This is only natural when a document of this nature is the subject of intellectual discourse. IEA has taken the step of publishing this draft because of the feeling that there has been enough talk about the right to information and that some concrete step should be taken to activate Parliament

into passing the required law. This draft must therefore be seen as a catalyst for generating action in Parliament. IEA is actively engaged in having the bill introduced and promoted in Parliament where it must necessarily undergo critical scrutiny and amendments if necessary.

We are gratified and encouraged by the interest which this draft bill has generated, an interest manifested by its use in this workshop. We see it as the first step and example of what civil society organisations can do to assist, encourage and perhaps even propel Parliament to pass necessary laws without waiting for the initiative to come from the Executive. We hope that Parliament will find it a useful working model out of which a law adequate for the needs of Ghana will emerge.

I think that what this workshop has undertaken and the valuable contributions made by participants will add considerably to the impetus to persuade Parliament to act promptly in giving Ghana a suitable right to information law. The passage of such a law should, ideally, be by consensus. I do not think from what I have heard and seen at this workshop that there will be much difficulty in persuading Parliament to achieve such consensus.

Freedom of Information and the Right to Know: Accessing Government Documents

Professor Thomas B. Riley
**Executive Director, Commonwealth Centre for Electronic
Governance**

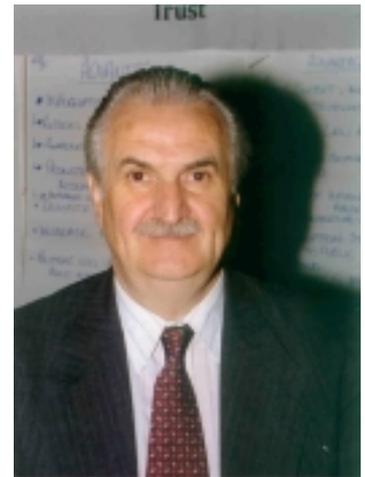
INTRODUCTION

Access to public documents statutes have been identified under different names, such as access to government information or public documents, or freedom of information. But the net result is the same - they all grant to the citizen in one form or another a statutory right of access to documents held by government bodies - with limited exceptions - in whatever form. This paper deals with the philosophical premises and a short history of information legislation in Canada as well as some of the issues that arose in debate for these laws. The paper also articulates steps for making requests and examples of the types of information being released. The focus here shall be on the Canadian Federal Access to Information Act as a means to discuss issues that are common to most freedom of information laws around the world.

For the purposes of discussion freedom of information/access to information shall be referred to in this text as access laws. Any discussion or exposition of access laws should, perhaps, be preceded by an analysis of the evolution of the term and what it has come to mean in today's access regimes. It is important when dealing with the many-sided debate over freedom of information (as that is the term access to government information is best known in information circles) to proffer an explanation of what the phrase "freedom of information" means.

The term is in many ways all embracing and has come to mean many things to many people. To those in the media, and to others, especially public interest groups and individuals, lawyers, academics, businessmen and other professionals, it implies the right to publish information and the right of the free flow of information without undue government restrictions. It means their right to inform the public in the way they think is best and without being fettered by regulations which in any way restrict the right.

The area of concern pursued within this paper relates to information held in government files. Some critics have argued that the term 'freedom of information' is far too loose a term and the American Act of that name, the Ontario Freedom of Information and Protection of Personal Information Act and the New Brunswick, Manitoba and Newfoundland Freedom of Information Acts, are in fact improperly named. Perhaps, contend some, the term 'freedom of information' is too all encompassing, suggesting the right to receive information of any kind not only from government but any entity in the private sector. As to the latter there are many who contend that the next logical evolution of access laws is the right to know what private corporations are doing when it affects public policy. But that is an esoteric debate for the future as we continue to struggle with the current laws, which allow a certain access to some information submitted by the private sector.



Professor Thomas B Riley was appointed as the Executive Director of the Centre for Electronic Governance, a body set up under the Commonwealth Secretariat in London, UK, in March 2000. Professor Riley has been a visiting Professor of Law and Technology, University of Glasgow, UK since 1995. He was the Chair of Canada's Coalition for Public Information from March 1999 to March 2000 and a volunteer with other groups in Canada. In June 1999 he was honoured with the Lifetime Achievement Award for Information Rights by British Columbia's Freedom of Information and Privacy Association. In the mid-1990s Mr Riley worked with the Hong Kong government in developing their Code on Access to Information. He also took part in discussions in 1995 and 1996 on the development of South Africa's freedom of information and data protection law. He held the position of Executive Secretary of the International Freedom of Information Institute, in London, UK from 1978 – 1983.

A more accurate term is ‘access to government information’ as this limits it to the kind of information being sought, especially those in government files, and implicitly holds that it is this ‘access’ which is being sought by the individual. The latter philosophy held true for the framers of the Canadian Act, called the Access to Information Act. Quebec’s Act is entitled, in English, An Act respecting Access to documents held by public bodies and the Protection of Personal Information. This appears to satisfy all the criteria and the title itself accurately reflects, for some, the purpose and intent of the statute.

However, in fact this debate is in many ways moot as the important thing is what is actually meant by the concept, not the terminology tacked onto it. What it means is that legislation which provides for this right guarantees to the citizen a right to information, albeit with certain exceptions and with the burden of proof on the government to show why the information, or a portion thereof, should be withheld, and the final right of appeal to a body independent of government in the event of denial of information or violation of one of the principles of the Act. It means that a citizen will then be in a position, if one so chooses, to know what the government is doing and why. It means that the citizen who pays the taxes which finances the gathering of that information will have the right to scrutinise the information. It means, in other words, that there shall exist the opportunity for any individual or group in society to have the right of access to government information, in whatever form.

Such a law, then, implies that the government of the day shall be accountable for what it is doing and for the policies it implements in the name of the people it is governing. There are many other ways that the government is accountable to the people: through the courts, parliamentary committees, Question Time in the House of Commons and Provincial legislatures and assemblies, the Auditor-General and a host of other offices including, naturally, the ballot box, all created to ensure various levels of accountability for the actions of government. Information laws are very much a part of the accountability process. But the central question then becomes: how effective have these laws been? Part of this question is answered through the built in concepts in the legislation.

The framework in which the requestor seeks information is what will determine the efficacy of his or her efforts. The second test is that of usage. The first to be explored are some of the fundamental concepts built into the legislation.

All access laws have, as inherent principles, the right of the individual to seek information from any government body, with certain limited exceptions, in a timely fashion and with the right to appeal to a body independent of the government agency from which the information is being requested in the event of denial of one’s request or a perceived violation of one of the principles of the access laws. Another fundamental principle is that the information be made available in whatever form. The underlying philosophical premise here is that democratic governments are custodians of the information they collect from the people and are themselves creators of information. In theory, the information is in fact owned by the people as the government is simply the people’s representatives.

EXEMPTIONS - WHAT THEY ARE GENERALLY!!!

It is also recognised that government cannot be run in a fishbowl and thus all legislation outlines information which cannot be released. In the Canadian instance the Access to Information Act not only has 27 exceptions to access¹, it also excludes from the legislation any Cabinet documents, or, more formally, ‘confidences of the Queen’s Privy Council’, though this does not apply to records more than twenty years old or to discussion papers of the Queen’s Privy Council if they have already been made available or after four years if a decision regarding the discussion papers has been made.² This means that not only can the information be refused, the government official simply declaring it is a Cabinet document, but that neither the Information Commissioner nor the Courts can go behind this decision. In other words, the Act does not apply to documents under this category. This is not found in any provincial legislation. This exclusion came about in 1982 as a late change to the Bill originally produced at First Reading.

TYPES OF EXEMPTIONS

The general exemptions found in all pieces of legislation are refusal to grant access on the grounds of:

- (1) national security (not implicitly stated in Canada’s Access to Information Act but an intrinsic part of it, couched in other terms)
- (2) information dealing with national defence
- (3) cause physical harm or injury to a member of the government, head of state, member of the royal family , a dignitary or diplomat
- (4) interference with the economic interests of the country (or province)
- (5) the personal information of another (unless release would be in the public interest)
- (6) information from an international organisation or another government, if it was given in confidence
- (7) information given in confidence from the federal government to a provincial government (or vice-versa) unless there is agreement the information can be released
- (8) law enforcement records, if an investigation is underway, if it would reveal a source or if the investigation is ongoing and there is a likelihood charges could be laid (this exemption varies statute to statute but this is the fundamental principle governing it)
- (9) intra-department documents or intra-office memos (not applicable under the Federal Act but applies to the U.S. Freedom of Information Act)
- (10) documents which would violate a solicitor-client privilege information from a third party given in confidence to a government which is a trade secret or financial, commercial, scientific or technical information. The Ontario Act states that environmental information which could cause harm to the public or a threat to health should be released in the public interest.

¹ An Act to enact the Access to Information Act and Privacy Act, to amend the Federal Court Act, and the Canada Evidence Act, and to amend certain other acts in consequence thereof. Consented to 7 July 1982, see Sections 13-27.

² *ibid*, Section 69.

MANDATORY AND DISCRETIONARY EXEMPTIONS

There are two types of exemptions in most legislation, mandatory and discretionary.³ A mandatory exemption is just that. If the access co-ordinator, the official within government who handles the requests for information, determines that the information is a mandatory exemption as listed in the Act, he must withhold it, with some exceptions such as in the public interest or if the submitter (such as a third party) consents to the release. If it is discretionary then this means the head of the institution has a right to exercise a discretion as to whether or not the information can be released.

THIRD PARTY EXEMPTIONS

When it comes to what is known as third party information, a mandatory exemption takes on an implied significance, if in fact it is not deemed by the head of the institution to fit into this category. Under this exemption when a third party, which could be an individual, a group, church, company or any organisation that submits in confidence information classified as a trade secret, scientific, commercial, financial or technical information and labour relations information in the case of Ontario, the information could be subject to release to a requestor.⁴ Many third parties submit information claiming this but what is clear is that just because there is a claim of confidentiality, does not necessarily mean the information shall be withheld.

However, if the information is releasable then there is consultation with the third parties as to whether or not they have any arguments or objections as to why the information should not be disclosed. Though the third party might argue against disclosure the official might still decide on release.⁵ In this instance, the third party is notified, and then has a right to seek a court order (on the Federal level) to prevent release or appeal to Ontario's Information Commissioner or Quebec's Access to Information Commission.

ELECTRONIC RECORDS - INTRINSIC TO ACCESS LAWS NOW

An intrinsic principle in all legislation is that the information being sought, if to be released, is subject to release in the form in which it is requested. This can range from the standard manual documents, microfiche, films, maps, photographs or electronic. It means that the individual has the right to see the information in the form in which it is kept by the government agency. Many statutes, particularly the Federal, Ontario and Quebec, allow on site inspection of records. In Ottawa, all departments must provide readings rooms for reviewing documents sought, as this is mandatory under the Access to Information Act.⁶

³ *ibid*, Sections 13-27.

⁴ *ibid*, Section 27-28.

⁵ *ibid*, Section 44.

⁶ *ibid*, Section 71.

EMERGING QUESTIONS AND ISSUES

As to availability of documents, with the increase of records in electronic format, the emergence of the preponderance of information and other new technologies, access laws and the storing of information in an electronic format, and how it shall be accessed, are becoming major issues which will predominate in the decades to come.

On the other hand, many access administrators within government state that the onslaught of automation will make it easier for the requestor as requests become more easily tracked, if they involve multiple submissions between departments or ministries and searches become easier.

It should be noted here that on 23 August 2000 the Canadian Federal Government announced that an Access to Information and Privacy Act Review Committee was being formed to review both pieces of legislation. Many of these issues raised in this paper will be scrutinised and recommendations for changes and improvements to the law will be recommended. Part of the reason for the review is the recognition that changes in society and developments in new technologies mandates a review.

CREATIVE USES OF GOVERNMENT INFORMATION

One possible good that could arise with the exponential growth of technology that is affecting all our daily lives making it easier to store, share, manipulate and disseminate data, is that governments could begin to store information by categories once it is released under an access law. In other words, once the request is made and a decision is made to release the information, then it can be assumed this is public information. Thus it could be placed in any number of the databases being developed by governments and become accessible to much wider numbers of people than one requestor. If the information did not fit into an existing database then it could simply be indexed electronically as already being released.

This means that when a similar request is made again in the future a check could be made to determine if this information has already gone out. This could act as a substantial savings for both the government agency, in time and personnel resources and the requestor, who would not be faced with burdensome fees for search and preparation time but duplication costs (or computer time) only. The requestor would also be able to receive the information faster, which could be very important. However, there are some problems in achieving a standard to release information on such a basis as records could be updated, some of which could be exempt, and a requestor might word an access request which might be seeking more documents than might be found in a particular database.

The relevance of this debate is that ways to release records faster, more efficiently and economically need to be found. In today's Information Age, in which millions of bytes of data is shared daily at all levels of working society, information can quickly lose its relevance. If information is power, as many rightly contend, then long waits diminish its effectiveness to the requestor directly proportional to the amount of time he has to wait for the desired

information. This is going to be a central issue in the years to come and how it is resolved is going to depend a lot on the success of access legislation and how effective it truly serves the need of society in our information age.

APPEALS AND COMPLAINTS

Another principle found in this type of legislation is the right of appeal to an independent body in the event of the denial of access or violation of one of the principles of the legislation. However, this appeal in the first instance varies from jurisdiction to jurisdiction. Some, such as Ontario⁷ and Quebec,⁸ give the appeals body the right to issue binding orders, and concomitantly the right to override an order of a Minister or head of an Institution, on the complaints filed. Whereas others, such as the Federal Act⁹ and Manitoba,¹⁰ New Brunswick¹¹ and Newfoundland¹² only give the right to make recommendations on the complaint, leaving the final disposition with the head of the agency or the Minister.

However, with the Federal Access to Information Act there is an appeal to the Federal Court of Canada. The same holds true with the New Brunswick Right to Information Act and Newfoundland's Freedom of Information Act. There is a slight difference with the New Brunswick Act in that the individual may file a complaint directly to the courts.¹³ Nova Scotia is unique in that appeals under their legislation are launched with the legislature and the Ombudsman has no jurisdiction under their Act. In both Ontario and Quebec there is an opportunity to appeal to the courts but it can only be on the grounds there has been an error in law not on the facts of the case.¹⁴

THE DEBATE - JUDICIAL REVIEW OR NOT?

Thus the principle of judicial review is firmly ensconced in Canada's access laws. This is important as, in the early stages of the debate in the 1970s prior to the passage of any access legislation, there was great political opposition to any form of direct review to the courts. It was a hotly debated argument, which for many years stalled the process of passage of access legislation. Opponents to such a system argued that Cabinet ministers were responsible to Parliament and Parliament alone. If they erred or erroneously or wilfully withheld information under an access law then they would be accountable to Parliament. This upheld the principle of Ministerial responsibility.

⁷ See Freedom of Information and Protection of Privacy Act, 1987 (Ontario), S.O. 1987, c.25, see clause 54 (1).

⁸ An Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information (Quebec), see clause 123.

⁹ *op cit*, Access to Information Act (Federal), see Section 37 (1) (2) (3).

¹⁰ The Freedom of Information Act (Manitoba), S.M. 1985-86, c.6 (ccsm CF 175), see section 29 (1) (2).

¹¹ Right to Information Act (New Brunswick), SNB 1978, CR 10.3, as amended by SNB 1979, c.41, S 111, 1982, c.58, SNB, c.67 SNB 1986, c.72, see section (1).

¹² The Freedom of Information Act (Newfoundland), SN 1981, c.5 as amended by SN 1981, c.85, see section 12 (1).

¹³ New Brunswick, *op cit*, section 7 (1) (a).

¹⁴ *op cit*, see Ontario Freedom of Information Act and Quebec Access to Public Documents Statute.

Proponents and lobbyists for access laws argued that this premise was untenable as increasingly the courts were making decisions that reviewed and overturned ministerial decisions. As well, administrative tribunals were beginning to breach tradition of role of final decision making by Cabinet Ministers. However, another argument was that going to court would be costly for the taxpayer and prove too burdensome, thus discouraging requests. This argument held a lot of merit as in the United States, which passed their law in 1966, and was proving to be the role model for legislation in Canada, Australia and New Zealand, the appeal was directly to the courts. Statistics for 1988 show that of over 394,914 requests made under the United States Freedom of Information Act (with 91% of those the records were released in full) there were only a little over four hundred cases that went before the courts.¹⁵ This trend, apparent a decade ago, gave cause to the argument that the courts were too costly and proved prohibitive for the average requestor.

The stalemate as to what the form of review would be was finally broken after much discussion. The compromise in Canada came in 1978 from the Joint House of Commons and Senate Regulations and Other Statutory Instruments Committee in direct response to a Green Paper published by the then Liberal Government. The Committee was co-chaired by then Senator Eugene Forsey and Conservative MP (Peace River, Alberta), Gerald Baldwin, called by many the father of Freedom of Information in Canada. He first introduced a private member's bill for Freedom of Information in 1968, the second one to do so (the first being the late Barry Mather of the New Democratic Party earlier in 1965).

Gerald Baldwin then introduced the Bill every year until finally, in 1974, it was referred to the above named committee. Parliament, in February 1976, voted unanimously to adopt the principle stated in that Committee's Report which recommended that a full blown freedom of information Act be introduced in Canada.

In 1978, as a compromise to the debate over who shall have the right to issue binding orders, a Commissioner appointed by Parliament or the courts, the Statutory and Regulatory Instruments Committee, at the suggestion of Baldwin, recommended that there be appointed by Parliament an Information Commissioner who would investigate complaints and respond and then make recommendations as to whether or not information should be released or other appropriate measures or if the department violated one of the principles in the Act. If a Minister failed to act on the recommendation or if there was no recommendation from the Commissioner then the requestor could make an appeal to the Federal Court of Canada. The stalemate over what form the review should take was finally resolved after much discussion.

The theory behind this proposed schematic was that the Commission could act as an ombudsman/arbitrator in disputes and attempt reconciliation. It was felt that about ninety per cent of the requests could be handled this way with the rest going to court. The concept was subsequently implemented in the Freedom of

¹⁵ Access Reports/Freedom of Information. 1989: Washington, DC: Harry Hammitt. Vol 15, no. 20 October 18 1989, p.3.

Information Bill (C-15) introduced in late 1979 in former Prime Minister Joe Clark's short-lived Conservative government and then in Bill C-43 introduced by the Liberals which became law in June, 1982 and operational on July 1, 1983, the present Access to Information Act.¹⁶

The subject was widely discussed in Canada and was the theme of one of the sixteen reports produced by the Williams Commission, a Commission to look into a freedom of information and privacy law for Ontario, appointed by the government of Premier William Davis in 1977 and which subsequently reported in 1979. When Ontario finally did introduce a law, when the Liberals came to power in 1985, the whole subject of the courts and type of commissioner became moot in that province as the Act stipulated the Information and Privacy Commissioner would have the right to issue binding orders, and thus be able to overturn the decision of a Minister.

The Federal idea of a two-tier appeal has worked fairly well. One other provision implemented in Bill C-43 was the right of the Information Commissioner to take a case to court if the Office made a recommendation for release and it was denied by the Minister, providing the assent of the requestor is given. The Commissioner can appear in court on behalf of the complainant and, with leave of the court, appear as a party to any review applied for.¹⁷

This has had some benefit for requestors denied information in which the Information Commissioner has taken their case to court. This has meant substantial savings for some requestors as it means the government has been paying the costs for what could be an expensive court process. The flaw in this is that there have been, in the first six years, few requestors who have taken their own cases to court when the Information Commissioner's office has rejected their complaint. From July 1, 1983 to March 31, 1990 of the 231 cases to be filed with the Federal Court under the Access Act 43 were commenced in the name of the Commissioner, 36 by individual requestors and 153 seeking third party withholding of documents under Section 44.¹⁸

The problem in allowing a Commissioner to decide on what cases can be taken to court is that it implies a discretion be exercised by that office. Some cases could be taken for their publicity value, or some because they deal with important issues of law while others are not taken to court as the Information Commissioner's Office did not recommend release or find in the requestor's favour or for whatever reasons. While this section (42) in the Access to Information Act has proven beneficial to many requestors it is, nonetheless, a curious oddity in Canada's Access to Information Act.¹⁹

Apart from this anomaly the system has proven quite workable. When Ontario came to implement their Freedom of Information and Protection of Privacy Act,²⁰ this concept of arbitration was included. Under this law Ontario's Information and Privacy Commissioner, has the right, as stated above, to issue

¹⁶ op cit, Federal Access Act.

¹⁷ ibid, section 30 (3).

¹⁸ Information Commissioner of Canada, *Annual Report, 1988-89*. Submitted to Parliament of Canada, May 1990, ISBN 0-662-575-15-6, see p.50.

¹⁹ op cit, Access to Information Act, section 42.

²⁰ supra, footnote 7.

binding orders, giving the Commissioner quasi-judicial functions. Upon receiving a complaint the onus is on the Commissioner to first attempt to arbitrate a settlement between the requestor and the government ministry who has denied the request or has violated another principle, such as seeking a time extension, asking for too much as a deposit on fees up front or not responding within the proper time limits.

Failing a settlement of this kind then there is an investigation in which the Commissioner can or cannot hold an inquiry. The Commissioner also has the right, as does the Federal Commissioner, to go into any ministry and inspect any documents and to call witnesses. One problem about laying complaints to the Commissioner's Office is that it must be done within thirty days of receiving a notice from the access official of denial of a request.

The Quebec law requires 45 days notice but, differing from the Ontario statute, states that the Commission may, 'for any serious cause, release the applicant from a failure to observe the time limit'. The Federal Act meets the probable ideal in allowing one year from refusal of the request to file a complaint with the Information Commissioner. However, there is a caveat in that the Act clearly states that the Information Commissioner can investigate the matter outlined in the complaint submitted if there are reasonable grounds.

Similar powers to Ontario's Commissioner reside in the office of the Access to Information Commission in Quebec. Under their law passed in 1982, An Act respecting Access to documents held by public bodies and the Protection of Personal Information, the Commission, composed of a Chairman and two commissioners, each have the right to issue binding orders, thus having quasi-judicial functions. Each Commissioner can rule on complaints and hold hearings separately. They only meet as a full Commission when there are important issues to be deliberated which have far reaching consequences under the Act.

Thus each of these three statutes contain in them the fundamental concept of the ombudsman to attempt to resolve the difficulties of the citizen at an early stage before having to go on to more complex and difficult measures to resolve the dispute.

FEES - SHOULD THE TAXPAYER PAY?

One of the most vexing questions under all access laws is the charging of fees for access requests. This ranges from simply imposing a levy for duplications costs (as in Quebec, where this is quite effective) to charging for search, preparation and review time. Fees can thus be minimal or imposing causing a burden on the taxpayer. Many governments argue that the user pay philosophy should apply here and that if the requestor wants information then it should be paid for. But is this the solution? The question bears exploring as fees, amongst others, is one of the lynchpins of access laws.

The right of access to government information represents a potential political mine field for government. It is through access laws that the government of the day, a department, a ministry, an official, a company (in that they submit information to government which can subsequently be released under the law) or others, can be embarrassed through the release of information. This can have

far reaching implications. It is not an easy piece of legislation to deal with and many governments, once the law is passed, come to realise they could well live without it. Attorney-General Ian Scott, when introducing Ontario's Freedom of Information and Protection of Privacy Act in 1985, succinctly stated the premise when he said that governments need to introduce legislation in their first six months of power or it would not get introduced at all. He understood that after a few months in office governments of the day would rather not have a statute which can be used as a tool by its critics to expose the activities of their departments and ministries.

Fees can be the sword with which a government can cut back the effectiveness of an access law. Though they can act as a barrier this is not to say they are generally. However, there are cases in many jurisdictions where fees have come to be used as a means to discourage requests. Many users have complained about having to pay fees both under the Access to Information Act and Ontario's Freedom of Information and Protection of Privacy Act.

It should be stipulated here that no fees are charged for accessing personal files under most legislation. While Quebec does not charge fees in general it does charge duplication costs for access to both general records and personal files over twenty pages.

Thus fees, in some instances, can represent a major stumbling block to requestors.²¹ The Federal Government is considering raising fees for requests on the grounds there is far too little money collected for the costs of administering the laws. As search, preparation and photocopying time can be charged it is possible for fees for a simple request to mount quickly, even if the first five hours (under Canada's law) or the first two hours (under Ontario's) are free time. Certainly, many argue, fees should be levied if the information is to be used for commercial purposes. But should they be charged at all?

These are important questions worth exploring through comparisons with other jurisdictions. Currently, the average requestor may not necessarily have to be worried about burdensome fees as in some cases they can be waived, in the public interest, and, often, the request is small enough that fees do not mount.

In fact, the 1988 annual report of the Federal Information Management Practices section of Treasury Board Secretariat states that between 1983 and fiscal year ending 31 March 1988, the average fee collected per request was CDN\$11.50.²² In the same time period there were 20,100 requests received under the Access to Information Act with 17,812 of them disposed of in the same time period.²³

²¹ Jean Claude Demers, Assistant Deputy Minister, Information Law, Department of Justice, 'Access and Privacy: What Lies Ahead', Article in *Inter Pares*. Department of Justice, January 1990, p.12.

²² *Annual Report: Access to Information Act, 1987-88*. Compiled by Administrative Policy Branch, Information Practices Branch, Treasury Board Secretariat. June 1989, p.15.

²³ *ibid*, p.10.

THE U.S. EXAMPLE

The United States Congress in 1986, in amendments to their Freedom of Information Act, set up three levels of fees that could be charged:

- (1) 'fees for search time and duplication and review time for commercial requestors
- (2) search and duplication costs for all other types of requests
- (3) waiving of fees 'if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.'

The latter has been interpreted to primarily mean journalists making requests but even here there have been stumbling blocks as many agencies have questioned freelance journalists seeking this fee waiver. In some instances they have asked for proof the material they are applying for under the Freedom of Information Act will actually be used for publication. This standard is difficult to meet as often a freelancer is gathering material to later sell a story. Another problem under the U.S. system is determining how big a publication should be to qualify for a fee waiver. These are some of the few examples of the stumbling blocks that have been encountered in the attempts to set fair criteria on fees.

Most legislation, in requiring the payment of fees, reflects the 'user pay' philosophy now predominant and very popular in these times of fiscal restraint, burgeoning deficits and attempts at cost cutting by all governments.

The same philosophy was applied in Australia where in 1987 amendments to their Freedom of Information Act (passed 1982) resulted in a substantial increase in fees (AUS\$30 an hour for search and preparation time alone). Though the government of the day pointed with pride to the amendments and the savings passed on to the taxpayer the one to suffer was the consumer. The annual report for 1987-1988 of the Commonwealth Attorney-General showed that in the first year of operations of the new fee structure the number of requests per annum dropped 2,451 from 29,880 in 1987 to 27,429 in 1988.²⁴

The same report also shows that in 1987-88 the total fees collected in all government agencies was AUS\$312,870 as opposed to AUS\$21,977 in 1984-85.²⁵ Yet, the same charts indicate that the total costs of administering the Act was AUS\$11.5 million.²⁶ Thus, this reflects a doubtful saving when the ones to suffer were the requestors who did not have the financial resources to make the request because the fees became prohibitive.

The Treasury Board of Canada's Summary of Operations for the period 1 July 1983 to 31 March 1988 indicates that in this time period there were a total of 20,100 requests under the Access to Information Act of which CDN\$204,854 in fees were collected.²⁷ In the same time period the cost of operations of the Act

²⁴ *Annual Report of Attorney-General of Australia, Commonwealth of Australia.* Canberra: Australian Government Publishing Service. p.1.

²⁵ *ibid*, p.1.

²⁶ *ibid*, p.1.

²⁷ *op cit*, Access to Information Act, p.10.

came to CDN\$18,352,977.00 (this does not incorporate the operational costs Information Commissioner's Office or the legal services provided by the Department of Justice or advice and guidance from Treasury Board). In fact, a study done by the Bureau of Management Consultants for Treasury Board on actual costs of processing and administering costs for access requests, found that the real costs were higher than those reported by the departments. In the period 1 July 1983 to the end of fiscal year 1986-87, a survey of 40 institutions responsible for 90% of all requests, found that the reported costs were CDN\$14,347,096, but there were an additional CDN\$19,652,904 in estimated costs not reported previously.

It is apparent that fee collection is almost minimal, even in Australia, when set against the actual costs of operating such legislation. Fees should be abolished except for photocopying costs. This is the sensible solution to the whole problem not the raising of costs, as some have suggested, in order to align fees with the actual operational expenses. There are persuasive arguments as to why this would be of benefit, especially to the requestor and those interested in making requests, as such legislation was designed for them in the first place. The answer is not to raise fees, as Australia did, in an attempt to bridge the gap between moneys collected and operational costs, but to abolish fees altogether.

It is the taxpayer who often provides much of the information in the possession of government and, if it is not, then it is mostly information produced with taxpayers dollars. Arguments are made that commercial users should be charged as they potentially stand to gain by it. True. But then what criteria shall be set that do not at one point become arbitrary? Where shall the line be drawn? Shall journalists be charged for this, as newspapers profit from increased circulation of their newspapers from the exposes they create in their stories? Shall researchers who plan to write books or get grants for their work, be charged when often what they do is of historical importance or potentially valuable to society? These are just a few of the questions raised by the fees issue.

In the final analysis, access legislation should be there to help the average person, the actual consumer who can see this type of legislation as a means to get behind what government is doing and why. This holds particularly true at the municipal level as there people are more involved with their government than at perhaps any other tier of government. Perhaps, a solution is to set regulations where only duplication costs of photocopying can be charged with a maximum of 25 cents per page. To handle requests that involve tens of thousands of pages then a threshold could be set where, after a certain number of pages, some costs could be levied. But the criteria to be avoided is one proposed by the Federal government in 1987 when the then Justice Minister proposed a clause which would prohibit access if the request were considered trivial and vexatious.

The province of Quebec charges for duplication fees only and it does not appear the government has suffered financial hardship. There is no need for governments to charge for access requests. All governments spend millions, in some cases billions, on their public relations programmes letting the people know about their good deeds, upcoming programmes of benefit to citizens as well as providing essential information on basic government services.

Citizens are not required to pay for a host of other public programmes which serve the common good and neither should they have to pay for accessing information which, essentially, they, as taxpayers, already own. In the final analysis the question to be asked is: What price democracy?

THE VALUE OF ACCESS LAWS!!!

Freedom of information is an integral right given to people. It is only in recent times that this idea has entered the democracies (with the exception of Sweden, whose legislation goes back to 1776). It is a law that shall come to be fully appreciated with time as its effects on our whole democratic system become apparent. Freedom of information is the quiet revolution of our times and it is only proper that individuals should have the capability to fully exercise that right without financial encumbrance.

USAGE OF ACCESS LAWS

The test of the efficacy and quality of any access law is the amount of information that is being released. The first criterion is an examination of the statistics which gives a fair idea of how much information is actually being released. But these can be misleading as part of the statistics reflect partially released documents. Also, the percentage of records not released might be low but not reflect that the information withheld could have been potentially embarrassing to a third party (which could be the ruling political party of the day, a government official, private interests in the case of their information submitted to government or any number of reasons due to pressure brought from some quarter). Thus, the second criteria, which is the litmus test of the true worth of access legislation, is an examination of the actual documents being released. The reason this is the test of the law is that when information is sensitive many tests can be applied which could come into play, preventing release.

Canada's Access to Information Act came into operation on 1 July 1983 nearly twenty years after the idea was first floated. It is really a piece of legislation born out of the seventies when events in the United States, such as the Watergate scandals, brought home to many the importance of open government. Resulting developments in technology, numerous scandals here in Canada, and an overall cry for more openness resulted in the current legislation. Though Nova Scotia, New Brunswick and Newfoundland had enacted statutes prior to Ottawa, their usage has been minimal compared to the Federal law. There have literally been thousands and thousands of requests in the first seven years of operation of the Federal law.

As was expected the initial number of requests were low. The Act was implemented with little fanfare, a simple press conference by the then Minister of Justice and President of the Treasury Board in June 1983. Registers of government programs and how to apply under the Act were prepared, directives and guidelines were put forth by Treasury Board and pamphlets explaining how to use the Act were printed for distribution in major post offices and libraries across Canada. But the word of the actual law itself, apart from features in some of Canada's major newspapers, was never actually widely disseminated.

Gradually, more and more Canadians have become aware that there is now a statute which allows them to peek into the dusty corners of government offices and the spanking new, bright computers now efficiently storing more information than the government might know what to do with. The potential goldmine for those who want to creatively use the legislation to their best advantage is now beginning to come to the fore of the consciousness of many Canadians.

WHO USES ACCESS LAWS?

As stated above, according to the latest statistics produced by the Treasury Board Secretariat between July 1, 1983 and March 31, 1988, there were a total of 20,100 requests made under the Access to Information Act and of these 17,812 were completed. In the first year there were 1,513, then 2,229 the following year, jumping in subsequent years to 3,607, 5,450 and 7,301 respectively, which represents a healthy annual increase.²⁸ It also indicates the word is spreading that there is an Act there which can be useful.

What is most interesting is that Canada is following the lead set by the United States in that the business community has become the largest percentage of users of the Access to Information Act. In 1985/86 there were only 683 (18.9%) of the total 3,607 requests made by the business community. But by the year ending 1988 this had risen to 3,516 (or 48.2%) of the 7,301 requests filed with the Federal government. It is clear that corporations, independent business people and entrepreneurs alike have caught on to the benefits of the legislation.²⁹

The percentage will undoubtedly grow. In the United States it has been estimated that between 60-65% of all freedom of information requests come from the business community. Many have sought not only information on their competitors, an aggressive undertaking by many businesses who creatively use the legislation, but also take advantage of the multitude of reports and studies done by the government which could range from economic forecasts for a region to environmental impact studies. Considering that in 1988 there were 394,914 requests filed with federal agencies, with an estimated 256,700 coming from business, this means there is a lot of advantage being taken of the freedom of information act. In Canada though the private sector is gradually becoming aware of this legislation and usage increases annually there is still a long way to go.

Of the 17,812 requests made in Canada, 6,045 were disclosed in full (33.9%) while 5,634 had some of the documents disclosed.³⁰ This figure means the requestors received portions of the document which could mean that sections of documents were exempted or whole parts of the record were exempt.

Though statistics indicate usage of the Access to Information Act is growing the best way to get a flavour of the type of information you can request from government is to review some of the types of information that have actually been released over the years.

What is startling about Canada's access laws is the diversity of requests received by government. A scanning of requests for the past seven years shows people have sought a wide range of information mirroring almost every conceivable interest in society. Information has been released on Cruise missile testing over Alberta, meat inspection reports, surveys done by governments, consultant contracts, information from successful bids of companies vying for company contracts, data on drug testing, audit reports on product safety.

²⁸ op cit, *Annual Report*. Treasury Board, p.10.

²⁹ ibid, Table A.

³⁰ ibid, p.10.

These are just a few of the examples of how Canadians have used this legislation to help them in whatever activity they are participating. Though business and the media are big users of access laws it is clear that others, such as researchers, academics and public interest groups and individuals, make good use of the Act. There are problems with this type of legislation but on the whole it does work. It is an avenue worth exploring, a tool to be used, to reach into the darkest corners of government and extract secrets or even just routine information. It is an Act to be used.

DISCUSSION SUMMARY

Session Three

Thursday, 31 August (am)

Participants, in their breakout groups, discussed the draft Right to Information 'Bill' produced by the Institute of Economic Affairs. They focused their attention on areas of the bill that required strengthening or additions. They also looked at the question of appropriate oversight for FOI.

The need to harmonise legislation and ensure consistency with the constitution was discussed. This included the need to review current laws relating to secrecy with a view to repeal.

Within the bill itself recommendations were to improve the technical drafting. Specific issues were to:

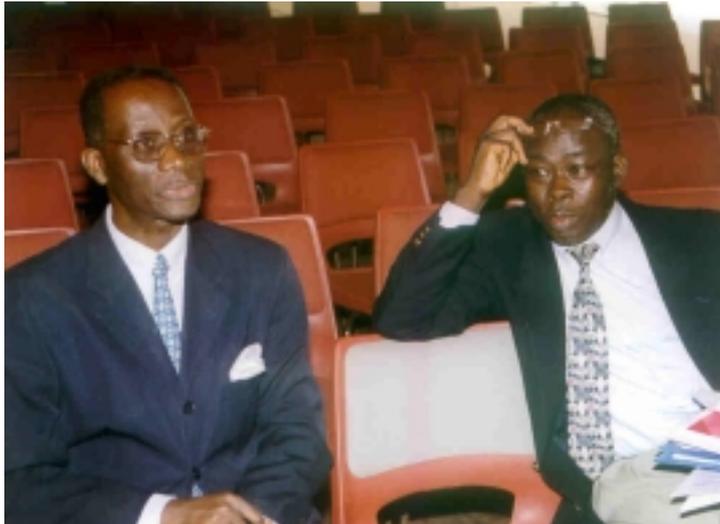
- include provisions on records management
- include provisions on oversight by Parliament
- strengthen provisions on privacy
- include the facility for sanctions against those who refuse access
- define mandatory and discretionary exemptions
- include procedures for accessing information
- improve the technical drafting.

Records management was a key theme in strengthening and implementing the FOI legislation. It was suggested that responsibility for overseeing the day to day maintenance of records must be assigned to the Public Records and Archives Administration Department (PRAAD). PRAAD should be charged with improving the management of records in the ministries, departments and agencies (MDAs) and provide guidance to public servants. This responsibility should be set out in the Right to Information 'Bill'.



Participants argued that procedures for appeals or seeking redress should be made stronger. They agreed that channels for seeking redress should be developed outside the courts, it was suggested that this responsibility should be assigned to the Commission on Human Rights and Administrative Justice (CHRAJ) as its role equates to that of the office of Ombudsman. It was also suggested that there should be provision for review of its decisions by the Supreme Court. Another option offered was to establish an Administrative Tribunal. Timeframes for responses and decisions should be incorporated into the bill.

Recommendations were made with regard to the institutional provisions necessary to implement the law. In addition to the records management improvements outlined above, it was suggested that the public relations units and client services units of MDAs should be strengthened, both in staffing and infrastructure.



The bill must also provide for the introduction of structured mechanisms for disseminating information, including a clear fee structure. Procedures should be put in place for declassifying information where appropriate. For example, it was thought reasonable that defence information should be withheld longer than some other categories of information.

An important element of the operational issues to be addressed was the need for an education programme to instruct the public. This would incorporate both awareness-raising about the Act and education about the responsible use of information. One group suggested that provisions regarding the need for responsible use of information should be incorporated in the bill.

Another activity to develop good practice for Ghana was seen as strengthening the Public Relations Units of MDAs, both staff and facilities.

See section on **Workshop Outcomes** (page 120) for findings of the two days.

SESSION FOUR

INTRODUCTION

Objectives

- identify administrative provisions needed to implement FOI (eg amendments to legislation, procedures, record systems, staff training, public awareness, institutional cultural changes).

The final session of the workshop, entitled *Operationalising FOI: Administrative Considerations*, focused on the operational and institutional changes that may have to be considered to implement Freedom of Information legislation.



Mr Kofi Obeng-Adofo, Chief Director, Office of the Head of Civil Service, provided an overview of current initiatives to re-orient the Civil Service to be more client-focused and customer-sensitive. He presented the case for the civil servant who is, of necessity, loyal to Government as its employer and bound by the Oath of Secrecy.

There are also internal constraints faced by the civil servant in providing access to information. These are identified as timeliness and lack of relevance of information, rules and regulations, and lack of clarity of requests. Also, the records security classification system reflects the 'need to know' basis of operations within the civil service. He argued that improvements in technology, if supported by training, as well as clarification of responsibilities, records management and improved public complaints facilities will help to address these problems.

Mr Cletus Azangweo, Director, Public Records and Archives Administration Department (PRAAD), gave an introduction to the obstacles to improving the delivery of information and role of records management in supporting access to information. He positioned records management as delivering the evidence needed to give body to the concepts of rights, integrity, transparency and accountability. Also he highlighted the need for a comprehensive records management programme that includes the increasing numbers of electronic records. He described the steps that have been taken over the last decade to

strengthen records management in the Government of Ghana. PRAAD can contribute to the aims of the Government to achieve Vision 2020, ie for Ghana to become an upper middle income country by 2020, by ensuring a free flow of information and protecting the rights of citizens. Growth and development are only possible where people can be held accountable through the availability of information.

Participants were divided into four groups to discuss ways to address the operational issues outlined by the speakers and draw on those identified at a higher level on Day One. The issues from Day One included:

- distance travelled to obtain information
- civil service culture: unwillingness to provide information to the public; lack of guidance on what information can be given out. Who gets information is too discretionary
- retrieval of information is inefficient: Poor records management or information is simply not there
- language (information in English) and literacy problems
- over reliance on informal networks for obtaining information
- bureaucratic procedures are obstructive
- paying bribes for information
- inadequate public education about how to access information and what information is available
- blind obedience/fear of retribution
- lack of redress/appeals procedures
- lack of transparency
- mistrust of what information is used for.

This was an opportunity to set out the main institutional arrangements required to make Freedom of Information legislation effective in Ghana. A key element of the discussion was identifying which agencies should lead.



Mr Kofi Obeng-Adofo attended the University of Ghana and Ghana Law School. Following graduation, he worked in the Administrative Service of the Ghana Civil Service in the following organisations: Central Regional Administration; the Office of the President; and Acting Secretary to the Council of State in the Third Republic. He is currently Chief Director in the Office of the Head of Civil Service.

Civil Service Culture and Access to Information

Kofi Obeng-Adofo **Chief Director, Office of the Head of Civil Service**

My subject for discussion is the ‘Civil Service Culture and Access to Information’

This subject and others already discussed should give great relief to the Civil Service that attempts are being made through this Workshop and other fora to find solutions to the problem of gaining access to information. The Civil Service has been maligned for its apparent notoriety for keeping tight-lipped over its records or information on subjects of topical interest. This has created the impression that the Civil Service has a lot of cobwebs to clear from its corridors. This criticism may be given varying interpretations depending on which environment or divide one is operating from.

We believe that the output of this Workshop will be of practical importance not only to the Civil Service but also all others assisting to provide good governance in public administration, and, for these contributions, we are grateful to the Organisers of this forum.

THE CIVIL SERVICE INSTITUTION

The Civil Service as you already know is one of the fourteen public service institutions. As the central government machinery, it stands in a strategic relationship with the Government ie the Executive, being an important instrument of policy formulation and implementation. Its task is determined by what the Government of the day sets itself to do, and its methods of operation are largely designed to suit the employer’s purposes.

THE GOVERNMENT/EMPLOYEE RELATIONSHIP

The members of the Civil Service are mainly the employees of the Government. The circumstance of a civil servant may be contrasted with that of an independent contractor, who is his own master. The Civil Servant is expected to show loyalty to the State, the Government and the Civil Service. It is evident from his relationship with the Executive that the Civil Servant is subject to *the control* of his employer as to ‘what he does and how he does it’ on the job. Pardon me, if I have given the impression, maybe rightly/wrongly, that the Civil Servant cannot chart his own course without the intervention of his employer. But the truth is that his loyalty and commitment would naturally predispose him to what his employer stands for.

The concept of culture needs to be classified before dealing with the substantive issues.

CIVIL SERVICE CULTURE

Sociologists define culture generally as ‘that complex whole which includes knowledge, belief, art, morals, law, custom and other capabilities *acquired* by men as a member of society’ (Tylor 1924 p.1). The Civil Service culture can be said to be the pattern of beliefs, values, attitudes, rituals, bureaucratic practices and myth shared by civil employees. The culture is the product of years of working within an environment created by the Civil Service Law, Administrative Instructions (General Orders), Conditions of Service, practices, experiences, and obligations of loyalty and obedience to the Government as employer. It is a culture of the way we do things; it is found to be meaningful and comfortable for Civil Service.

The Civil Service Institution has, over the years, been built on the basis of confidentiality of information or records which was utilised initially for the preservation of law and order, and gaining commercial advantage for the Colonial Authority. The Service has been nurtured to treat information as an ‘item of risk’ which should be handled with caution. The attitude to this resource provides the grounds for the values and beliefs Civil Servants hold about what is or is not appropriate.

Normally when a Civil Servant is offered his first appointment into the Civil Service, he is instantly made to swear the Oath of Secrecy, solemnly declaring:

I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall come to my knowledge in the discharge of my official duties except as may be required for the discharge of my official duties or as may be specially permitted by law (So help me God).

The Civil Service, like all other Organisations, has its rules, and Code to regulate its operations, so as to make it effective. Such guidelines were first developed by the Colonial Government, and embodied in the time-honoured Gold Coast General Orders (1951). This, together with the Civil Service Regulations 1960 (LI 47) and Circulars issued from time to time, have constituted the main source of authority and direction for running the Civil Service machinery.

Thus, the development of the Civil Service culture has largely been moulded by the following: standards, and/or common management practices, attitudes, rules, regulations, procedures, ethics, guidelines, functional environments that have strong impact or influence on the functioning of the Civil Service. In particular, such legislation as the *State Secrets Act*, 1961, Act 101, with its stringent penalties, Section 14 of Act 101 and also the Code of Conduct have fashioned to a large measure the attitude of the Civil Servant to information disclosure. It is provided in Departmental Security Instructions that negligence in the handling of information could ‘adversely affect the national security, law and order, public interest or cause difficulty or embarrassment to Government’; it goes on to caution against disclosures that ‘might result in any person deriving improper financial or commercial advantage’. The consequences have been evident in disciplinary actions where some Civil Servants have suffered penalties including dismissal after conviction for the infringement of the Code.

IN-BUILT BARRIERS TO THE PROCESS OF INFORMATION DISCLOSURE

Access to information has been dictated by both external and internal factors. Apart from the restrictions imposed by legislation, such as the State Secrets Act, 1961, Act 101, the Code of Conduct and Administrative Instructions, the Civil Servant is also faced with internal working methods that influence performance. There is the need to look at the extent to which the methods of work, practices, processes, procedures, performance, attitude of the Civil Servant facilitate or impede the release and flow of information to the general public either directly or through the media. Pressed to provide or make information available to an inquirer, he has been confronted with the following issues:

- timeliness of the information
- out-dated or irrelevant information
- information/records classification based on the 'need to know'
- restrictive rules, practices or procedures
- vagueness as to type or nature of the information required, and for what purpose.

The timeliness of the information: The long delay in the release of information in my opinion is basically due to the inefficient ways of records keeping and management in our organisations. Fortunately this culture is changing for the better, and the next speaker here will tell you about their endeavours in that direction.

The information may not be up to date and relevant: This is so because of weaknesses and shortcomings in the system of organising data, and following the procedures in capturing the required data and distilling them into meaningful and relevant information. Part of the reason for this inefficiency derives from poor records keeping and management, despite the 'arrival' of the computer.

There is also the handicap arising from restrictive Civil Service rules and regulations which have become obsolete. In particular, the system of Records Classification dating back to the days of colonial administration is too rigid, unnecessarily restrictive and indeed out of date. Currently, the levels of information classification include:

- Top Secret
- Secret
- Confidential
- Restricted

All of which emphasise the principle of the 'need to know'.

In these circumstances, a Civil Servant, unless well placed in his organisation, may not gain access to information so classified.

Another problem that is often encountered is the lack of clarity as to the type or nature of information that is needed for release, as well as the purpose for which the information is required. A corollary to this is the lack of clarity as to the person or the unit within the organisation that may be responsible for providing the specific information required. Under such circumstances, the safest attitude of the Civil Servant seems to be 'when in doubt don't give out the information'.

POST-INDEPENDENCE DEVELOPMENTS

With the advent of independence, and the pursuit of good governance and as people demanded to know, the Civil Service started to modify its attitude to information disclosure. Notwithstanding the regulations and other prevailing measures, restrictions on communication have been observed but within bounds dictated by administrative convenience. The Civil Service Law, PNDCL 327, the Code of Conduct and other rules provide for a referral system, where an officer who cannot provide information can refer a person seeking information to a higher authority. The Public Records and Archives Act has a whole provision on 'Access to Public Records and Archives' (Part III, Section 17 of Act 535). The need for maximum security has not been completely sacrificed but, where observance, if taken to the extreme, may have unacceptably adverse effect on efficiency, the Civil Servant has exercised some discretion. Consequently, some common sense has been used in certain situations to apply the rules so that while security standards are given high priority, administrative inconvenience is reduced to a practical minimum.

Current developments in information technology tend to favour the relaxation of restrictions. This is important, if the other sectors of the economy are to be assisted to promote social and economic development and, in this regard, they need to gain access to information in the Public Service Institution. Progress can be achieved, if the short-comings and drawbacks which are significant are identified for future improvement. Some defects needing attention include

- Lack of clarity in the identification of responsible officials as well as the precise definition of their roles and responsibilities, including the demarcation of the functional or subject boundaries of their responsibilities ie Financial Area, Foreign Policies Area, Personnel and Industrial Relations Areas etc.
- Poor and inefficient records keeping, which is the major source of the raw data needed for capturing and processing into pieces of meaningful information, remains a weakness. This has been largely due to lack of interest or appreciation at the decision and policy levels, of the importance and significance of records. Part of this problem is beginning to be seriously addressed following the establishment within the Office of the Head of Civil Service of the Public Records and Archives Administration Department.
- The need to strengthen the training and education in the harnessing and processing of data in different forms cannot be over emphasised. This should include aggressive training to make as many officials as possible computer literate so as to enable Ministries, Departments and Agencies (MDAs) etc to maximise the use of computers.

- Methods of release, flow, and dissemination of appropriately justified public information need to be greatly improved. This will be seriously addressed with special reference to
 - ◊ the organisation, staffing, and functions of PRO Units in MDAs
 - ◊ paying attention to, and redressing public complaints with regard to withholding information in the Civil Service
 - ◊ classification of information to be reviewed so as to relax, or make operationally flexible, the rigidity of existing regulations
 - ◊ re-orienting the Civil Servant to perceive service delivery and customer satisfaction as including transparency and information availability to the public.

It is proposed, as a final recommendation for consideration, the establishment of a Special Technical Committee. This would comprise specialised members with suitable knowledge and skills in communications/information technology. They would critically examine the existing laws, rules, processes, dissemination and flow etc, of information within and between the Government and the General Public on Government policies and functions, and make appropriate recommendations for improvements.

CONCLUSION

Current developments in line with the concept of good governance and free market dispensation have made a remarkable impact on the issue of access to official information by the Public. To this end, appropriate provisions have been made in both the Civil Service Code of Conduct and Civil Service Regulations as well as the PRAAD Act. These spell out the procedures, amongst others, for releasing official information to our major clients - the public, in consonance with the objectives of the Civil Service Reforms of developing client sensitivity and improving customer service delivery. This is only the beginning, and I have no reason to doubt that with the increasing tempo of globalisation and the Internet revolution, the right to public information will be more respected.

Records Management and Information Delivery

C.A. Azangweo

Director, Public Records and Archives Administration Department

Mr Chairman,
Ministers of State,
Honourable Members of Parliament,
Head of Civil Service,
Distinguished Participants,
Ladies and Gentlemen.

It is with great pleasure and honour that I accepted the invitation to present this paper on *Records Management and Information Delivery*, before such an august audience gathered here this afternoon.

INTRODUCTION

Permit me Mr Chairman, to remark that there could not have been a more appropriate platform for my paper; than at this *Information for Accountability Workshop*. It is also significant to note that the invitations for the workshop came from the Rights and Records Institute of the International Records Management Trust and the Ghana Integrity Initiative, local Chapter of Transparency International. The key words - rights, integrity initiative, transparency and accountability - convey forceful and powerful connotations of the yearnings of all of our people, and yet on their own, they represent mere words signifying nothing! They are like mere 'skeletons' crying for flesh and body! Records management provides that flesh and body!

RECORDS: THE FLESH AND BODY?

I would like to believe that we all understand what records are. Nevertheless, allow me to refresh your minds - as individuals, institutions or organisations, documents are created or received in the course of administrative and executive transactions. Such documents form part of, or provide evidence of, the transactions and must be maintained by or on behalf of those responsible for the transactions. Such documents, regardless of their form or medium, are referred to as records. They arise from actual happenings and therefore, represent a tool of verification, and a main source of information for accountability.

It goes without saying therefore, that every government creates and uses records on a daily basis to document actions, confirm decisions, and identify rights as well as responsibilities.

Administrators also need records to formulate, implement and monitor policy as well as to manage key personnel and financial resources. The capacity to carry out economic and administrative reform programmes aimed at achieving efficiency, accountability and enhanced services to citizens depends on records.



Mr C.A. Azangweo is the Director of the Public Records and Archives Administration Department. He has worked in the Public Records and Archives Administration Department since 1974. He was appointed Ashanti Regional Archivist in 1976, and Acting Director in 1992-3 and again in 1995-6. He is currently Editor-in-chief of the West African Regional Branch of the International Council on Archives (WARBICA). He also acts as a consultant to the International Records Management Trust.

Without relevant records, the public will be denied the evidence needed to hold officials accountable or to insist on the prosecution of corruption and fraud. When programmes cannot be delivered because of inadequate information systems, the public stands to suffer because, all aspects of Public Service - health, education, pensions, land and judicial rights - depend on records.

Records are vital to virtually every aspect of the governance process. Governance objectives such as the rule of law, accountability, management of state resources, protection of entitlements, services for citizens, foreign relations and international obligations all depend on a variety of records.

On the occasion of the commissioning of the National Records Centre on 8 April 1998, His Excellency the President, Flt Lt Jerry John Rawlings said, 'We appreciate the important catalytic role that records, as a source of information, play in all human endeavours.'

WHAT THEN IS RECORDS MANAGEMENT?

If records are so important, as recounted, how then should we treat them, without care and protection?

Simply put, the act of caring for records to ensure that they are protected for both administrative purposes as well as to serve as evidence of the organisation's work, is Records Management. The watchwords in Records Management are 'economy' and 'efficiency' - in the creation, in the maintenance, in the use and in the disposal of records.

The British High Commissioner on the same occasion of the commissioning of the National Records Centre observed that 'Proper records management is central to all aspects of public resource management and of administrative and legal/judicial reforms. It provides the foundation for the planning and budgeting process, and provides the basis for accountability for enabling effective audit procedures'.

From this we can infer that records management is, and should be, aimed at ensuring that the right information is made available to the right person, at the right time, and at the least possible cost, hence 'records management and information delivery'.

PRINCIPLES

For us to understand records management as it relates to information delivery, we need to understand certain basic principles.

The first of these is that records must be kept together according to the agency responsible for their creation or accumulation in the original order established at creation.

The second is the life-cycle concept of the record, which stems from an analogy with the life of a biological organism that is born, lives and dies. In the same way, a record is created, is used for so long as it has continuing value and is then disposed of by destruction or by transfer to an archival institution.

Thirdly there is the continuum concept which relates to the management of records through a coherent and consistent continuum of actions - development of record-keeping systems, creation and preservation of the records and their eventual use as archives. This principle is simply saying that there are four actions - identification of records, intellectual control, provision of access, and physical control, that continue to recur in the life of a record.

RIGHT APPROACH

The right approach in records management should therefore take cognisance of the above principles. That is to say, through the adoption of an integrated approach to records management.

ELECTRONIC RECORDS

So far, we seem to have been focusing our minds only on paper records:

Whatever the case we need to recognise the fact that computerisation is an inevitable developmental tool as all nations in future cannot operate successfully both domestically and internationally without it. There is the need therefore, to begin to define electronic records management strategies. It is increasingly becoming evident that a growing volume of government work is carried out electronically and may never appear in paper. Electronic records must therefore be managed to ensure their authenticity, reliability, verification and security, so that they can be accessed over time in order to establish information accountability. Electronic records management should include the following basic requirements:

- appropriate provision in legislation both for the management of electronic records and for legal admissibility
- adequate management structures and assignment of responsibilities
- well organised, accurate, and easily accessible source data
- appropriate systems design, including provision for capture of contextual data and realistic targets
- clearly defined backup and storage procedures
- appropriate system documentation
- appropriate environmental conditions and physical security
- sufficient budget allocations to cover all costs.

I am conscious that I have so far succeeded only in propounding ideas of systematic records (including electronic records) management as the basis for information delivery in support of the protection of rights, establishment of transparency, probity and accountability and therefore, good governance.

But our concern, as good and productive citizens, should be to actualise ideas or be as pragmatic as possible, rather than just propound theories. I wish therefore, Mr Chairman, to give an account of the records management situation as it really is, in Ghana, since, from what we have heard so far, that is very critical for any freedom of information for accountability.

THE GHANAIAN SITUATION

In order to understand better the records management situation as it is today in Ghana, we need to go back in history to the period of the colonial regime.

In Ghana as in other Commonwealth Countries, structured record keeping systems were common, operating as part of a small centralised Civil Service with well trained and experienced registry staff. Senior Civil Servants understood the importance of records management, having themselves worked in the registries earlier in their careers.

However in the years following independence, the situation deteriorated progressively as part of a general decline in public administration. Informal practices were preferred to formal rules and the need for employment overshadowed the need for an efficient administration. Consequently the Civil Service expanded steadily, bringing with it a corresponding increase in transactions and therefore, the creation of more records. Administrators preferred ad hoc work methods to formal ways of working, making decisions without referring to records.

There was thus scant incentive to maintain effective record keeping systems or to allocate adequate resources for records storage and staff.

Even in some cases, the lack of effective record systems was motivated by the desire to conceal financial and other irregularities.

Eventually, the registries, which at first became the point of entry for career development in the Civil Service, were later regarded as a sort of 'Siberia' for staff without career prospects.

Moreover, the file classification and indexing systems originally designed to meet the record requirements for the colonial period could not meet the needs of complex modern government.

It is even paradoxical that despite the low usage of records, officers were reluctant to destroy records whether they were of value or not. In any case there were no guidelines as to what should be kept and for how long. The end result was that registries became severely congested with older records, leading to the collapse of many records systems under their own weight.

This situation was confirmed when in 1998, three experts (two lecturers from the University of London and the Deputy Keeper of the UK Public Record Office (PRO), London) conducted studies in records management systems of 32 Commonwealth countries under the auspices of the Commonwealth Secretariat.

Following the report, the then Overseas Records Management Trust (now the International Records Management Trust, IRMT) of London organised two international workshops, funded by the Commonwealth Secretariat, on the management of semi-current records, in 1989 and 1990.

The participants sorted and evaluated large quantities of semi-current and non-current records from eight ministries, thereby sensitising administrators on the need for proper records management to enhance efficiency and effectiveness in public administration.

Backlogs of inactive records from eight ministries were cleared and sent to a model records centre set up in one of the repositories of the National Archives.

A follow-up assignment to review registry organisation and management in the Ghana Civil Service, was undertaken by the IRMT in July/August 1990 under British aid arrangements with the then Overseas Development Administration (ODA), now the Department for International Development (DFID). The review identified a number of serious weaknesses as follows:

- poor record keeping and registry practices
- piles of semi-current and non-current records in expensive filing cabinets and office space
- ill-equipped Registry staff in terms of skills
- absence of retention schedules
- the need for an organisation to manage records from creation to disposition.

The lead role of the IRMT was recognised by both the Governments of Ghana and the UK, resulting in the formal engagement of IRMT by DFID.

THE RECORDS MANAGEMENT IMPROVEMENT PROGRAMME / PROJECT (RMIP)

A task force on Records Management was formed to liaise with the IRMT and the British Council on project activities on behalf of the Ghana Government.

DFID provided technical assistance covering consultancy, training and the provision of equipment including shelving of the Records Centre. The International Development Agency (IDA) of the World Bank also provided assistance for the construction of the Records Centre. The project was executed in two phases from early 1992 to 31 March 1999.

AIMS OF THE PROJECT

The Project was aimed at introducing ‘a fully comprehensive records service that will cover every aspect and all stages of records creation and keeping’.

ELEMENTS OF THE PROJECT

- Project Management Team should be constituted in place of the Task Force to be responsible for driving through all work programmes.
- A re-structuring programme of registries in ministries and departments in Accra be instituted.
- Retention schedules covering common categories of records be drawn up.
- A new law to cover all facets of the records cycle (ie from creation to disposition), be drawn up.
- The Department of National Archives should be strengthened and its scope widened to include the management of the entire life cycle of records. A new organisation altogether should be created.
- A Records Class embracing registry staff in the Civil Service and staff of the Department of National Archives be established in the Civil Service to be responsible for the entire records cycle.
- An appropriate Scheme of Service should be drawn up for the Records Class.
- An intermediate Records Centre should be set up with the Government of Ghana contribution to support funding from the World Bank for its construction.
- An extensive training programme targeted to meet the needs of a range of different groups in records management should be embarked upon.

IMPLEMENTATION OF THE PROJECT

By November 1992, the IRMT dispatched a consultant, the primary purpose was to implement the project by first introducing new record-keeping systems in the Office of the Head of Civil Service (OHCS) and developing an action plan for introducing the systems to the Public Services Commission.

LEGISLATION/CREATION OF NEW ORGANISATIONS

Legislative Instrument No. 1628 was promulgated in September 1996 establishing the department to be known as the Public Records and Archives Administration Department (PRAAD). The Head of Civil Service issued circular No: 78/97 of 12/1197 announcing the creation of the new department.

The Public Records and Archives Administration Act, 1997, No. 535, was also passed by Parliament on 1 August 1997 and assented to by the President on 29 August 1997. This redefined the functions and operations of PRAAD to manage public records through out their life cycle and that is the key to information accountability.

ESTABLISHMENT OF A RECORDS CLASS

To facilitate the professionalisation of the management of records in the Civil Service a Records Class has been established. There are about 515 Records Class staff working in the various records offices and 139 staff at PRAAD headquarters and seven regional offices.

SCHEME OF SERVICE

There is a new Scheme of Service for the Records Class - defining conditions governing entry to the class, the training facilities and progression within the class.

REGISTRY RESTRUCTURING

Two Records Office Re-structuring Teams formed in 1992 have restructured and installed the new keyword system in registries of 19 ministries. With the end of the records project, members of the team have been re-deployed to head records offices to ensure the sustainability of the enhancements made whilst still being available to be called on to lead or participate in future restructuring exercises.

RETENTION SCHEDULES

As a basis for clearing the large backlog of inactive records from ministries and departments general retention schedules covering Administration, Finance, Personnel, Equipment and Supplies, and Building and Properties have been printed and over 500 copies distributed to MDAs.

TRAINING

Training has been taking place through workshops, during the restructuring exercise, and awareness sessions. In all these more than 1,200 Civil Servants have benefited from training in records management within the Ghana Civil Service.

Twenty-six members of PRAAD staff have undertaken professional level training in the UK. PRAAD staff also benefited from study visits to The Gambia and Tanzania where similar projects have been or are being implemented.

Training manuals have been produced on all aspects of PRAAD work such as:

- Records Office Procedures Manual (Restructured Records Offices)
- Omnibus Retention Schedules for the Disposition of Public Records
- Records Office Restructuring Guide

- Records Centre Procedures Manual
- Procedures Manual for Un-restructured Records Offices
- Desk Instructions for Un-restructured Records Offices
- Desk Instructions for Action Officers
- Training of Trainers Guide
- Archives Procedures Manual
- Records Disposition Guide.

CONSTRUCTION OF RECORDS CENTRE

The construction of the centre began in 1994, and was completed and occupied early in 1996. The President of the Republic of Ghana commissioned it on 8 April 1998. It has a capacity to hold over 80,000 boxes and is fully operational with over 100 clientele whose records in custody are now about 15,000 boxes. This represents over 2000 drawer filing cabinets freed in MDAs for re-use, and savings to Government of over one billion Ghanaian Cedis (250,000 US dollars).

The MDAs have the assurance that their semi and non-current records are better managed, secured and can easily be accessed. This situation was not possible when the records were with them. The records office staff with training in decongestion exercises and the use of the Records Centre, have better understanding in transferring their records to the centre. They therefore own the decongestion exercise.

The centre takes an average of 3 - 30 minutes to produce and deliver records requested through our records courier delivery system.

The opportunity that the centre offers depositors to have easy access to their records for reference has ensured speedy and quality decision making process in government either to confirm, plan and implement policies, or protect the citizenry rights and as evidence of accountability.

ELECTRONIC RECORDS MANAGEMENT

Following Ghana's participation in an 'Electronic Records and Good Governance' seminar in Kenya (March 1996), significant steps have been made in the management of electronic records.

An assessment of capacity to manage electronic records was carried out by an IRMT consultant (who is here with us, Kim Barata) in selected departments including Ministry of Finance and OHCS in September 1998, revealing a very gloomy picture:

- there are no proper backup procedures

- no Government policies on the creation, capture, maintenance, use and disposition of such records
- no data protection laws, standard computer structures
- lack of disaster recovery plans for files stored on our PCs
- inconsistency in back up procedures
- non-existence or inconsistent security procedures for access to computerised information especially on stand alone PCs
- lack of adequate training for both junior and senior management staff on electronic record issues
- belief that computerised versions of records are not records.

Following these revelations a round table conference was organised, bringing together stakeholders representing a wide variety of perspectives to discuss issues on electronic records within the Government of Ghana (January 1999).

A co-ordinating body was formed to deal with electronic records management issues.

A policy document on Electronic Records Management has been developed. Key provisions of the policy are:

- to make and keep records that fully and accurately document their operations and ensure accountability
- to establish and maintain a government-wide records management programme to be managed in conformity with standards and codes of best practice formulated by PRAAD.
- on 29 October 1999 at Miklin Hotel, Accra, a workshop of fifty participants drawn from the civil service and other public sector organisations was organised to validate the policy.

LESSONS/IMPACT OF THE PROJECT

The experience of the RMIP in Ghana so far, teaches us that Government records can be managed as a *strategic resource* as valuable as our cocoa and gold. The clearing of vast backlogs of closed files from ministries has freed valuable office and storage space, thereby saving government costs that would have been spent in the expansion of accommodation and storage equipment. It is estimated that about 20 million cedis (over \$5000) savings are made every year from the liberation of office space, file cabinets and other storage equipment in the Ministries alone.

By establishing and maintaining high professional standards at each phase of the management of records life cycle, the widespread breakdown of record keeping systems in the past is being rectified so that every aspect of the Public

and Economic Sectors' reforms to which Government is committed, can be sustained.

MDAs whose registries have been purged of their semi-current and non-current records have faster and more accurate retrieval of files than before. Therefore, informal policy decision making is effected without much delay.

The Records Centre, apart from providing physical security for the records in custody, has through its effective and efficient operation, won the confidence of MDAS whose records are in custody.

The Records Management Improvement Programme has exposed the staff of the former National Archives to new skills and a new confidence for tackling severe records problems.

There is also regular flow now, of records of permanent value into the repositories of the archives than before, thus enriching the archives.

Ministries and departments are beginning to cultivate a new sense of awareness that it is their responsibility to maintain a good records management system as enshrined in the law with PRAAD having an inspectorate and advisory role.

PRAAD CAPABILITIES

If records management is so important, we should be keen to know whether PRAAD, as the institution empowered by law to be 'responsible for the proper and effective Management of records in public institutions of government' as enshrined in 1(1) of the Act 535, is capable of doing so.

Strengths

A joint final review of the Ghana project by PRAAD and IRMT in April 1999 noted the following as the strengths of PRAAD:

- management structure in place
- a supportive environment
- support of the Head of the Civil Service
- enthusiasm of senior staff
- enabling legislation
- regular and systematic flow of material and accruals into the National Archives for the first time in 20 years.
- fully functioning Records Centre
- higher profile

- scheme of service
- mechanisms for staff to opt to join the Records Class
- a range of manuals and supporting documentation.

Weaknesses

- insufficient staff and too many vacancies unfilled
- limited expertise and capacity, especially in the regions
- lack of resources to sustain advances, especially in the regions
- no significant enhancement of archival services such as describing and making available material passed to its care.

Opportunities

- good will from the Head of the Civil Service
- possibility to raise image further and to seek increased budget
- staff have greater opportunities for promotion in the Records Class
- a solid basis on which to build out into the regions
- the possibility to generate funds or pursue more realistic cost recovery.

Threats

- fear of change and a resistance to new objectives still evident among a small minority of staff
- insufficient funds bind resources in present budget provisions
- uncertainty of support to sustain the improvements
- the project may be seen as donor driven and thus the Government of Ghana may not fully take it over
- a lack of public awareness of the role of PRAAD.

NEXT STEPS

Paper Records Management

Ghana is committed to Decentralisation as a means of ensuring that public sector activities spread to the 10 regions and the 111 District Assemblies established. Therefore, the need to build capacity in these Regions and Districts

to enable them to manage their records effectively is a step that PRAAD should pursue. This can be achieved through:

The establishment of PRAAD Regional offices in all Regions.

- The establishment and training of regional restructuring teams to decongest and restructure the records systems of Regional Co-ordinating Councils to act as models of good practice.
- The establishment of model records centres in Regional Co-ordinating Councils.
- Running of awareness raising and action planning workshops for senior administrators in the Regions to extend record keeping reforms to the Districts.

Electronic Records Management

Ghana Government's commitment to the development of computerised support systems such as Public Financial Management Reform Project (PUFMARP) and the Integrated Personnel and Payroll Database (IPPD), calls for the strengthening of the initiative taken so far on the management of electronic records by:

- developing a strengthened legislative framework to address electronic records issues
- developing desk procedures and guidelines for the use of action officers creating and using electronic records.

CONCLUSION

If I have to conclude, not because my august audience is urging me to do so, nor because I have exhausted the topic, I should say just two things:

Our Ghana Vision 2020 seeks to create opportunities for the development of the private sector as an engine of growth so that Ghana will become an Upper Middle Income Earner by the year 2020 with remarkable improvement in the living standards of the people. An important instrument, which can predictably facilitate the achievement of these goals, is a conducive environment which allows for the *free flow of information*. This will enable individuals and corporate bodies to gain easy access to the information relevant to their specific needs while, at the same time market information can be made available to the business community. The direction set in Ghana Vision 2020 has serious implications for information needed to conduct official business at the international and governmental levels.

Secondly, it must be noted that the PRAAD is the Institution that can effectively contribute to Ghana Vision 2020 by preserving the collective memory of the nation and the Government of Ghana as well as supporting the protection of rights and the enhancement of our national identity by:

- establishing and implementing good records management practices in MDAs
- providing facilities for the efficient management of semi-current records
- preserving and conserving records of enduring value and making them accessible to users.

Currently PRAAD has in custody a variety of records containing information on many subject areas. These include Native Affairs; Judicial Records; Proceedings and Reports on Committees and Commissions of Enquiry; Government Dispatches; Newspapers, such as Ashanti Sentinel (1890s) and Daily Graphic (1951); Private Papers, eg Kwame Nkrumah; Acts and Ordinances; Agreements and Contracts.

We need to grow and develop as a nation. Growth and development are impossible in a lawless society where no one can be held accountable because of lack of information. Corruption is another major issue retarding development. Where however, it is possible to establish who did what, when, why and how, that can serve as a powerful means of deterring individuals from engaging in fraud or corruption and thereby, enforcing accountability.

Records management and information delivery is the answer to corruption and accountability problems as well as the bulwark of security for law and order, for the protection of rights, integrity initiative, transparency and accountability!

Yes, records management, the body and flesh indeed!

Mr Chairman,
 Ministers of State,
 Honourable Members of Parliament,
 Head of Civil Service,
 Resource Persons and Facilitators of the IRMT,
 Distinguished Participants,
 Ladies and Gentlemen.

Thank you!

DISCUSSION SUMMARY

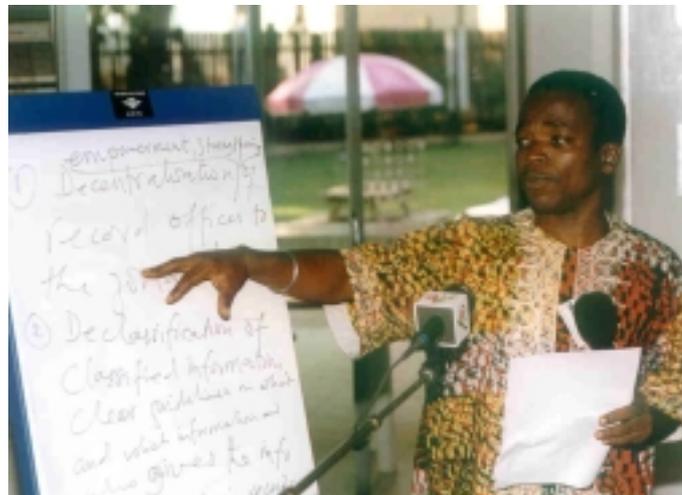
Session Four

Thursday, 31 August (pm)

Breakout groups examined the operational issues identified during the course of the workshop and made recommendations as to how these should be addressed.

With respect to the legal framework, the main recommendations were to:

- establish an enabling legal environment, ie implement a FOI Act
- review and repeal statutes that conflict with the intentions of the Constitution, e.g. criminal libel law, sedition and statute law.
- introduce regulations to guide the implementation of the law, whether by the Ministry of Communications or an independent institution.



There were a large number of operational issues raised by participants, building on those that had been discussed over the two days. Recommendations focused on practical methods of implementing FOI and ensuring that citizens can make effective use of such legislation. These include: strengthening records management, improving the MDAs infrastructure, changing civil service culture, being sensitive to language and literacy limitations, streamlining existing and developing new procedures, implementing anti-corruption measures and raising public awareness.

STRENGTHENING RECORDS MANAGEMENT

The needs identified can be summarised as:

- record keeping training for civil servants
- reviewing levels of security classification
- decentralising records offices to the zonal level (regions/districts)

- using computers, the Internet, and electronic information storage to reduce distance
- investing in human and material resources
- teaching records management in schools
- strengthening existing records management systems.

IMPROVING THE MDAS' INFRASTRUCTURE

Suggested areas for institution building or reform were:

- registries
- databanks
- information clearinghouse/client services units
- electronic information dissemination via Internet, intranets and telephones
- strong contact points, eg notice boards, friendly brochures, etc.



In addition it was suggested that information clearing centres be established at all levels of Government and national databases be strengthened and be readily accessible.

CHANGING CIVIL SERVICE CULTURE

This was identified as a key area for change in order to facilitate access to information. This includes:

- sensitising civil servants through staff training, particularly for all those in areas relevant to the implementation of FOI

- combating reliance on informal networks by promoting transparency
- improving customer orientation
- printing a Code of Conduct
- assigning appropriate and clear levels of authority for authorising the disclosure of information
- protecting civil servants through a revised legal framework in order to encourage information disclosure
- changing emphasis for responsibility for misuse from provider of information to receiver.

AMELIORATING LANGUAGE AND LITERACY LIMITATIONS

It was suggested that the accessibility of information to local people could be improved. It was recommended that the media should be used to make available material in local languages. Records should continue to be maintained in English. A speedy way to improve accessibility is to simplify and clarify technical terms in documents. The Information Services Department and the media were asked to be more proactive and target specific relevant issues to the rural poor, eg health, sanitation, parliamentary debates, etc.

STREAMLINING AND DEVELOPING PROCEDURES

Bureaucratic procedures had been identified on Day One as an obstacle to accessing information. Recommendations actions were:

- streamlining/clarifying existing procedures for civil servants
- setting out instructions for request formats to clarify requests
- delegating authority to officers responsible for authorising disclosure
- imposing sanctions for non-disclosure
- establishing a clear appeals procedures overseen by the Commission for Human Rights and Administrative Justice (CHRAJ)
- reviewing classified information with the intention of declassifying where appropriate
- writing clear guidelines on ‘what’ information can be released and ‘who’ should provide it.

It was hoped that these measures would address the negative culture within the civil service.

IMPLEMENTING ANTI-CORRUPTION MEASURES

Participants saw implementing FOI legislation as an important element in the anti-corruption strategy. Recommendations include:

- making information about pricing structures for access to information and services available to the public
- strengthening public complaints units
- imposing sanctions against bribe-payers and takers.

RAISING PUBLIC AWARENESS

Participants recommended:

- increasing public education re access to information
- involving citizens at local level
- educating the public to create mass awareness of information use.

See section on **Workshop Outcomes** (page 120) for findings of the two days.

CLOSING CEREMONY

Closing Address

Desmond Woode
Second Secretary
UK Department for International Development



Ladies and Gentlemen: I am delighted to be here and I am grateful to the organisers for asking me to say a few words as you bring this workshop on Information for Accountability to a close. I will not say much: late afternoon is not the right time of day to do so!

I do hope that all of you who have participated in the discussions feel that you have had the opportunity to express your views and opinions in an objective and open manner.

The workshop was organised to allow you to do so and to raise citizens' awareness, more broadly, of the wider implications of a bill on Freedom of Information. I wholeheartedly agree with the underlying argument that citizens must have improved access to information, especially Government information, to be effective and to participate constructively in national development. Otherwise, how else can they contribute?

I suspect many of you leave today with a number of thoughts. What information, or further information, should citizens have or want? Why should they have this information? What additional benefits are they likely to derive from access to such information? And for Government, what information should it make available and what should be restricted? There are no clear-cut answers!

Introducing a bill on Freedom of Information is much more than a simple change in the law. It means changing the very nature and culture of the manner in which Government operates. For active national participation, citizens need to be well informed. To do so, the Government must, itself, be well informed. It also needs to be willing (and able) to inform others and must see this role as part and parcel of its duty rather than as a chore or an additional task of limited significance.

Lessons from other countries have shown that by far the largest number of Freedom of Information inquiries tend to come from private individuals. And these tend to focus more on matters relating directly to themselves than seeking information on others. So, if we are to go on the basis of past experience, there is little to fear!

But, ultimately, we need to think about the ‘real’ benefits of improved access to information? A better-informed public can contribute more effectively to enhancing democracy. There is also the question of a more effective and improved Government service that collects and collates relevant and proper information for its public. There are benefits to Government officials with their possibly enhanced roles as custodians of relevant information.

The UK is in the process of improving the quality and scope of information made available through Government Departments. And even prior to a bill of information being passed through Parliament, it has made evident strides in introducing relevant information for the benefit of the wider public. Some years ago it introduced information on schools performance which initially caused some concern. Now, however, most parents appreciate the benefits of having access to such information as it allows them a factual foundation on which to make those crucial decisions regarding their children’s education. There are other examples in places like South Africa, Malawi, Zambia and Cameroon where civil society has tried to present Government information, especially financial information and targets, in a manner more suitable to the communities in which they operate.

The UK is currently discussing the introduction of a similar bill on Freedom of Information. Ghana and the UK are moving broadly in the same direction, but it is important that, as in the UK, any bill on freedom of information is home-grown and designed to meet the information needs of Ghanaians. Each freedom of information bill is unique in its own environment but must ensure the information made available is appropriate both in tone and content, easily digestible and, of course, informative! Government, Individuals and, especially, civil society organisations, all have a significant role to play here. There are no clear-cut answers to how this develops, and I hope the outcomes of this workshop help input the much needed discussion on different perceptions back into the policy decision making process.

A couple of points I would like to make in closing are that:

A Freedom of Information Act is a key tool in enhancing and improving governance. For example with freedom of information, investigative journalism can play an important role not only in exposing corruption and corrupt practices, but also by publicising the positive side of combating corruption. Similarly, the repeal of certain types of libel laws is also crucial, especially those that imprison reporters and owners of media outlets for political reasons. Such actions send the wrong message to the media by suggesting they should hold their tongues and that criticisms will not be tolerated. A free press is, indeed, necessary to democracy.



Secondly, civil society empowerment is critical. They are more in touch at grassroots level and their efforts help the wider institutional and political efforts to tackle corrupt practices by complementing the systematic efforts Government may have introduced to inform citizens about their rights and entitlements. Empowering civil society and forming coalitions with others is a crucial aspect of good governance programmes.

We, as the donor community, also have a stake here and we should continue to make greater efforts by improving our oversight of governance issues more broadly, and by facilitating the involvement of civil society in monitoring and planning. We also need to continue to provide sustained and focused assistance to countries where it is right to do so.

I thank you for listening.

Closing Remarks

Yongmei Zhou
Economist, The World Bank¹

Honourable Members of Parliament, distinguished guests, ladies and gentlemen.

On behalf of my colleagues at the World Bank, I would like to congratulate you on the consensus you have reached regarding the importance of openness and transparency, on your pragmatic approach of identifying administrative and cultural difficulties, on your determination to push this bill through. Let me also congratulate the International Records Management Trust and the Ghana Integrity Initiative for organising this wonderful workshop.

The World Bank is proud to support this workshop. Strengthening government accountability is high on our agenda, as we recognise it as the key to aid effectiveness and ultimately to poverty alleviation. We enthusiastically support your push for openness, so that various stakeholders, especially the civil society, can meaningfully participate in policy debates, budget planning, expenditure monitoring, and government performance evaluation. We see this initiative as highly complementary to Ghana's existing public sector reform programmes, such as the National Institutional Renewal Programme (NIRP) and the Public Financial Management Reform Project (PUFMARP), which the Bank is supporting. Ultimately, they have a common goal, that is to establish an efficient and accountable public sector which is able to develop credible policy and provide quality service to citizens.

Again, we congratulate you on taking this important step and trust you will extend the discussion to a wider range of stakeholders to reach a consensus in Ghana on the importance of transparency and accountability.

You can count on our continuing support.

¹ Speaking on behalf of Mr Peter Harrold, Country Director, The World Bank Ghana Office.

Closing Remarks

Terence Humphreys
Director, British Council Ghana

Distinguished invited guests,

Ladies and Gentlemen.

On behalf of the British Council I, like my colleague from the World Bank, am also very proud to be associated with this workshop and am also very respectful of the work that you have done during the course of the workshop. The British Council has been around in Ghana for an awfully long time, we have actually been here since 1943. I think probably you are quite used to us, so used to us you don't notice us. In some ways, perhaps I need just to say why we are involved with this workshop. Obviously enough the deep-rooted aim of the British Council is to make friends, it is to enhance the reputation of the United Kingdom as a valued partner in Ghana. It has a number of strategic objectives - one of which is to be a committed partner with Ghana to tackle some of the key reform issues and agendas, and to help promote sustainable development in Ghana. Working within those kinds of issues we are very proud to support this particular drive towards good governance and accountability and democracy and we are sure that with the calibre of participants that we have had here today that is what will happen, that Ghana will move forward. So all I need to do is to thank all the different partners who have sponsored the workshop and all those organisers and helpers and yourselves who have taken part.

Thank you very much.

Closing Remarks

Piers Cain
Director, Rights and Records Institute

Mr Chairman
Honourable Ministers and Members of Parliament
Distinguished Participants
Ladies and Gentlemen,

It is now my pleasant duty to say a few words on behalf of the Rights and Records Institute of the International Records Management Trust.

We have had a very busy and I hope useful two days discussing Freedom of Information in the Ghanaian context. Until I came to this country I had not realised how much interest there is in this topic. Whatever the individual standpoint you may have on this issue, it is a healthy sign that so many people here have an opinion and are prepared to express their views.

At this stage in the proceedings, my main duty is to thank the many institutions and people that have made this workshop a success. First, I would like to thank our sponsors, the World Bank and the Danish Trust Fund for Governance, which has financed this workshop and the programme to develop Information for Accountability workshops.

I would also like to thank the Westminster Foundation for Democracy that sponsored the attendance of the Members of Parliament and some other costs of the workshop. The Westminster Foundation exists to further the cause of democracy around the world, so we are particularly gratified that they share our view that the free flow of information to the public is vital to a healthy democracy.

I should also mention the Commonwealth Secretariat, which kindly funded the participation of Mr Tom Riley, our expert on freedom of information.

A special 'thank you' is due to Mr Terence Humphreys of the British Council and his able staff Peter Ridellsdell and Angela Joy Sampson. Their friendly and active support, throughout the planning of the workshop has been of immense value. The British Council has not only contributed financially, but has made available this fine auditorium and have also provided much needed logistical support.

Finally I would like to thank our partners the Ghana Integrity Initiative, especially Emile Short, Yaw Asamoah and William Nyarko for their ideas, enthusiasm and commitment to delivering this workshop. The Ghana Integrity Initiative deserve wider recognition for their pioneering work in fighting corruption and promoting good governance. I congratulate them for their efforts so far and wish them well for the future.

Last of all, I thank all the people who have contributed to the debate whether as invited speakers, participants or observers. You are the real stars of this show.

Ladies and Gentlemen I think we can congratulate ourselves on a job well done.

Thank you.

Closing Remarks

Emile Short
Chair, Ghana Integrity Initiative

Thank you very much. I don't have a formal speech to make but I just want to start by echoing the sentiments of Piers that this workshop has been a resounding success and I want to acknowledge the valuable contribution our co-organisers, the International Records Management Trust has made to make this a success. I am particularly pleased that we have had a consensus on this issue - a consensus about the need and importance of a Freedom of Information Act, and that I think is a positive conclusion.

I would particularly like to express my appreciation to the participants who responded to our call. The discussions and the contributions really enriched the debate. It enabled us to examine the various dimensions or complexities of the problem. I would like to pay special tribute or mention to Tom Riley who really placed at our disposal the wealth of experience that he has acquired over, I don't know how many years, 20 or 30 years. I think that this is going to play a very big part when we try to refine and polish the Act. We need to look now at the way forward. I would hope that we can get a small committee together to try and develop a strategy for the way forward. Firstly to polish and refine the Act, and secondly to see how we can get this bill through Parliament. In that regard I am going to count very much on the Parliamentarians who responded to our call. We see you as very important partners and that you are going to form the block in Parliament to push this bill through for us. I am not going to be so optimistic as to hope that it is going to be pushed through before the elections but at least one would hope that during the next Parliament we will be able to see this bill through.

I would like particularly to express the Ghana Integrity Initiative's gratitude to the sponsors. The World Bank, the WFD, The Danish Trust Fund, and of course our hosts, our friends, Peter has been very nice to us, and the food particularly was very good - some home-grown food.

I would also particularly like to thank Kim and Dawn for their hard work. The effort started months ago. We have been communicating over the phone, by email, all kinds of ways, and this has been the crowning success of all our efforts and I really appreciate your contribution. And I would like to finally thank each and every one of you who came and I hope that we will be able to, in the near future, announce that we have a Freedom of Information Act and that we have joined the world family that has Freedom of Information.

Thank you very much.

Chairman's Conclusion and Vote of Thanks

Professor Patrick Twumasi
Chair, Civil Service Council, Government of Ghana

Distinguished ladies and gentlemen.

We have now come to the end of this very important workshop and as chairman I think I have to say something. My work is very light now. There are two points I would like to make. I would like to add my voice as to the importance of this workshop and to thank the organisers for selecting Ghana. I think we in Ghana are very appreciative because of the importance of this subject matter.

We also need to outline that the participants from the diverse backgrounds, from all categories of our social structure, have been very very useful. And they are happy that they were selected - lawyers, Parliamentarians, people from the broad society, civil society, sociologists, and all these people, threw some light on the different aspects of the issues involved. They have been very enlightening.

We need also to note all that they have said in terms of the information to know, in terms of the right to information. There is no doubt that you have to be transparent, you have to give information, we have to sensitise the public to demand more information. But nevertheless we need to draw the line if it is possible. It might be clearly stated in legal terms, in terms of public interest, in terms of security and all this. The bottom line is that for the growth and development of any viable society we need to share information.

That leads us to the fact that has been reported by the groups, that there is also a need for the custodians of the information to come out clearly because of the nature and type of our society where the majority of the people live in rural and outlying areas. There is the need for us to define and to design a method of approach so that all and sundry can benefit from this important workshop. On that score, I think in Ghana we are happy to note that a decentralisation policy has helped us to decentralise and it is for this reason that in any information flow, and any education which will come thereafter, there is a need for us to recognise the people at the base. It was mentioned clearly in one of the groups that was reporting, that at a certain level we need to remember them, in terms of their own characteristics and way of appreciating things. Here we have in mind the chiefs, we have in mind the district assemblies, and it is a challenge for us to design viable ways and methods.

In short then, we have been able to achieve our objectives. But I think what we expect is also that we need to go back and talk about it. We need to go back and talk to the MDAs, as the Civil Service Chief Director has mentioned, and discuss these issues. I think we wouldn't like to hoard information, we wouldn't like to hoard the knowledge that we have got here so I ask that when we go back the discussion must go on.

The last point I would like to make, which has already been mentioned by all of you but I think it is important so I will add my voice, is to thank very much the organisers. Then we will thank the support we have received from the World Bank, the Danish Trust Fund for Governance, the British Council, and also the

Westminster Foundation for Democracy and the Ghana Integrity Initiative. We thank the Rights and Records Institute, International Records Management Trust and indeed we thank all the resource persons, those in the background and those in the fore. We thank Professor Tom Riley, Mrs Angeline Kamba and all others who know that we say thank you. And indeed, the MPs, ministers, especially the Minister of Communications, who spared some time to be with us yesterday, and indeed we thank the mass media.

And so indeed we have come to the end of this very important seminar but not the end of the discussion so, please, go in peace. We thank you.

WORKSHOP OUTCOMES

ANALYSIS OF ATTITUDE SURVEY RESULTS

The attitude survey was intended to measure the perceptions of the participants in the Information for Accountability Workshop with regard to the current position on access to information in Ghana and their attitudes towards Freedom of Information legislation.

100% of participants believe that the right to information is a fundamental human right.

There are many stakeholders in the issue of access to information. This range of interests was reflected in the composition of participants at the workshop. Across this broad spectrum, 100% were agreed that the right to information is a fundamental human right and that there should be a law to govern this right.

100% of participants believe that there needs to be a law governing access to information.

Although all participants were in favour of a Freedom of Information law, 9.4% were of the opinion that this would not improve access to information. However the vast majority (87.5%) believe that a law would indeed improve the information environment. In addition, 84.4% of respondents believe that enacting such a law should be a priority for government despite the other claims on their resources.

Under existing arrangements, 87.5% of participants believe that access to government information is unequal.

There was a firm conviction that information held by government is held on behalf of the public and should be made available wherever and whenever this would not be damaging (90.6%). However there was a perception that access to this information is unequal, 87.5% stated that under existing arrangements access is not equal. Economic status (46.9%) and political connections or affiliations (31.3%) being cited as the chief determining factors.

There was a wide range of government activities that participants felt that citizens would want information about. The most important categories were felt to be national budget and expenditure (87.5%), local government expenditure (65.6%), education (62.5%), health (56.3%) and public works (59.4%). Participants were also asked to determine who they felt would be the chief beneficiary of Freedom of Information legislation. Less than half thought that ordinary citizens would be the chief beneficiary (40.6%). A significant number also thought that the press would benefit the most (25%). The press were also chosen by a large number as the second most significant beneficiary, cited by 43.8% of respondents. Opinion was more evenly divided between the different categories for third place. There was a significant showing for researchers scooping 31.2% of the vote.

Participants see obtaining information and seeking redress if information is not accurate or complete as problems. 84.4% believed that the information provided by government is inadequate or poor. In addition, in the event of dissatisfaction with information provided to them, 71.9% would not know where to go to seek redress.

Information systems were seen as a key problem - a total of 81.3% believe that government records are inadequate or poor. 71.9% believe that records are too disorganised for staff to locate relevant information, and 56.3% that the non-existence of information is a serious obstacle to access.

81.3% believe that government records are inadequate or poor.

Obstructive officials and procedures were also identified as obstacles, by 81.3% and 56.3% respectively. Another major obstacle cited was that information is often considered confidential (78.1%).

Participants were asked what categories of information is it reasonable or unreasonable to exempt from disclosure under Freedom of Information. 71.9% were agreed that it would be reasonable for the government to make information about defence confidential. 62.5% of participants felt that minutes of Cabinet meetings should be exempt, even more than those who felt that policy advice to Cabinet should be exempt (43.8%). Over half of participants agreed that information given in confidence (59.4%) and commercially sensitive information (56.3%) should be exempt from FOI.

Less than half of participants felt that it was not reasonable to exempt any category of information under FOI. Those categories where participants felt strongest were government revenue (50%), government expenditure (46.9%), and government policy (46.9%).

Perhaps surprising is that only 62.5% felt that it was reasonable to exempt personal information if not related to the person making the request. Nearly 18.8% thought it was unreasonable to exempt this information, 3.1% did not know and 15.6% did not express an opinion.

The quantitative results of the Attitude Survey can be found at **Annex Two** (page 148).

KEY OUTCOMES

The workshop was successful in meeting its stated objectives. Discussions over the two days were synthesised at the conclusion by the workshop facilitators. Issues that must be addressed came into two categories:

- legislative
- operational.

LEGISLATIVE ISSUES

Government is not averse to a Freedom of Information law.

There was clear consensus on the need for Freedom of Information legislation in Ghana. Participants recognised that government cannot continue to do business as usual. The government position on this was made clear by Hon John Mahama, Minister of Communications in his keynote address when he said that the Government is not averse to introducing a Freedom of Information (FOI) law.

Review and repeal laws restricting access to information.

As a way to achieve greater access to information, it will be necessary to reform the legal framework. Currently a number of laws inhibit the disclosure of information. These also hinder efforts through the Civil Service Performance Improvement Programme (CSPIP) to reform the civil service. It was recommended that a list be drawn up of legislation restricting access to information and that, as part of the debate on the FOI legislation, that these laws are reviewed and repealed. Where repeal is not necessary, their provisions should be harmonised with any new legislation.

Provide for an independent appeals/complaints arbitration body.

There was consensus on the need for a more clearly defined and accessible appeals procedure than has currently been provided for in the draft Right to Information 'Bill'. This should provide a mechanism for obtaining redress outside of the courts. It was recommended that an independent appeals/complaints body should adjudicate on access to information issues. This body could either be a new tribunal or the responsibility could be assigned to the Commission on Human Rights and Administrative Justice (CHRAJ).

Assign responsibility for administrative oversight to the Ministry of Communications and the Attorney General's Department.

In addition to the enforcement of FOI, it was recommended that responsibility for administrative oversight be assigned. The Attorney General should be responsible for the interpretation of legal issues, and the Ministry of Communications should oversee policy and guidelines.

Apply sanctions to those who refuse access.

There was consensus on the need to impose sanctions on those who refuse to allow access to information in contravention of legislation and regulations. This should also be a provision of the FOI legislation. Without such sanctions, the bill cannot be effectively enforced.

OPERATIONAL ISSUES

Strengthening records management is a vital plank in the strategy for implementing FOI. This includes aspects such as training for civil servants, decentralising records offices, investing in human and material resources for records systems, and giving the oversight of daily records management in Ministries, Departments and Agencies (MDAs) to Public Records and Archives Administration Department (PRAAD). Without such measures, information may continue to be unavailable despite changes in the legislation.

Strengthen records management systems; assign responsibility for oversight of day to day records management in MDAs to PRAAD.

Key to improving the flow of information is to change the culture of the civil service towards a more customer-orientated service delivery focus. Civil service reforms are already under way to achieve this objective. Civil servants must be sensitised to access to information issues through training. It was recommended that clear guidelines be produced for civil servants to delineate levels of authority for disclosure, describe what information may or may not be released, and provide for the consistent security classification of information.

Change civil service culture. Provide clear guidelines to govern access to information.

Participants recognised that government has a legitimate concern with the responsible use of information. Participants recommended that a public education programme would help to raise awareness and educate citizens on how to use information appropriately. With a more free flow of information, it is expected that the media would move away from sensational journalism.

Educate citizens on the responsible use of information.

Procedures governing the appeals process must also be drawn up and disseminated. The right of appeal should be encapsulated in FOI legislation along with the mechanisms by which this right is given effect. In addition, detailed procedures must be provided to support this.

Prepare written procedures for appeals process.

In Ghana, FOI comprises an element of the anti-corruption strategy. Participants recommended that to further this, clear guidance must be given to citizens about the cost of information - what is provided for free, what fee is charged where applicable, etc. This reduces opportunities for fraud. In addition government should put into operation public complaints units and impose sanctions on those found taking or giving bribes.

Implement anti-corruption measures; provide clear guidance on fees charged.

Participants also recommended that the government addresses infrastructure requirements in the MDAs. Institutional changes are necessary to support access to information reforms. It was recommended that these include decongesting registries and providing further training for registry staff, developing databanks, continuing to establish client services units and providing for electronic information dissemination.

Build an appropriate information infrastructure in MDAs.

PRESS RELEASE

Information for Accountability Workshop on Freedom of Information 30-31 August 2000

Gaining access to government information is recognised as a major challenge in Ghana. The Ghana Integrity Initiative (the local chapter of Transparency International) and the International Records Management Trust, Rights and Records Institute held a two-day workshop on Information for Accountability in Accra. The draft Right to Information 'Bill' published by the Institute of Economic Affairs served as the focus for discussion.

In the opening keynote speech, Hon John Mahama, Minister for Communications made clear that the government is not averse to a Freedom of Information Bill. He stated that

It is my hope that a comprehensive look will be paid to removing all the hindrances preventing free flow of information, including strengthening the capacity of public institutions to generate, preserve and retrieve information in a timely manner. If these issues are not addressed we may successfully pass a Freedom of information bill, but find out that there is no free information to be given.

Dr Robert Dadoo, Head of the Civil Service built upon this by stating that

Information in the public domain which is locked-up, untouched and unused is wasteful. Parliament and the people have a right to the use of information, the right to be informed to enable them to take the right decisions and make well informed choices.

He went on to say that

The trend toward a free flow of information between the Civil Service and the public is likely to be an irreversible development in this century and next millennium. There is hope for the achievement of total partnership between the Civil Service, the Media, Government and the public to enable the free flow of information to become an important aspect of our national development.

Professor Patrick Twumasi, Chair of the Civil Service Council, opened the second day of the *Information for Accountability Workshop* in Accra. In his opening remarks, Professor Twumasi said that

...good governance is predicated upon transparency, accountability, probity and access to information on the part of the governed and the governors.

He went on to say that when looking at the issue of access to information

We need a serious look at the topic devoid of sectoral interest because what we come up with will help to generate interest in our democratic institutions in the growth and development of the nation.

The workshop brought together Members of Parliament, senior civil servants, and representatives of the legal profession, the media, academia and public interest groups to look at the applicability of Freedom of Information legislation as a solution to providing greater transparency and encouraging more equitable government. The participants worked to develop consensus on the draft Right to Information 'bill' and to identify the key administrative provisions required to improve the delivery of information to the public.

The workshop was held at the British Council on August 30 and 31. It was sponsored by the World Bank Danish Trust Fund for Governance, the Westminster Foundation for Democracy and the British Council Ghana.

MEDIA COVERAGE

The Ghanaian Times, September 1, 2000

‘Government not opposed to Freedom of Information Bill - Mahama’

By Augustine Cobba-Biney

The Minister of Communications, Mr John Mahama, has said that government is not averse to a Freedom of Information Bill. He said it is however the hope of the government that serious efforts would be made to remove all factors militating against free flow of information in the country.

Opening a two-day workshop on “Information for Accountability” in Accra, on Wednesday, the Minister noted that if hindrances to free flow of information, including strengthening the capacity of public institutions to generate, preserve and retrieve information in a timely manner were not removed, “we may successfully pass a Freedom of Information Bill, but find out that there is no free information to be given.”

The workshop, being attended by Members of Parliament, professionals and senior civil servants, will develop a consensus on the draft Right to Information Bill and identify the key administrative provisions required to improve the delivery of information to the public.

Mr Mahama stressed the need to balance the public’s right to know against the needs of national security and the protection of the economic and political interests of the country.

A Freedom of Information Act, he said, must not be driven by sectional interests, stressing “a comprehensive assessment of the information needs of our society must inform the measures we take to improve the access of our people to relevant information.”

The Minister said that while importance must be attached to the flow of information from government institutions and public sector organizations to the people, equal emphasis must be placed on the system of information feedback from the people.

“It is also important to dispel the perception that a free flow of information is important only for the media in its work,” he said adding that researchers, students and the general public stood to benefit from any improvement in access to information.

The Deputy British High Commissioner, Craig Murray, described corruption in the country as bad and called for a change in cultural understanding to the issue. He said that even though corruption existed in almost every country and organization including the United Nations Assembly, that of Ghana was bad. Corruption in Ghana called for a reduction of the government’s role in the economy, he stated.

Ghanaian Chronicle, September 1, 2000

‘Your Government Is Corrupt! Says British Ambassador’

By Joyce Mensah Nsefo

Nobody expected Wednesday’s conference on accountability to produce any fireworks, but then nobody reckoned with the Scotsman His Excellency Mr Caig John Murray, deputy British High Commissioner, the open minded, respected, free-speaking diplomat. And when he decided to make an intervention it came in the form of a bombshell, lifting his audience off their feet with surprise, followed by moments of embarrassing silence.

Craig, who had been invited to say a few words at the workshop on ‘Information for Accountability’ declared that corruption in Ghana is a problem and specifically pointed accusing fingers at the government in the area of awards of contracts. According to him, even foreigners awarded contracts are not excused or spared but made to pay a percentage sum of money of the value of the contract to the government, even after they had met all the procedure that is required of them.

When he felt the impact of his outburst on his audience, Craig, unmoved by shocked gaze that met his remarks, proceeded to issue a challenge to any body in the room who was unaware of the situation or experience it to show by hand or come out to prove him wrong. No one did. No one could, and two Ministers in the room, Messrs Nii Adjei-Boye Sekan (Presidential Staffer) and Mr John Mahama, the communications man, winced uncomfortably.

The Deputy High Commissioner did not end there. He revealed that at a recent conference with the World Bank, it came out clearly that the international community is disappointed with the Ghana government’s restructuring and handling of the economy. Too much, Mr Murray pointed out, had been privatised without the expected returns. He said there are instances where some of those who bought privatised companies did not have money to invest in the project. The last blow was to come when he said Ghana is not creditworthy, but the international community and donor countries continue to advance the nation loans because they are being sympathetic to the nation.

It was a telling confirmation of the mass public perception of the corruption in Government and the total abandonment of measures to combat official corruption. The Ghanaian Chronicle, among other independent newspapers, has weekly exposed mass corruption with no visible action from Government. The Presidential Staffer in charge of ACDRs, Nii Adjei-Boye Sekan, who was a participant, thought it was unfortunate for the Deputy High Commissioner to take advantage of the gathering, which included some foreigners, to make such a statement.

When accosted by the Chronicle afterwards, Nii Sekan, who was seen also accosting the High Commissioner only after the event, argued that by virtue of his privileged position, if Mr Murray has such information, he should have informed the government to address it. “In any case, if he did inform Government, he should have balanced his statement with the government’s response”, a visibly upset Nii told the Chronicle. He insisted that the NDC government had done much in the area of combating corruption and therefore, its efforts should be appreciated.

President Rawlings recently took on the donor community for withholding credit and other facilities the government had asked for, because, according to him, they want to see the NDC lose the December general elections. Rawlings said last month that the government had done what was expected of them to meet their conditionalities, but they were still holding on to the purse.

The workshop itself saw participants complaining that the legal environment that public servants operate within as inhospitable to freedom of information, even if the official wants to do so. Mention was made of the Official Secrecy Act of 1962, which makes it a criminal offence for an official to release information to an unauthorised person, and can land a person in jail for 14 years. Other such legislation includes the Criminal Code of 1960, the Civil Service Law of 1993, and those from the Prison Service, Police Service and the Armed Forces. The participants expressed their desire to have a Freedom of Information Act that will do away with these laws that restrict access to information to the governed.

When an official of the Ministry of Communications, Mr R P Arthur, drew their attention to the fact that the government is opening up to the public by instituting the “Meet the Press Series” and post-Cabinet press briefings, among other policies, A lecturer at the School of Communications at the University of Ghana, Legon, Ms Audrey Gadzekpo, disagreed. She pointed out that it is not only journalists who need information, but researchers and the general public as well. According to her there should be a law that would enable information to be accessed freely by all and not at the behest of a minister or any body who will decide when to give information out and how. That, she stressed, might be a tool for control by whoever is wielding those power.

Radio and Television Coverage

TUESDAY 29 AUGUST

Programme	Participants
Vibe FM Breakfast Show (30 Minutes)	Piers Cain, Director, Rights and Records Institute
JOY FM Super Morning Show (25 minutes)	Dr Justus Wamukoya, Moi University Yaw Asamoah, Ghana Integrity Initiative

WEDNESDAY 30 AUGUST

Programme	Participants
JOY FM hourly news broadcast; (2 minutes every hour)	Craig Murray, UK Deputy High Commissioner
Radio GAR hourly news broadcast (2 minutes every hour from 13.00)	Hon John Mahama, Minister of Communications Yao Boadu-Ayeboafoh, Ghana Journalists Association Dr Robert Dadoo, Head of Civil Service
Vibe FM hourly news broadcasts (2 minutes every hour from 13.00)	Hon John Mahama, Minister of Communications Craig Murray, UK Deputy High Commissioner Dr Robert Dadoo, Head of Civil Service Yao Boadu-Ayeboafoh
Choice FM hourly news broadcasts (2 minutes every hour from 14.00)	Craig Murray, UK Deputy High Commissioner Hon Adjei-Boye Sekan, Chairman, Parliamentary Sub-Committee on Communications Hon John Mahama, Minister of Communications Dr Robert Dadoo, Head of Civil Service

THURSDAY 31 AUGUST

Programme

Ghana Television Breakfast Show
(8 minutes)

JOY FM News on the Hour
(2 minutes)

Participants

Yaw Asamoah, Ghana Integrity Initiative

Alhaji Abdullah, Serious Fraud Office

Mr BJ da Rocha, Institute of Economic Affairs

Hon Adjei-Boye Sekan, Chairman, Parliamentary Sub-Committee on Communications

FRIDAY 1 SEPTEMBER

Programme

Choice FM Breakfast Show
(20 minutes)

GTV: Talking Point
(weekly current affairs talk show: to be shown on Sunday 3 September)
(1 hour)

Participants

Yaw Asamoah, Ghana Integrity Initiative

Piers Cain, Director, Rights and Records Institute

Professor Tom Riley, Commonwealth Centre for Electronic Governance

Dr George Apenteng, Institute of Economic Affairs

Hon Papa Owusu Ankomah, Member of Parliament, NPP, Sub-Committee on Communications

Hon George Boadu, Member of Parliament, NDC, Sub-Committee on Communications

ANNEX ONE

THE RIGHT TO INFORMATION BILL,

**1999
(Draft)**

WITH COMPLIMENTS
INSTITUTE OF ECONOMIC AFFAIRS

Justice P D Anin

An Institute of Economic Affairs Publication

The Institute of Economic Affairs (IEA), Ghana was founded in October 1989 as an independent, non-governmental institution dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for sustained economic growth and human development.

The IEA supports research, and promotes and publishes studies on important economic, socio-political and legal issues in order to enhance understanding of public policy.

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PREFACE

This is an Occasional Paper of a special kind. It contains the full text of what is proposed as a suitable law which Parliament may pass on the subject of the right to information.

Under Ghana's current Constitution of 1992, Parliament has the exclusive power to legislate. The initiative for the passing of laws need not come exclusively from the Executive. Members of Parliament may initiate the passing of laws. Civil society, on its part, may press for the passing of laws which are considered necessary. If the initiative for passing legislation comes exclusively from the Executive, as appears to be the practice now, it means, in effect, that the supreme legislative authority of Parliament is to that extent curtailed. Ghana's system of governance is different from the British system in which the Executive and the Legislature are more or less fused; Ghana's is more akin to the American system.

The publication of this paper is aimed at directing the attention of Parliament to the need for a law governing the right to information. It is also intended to assist Parliament by providing it with a model. As can be seen, the draft takes the form of a Bill ready for publication! This model, it is hoped, will sharply focus Parliament's attention on the specific provisions. It should help Parliament, if it is impressed, to move expeditiously in the direction of passing a suitable law on the right to information. The adoption of this draft subject to any necessary modification should perhaps be a suitable first step. There are indications that the government is not averse to the passage of such a law.

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There is a general feeling that the passage of such a law is long overdue because its absence renders Article 21(1)(f) a lame provision of the Constitution.

I am delighted to place on record, the gratitude of the Institute of Economic Affairs to the Danish Government, through the Royal Danish Embassy in Accra and DANIDA, whose generous assistance made the publication of this Occasional Paper possible.

Dr. George A. Apenteng
Executive Director
Institute of Economic Affairs

Accra, July 1999

ABOUT THE AUTHOR

Justice PD. Anin was educated at Achimota; Cambridge University where he graduated in history in 1952; and the London School of Economics and Political Science where he graduated in law in 1955.

Following his admission to the Gold Coast Bar in 1956, he engaged in extensive legal practice stretching up to July 1967. Thereafter, he held many public offices including appointments in the Cabinet of the NLC Government, and on the bench as Justice of the Appeal Court, and Justice of the Supreme Court.

From 1980 to September 1994, he sat on the Gambian Court of Appeal from which he retired in September 1994, having served as President of the Court for over eight years.

He contributed to the development of legislation in the Gambia by serving as the first Law Reform Commissioner of the Gambia (1985); drafting new court rules for the Supreme Court and the Court of Appeal; and drafting thirty new laws, all of which were passed by Parliament.

MEMORANDUM

The 1992 Constitution of Ghana is unique in conferring on all persons the right to information, subject to such qualifications and laws as are necessary in a democratic society (Art. 21(l)(f)).

RIGHT TO INFORMATION - A FUNDAMENTAL FREEDOM AND HUMAN RIGHT

This general right to information is part and parcel of the general fundamental freedoms and human rights contained in chapter 5 of the Constitution (Arts. 12-33); and embracing, inter alia:

- the right to life
- * personal liberty
- * protection from slavery and forced labour
- * equality and freedom from discrimination
- * protection of privacy of home and other property
- * fair trial
- * protection from deprivation of property
- * general fundamental freedoms -
 - * freedom of speech and expression, including freedom of the press and other media;
 - * freedom of thought, conscience and belief, including academic freedom;
 - * freedom to practice any religion and to manifest such practice;
 - * freedom of assembly, including freedom to participate in processions and demonstrations;
 - * freedom of association;
 - * freedom of information; and
 - * freedom of movement in and out of Ghana.

There has been further case law development of these fundamental freedoms, with the notable exception of freedom of information

For instance, the Supreme Court case of *Abel Edusei v. Attorney General and Others* (1996-97) SCGLR 1-62, dealt with the jurisdiction of the Supreme Court in a freedom of movement and the significance of a Ghanaian's passport case.

Rosemary Ekwam v. Kwame Pianim and Others (Nos 1,2 and 3) dealt with disqualification issues, Interim Injunction Orders therein (see pages 117, 120 and 431-445, respectively, of the above-quoted (1996-97 SCGLR).

New Patriotic Party v. Attorney General (CIBA case), (1996-97)

SCGLR 729-803 contains important pronouncements and rulings on the freedom of association of corporate persons.

Republic v. Tommy Thompson Books Ltd Nos. 1 and 2 (1996-97) SCGLR 312-319, 804-891 and 484-514, respectively, deal with press freedom, criminal libel and other cognate issues.

In *Mensimah and Others v. Attorney-General and Others* (1996-97) SCGLR 676-728, freedom of association issues are considered and adjudicated upon.

Up to date, however, there have been no suits in the Supreme Court dealing with the freedom of information under article 21(1)(f).

The present draft bill on that enactment is a modest attempt to give teeth to it, and encourage discussion of this vital fundamental freedom, and to invite the legislature to define and regulate the scope and parameters of this constitutional enactment

OPEN GOVERNMENT AND ACCESS TO INFORMATION

Good governance and open government in a democratic society such as Ghana are predicated upon transparency, accountability and probity on the part of the rulers, officials, government departments and agencies alike on the one part, and a well-informed general public on the other part. The latter are entitled, as of constitutional right to access to official information, unless there is good reason in a particular case for withholding it.

This Bill is accordingly designed and intended to increase the availability to the general public of official information in order to enable their effective participation in the making, and a meaningful contribution to the administration, of laws and policies; to promote the accountability of Ministers and officials; and thereby to enhance respect for law and order in society.

It is common knowledge that the citizen can only form an informed opinion about governmental policies, plans and measures when he is in possession of the material facts. He lives in an information age and access to official information is a *sine qua non* for his effective participation in government, both at the local and national levels.

To instance but one professional group in society, media houses are deserving of reasonable access to official information, subject to necessary qualifications in the sensitive areas of state security and national defence, in the discharge of their public duty of dissemination of information, education, and entertainment to the public; Otherwise they stand in danger of peddling falsehoods and defamatory material. A true balance must be kept between personal freedom on the one hand and national security on the other.

The withholding provisions of this proposed Bill follow existing common law and statutory laws, and are intended to strike a correct balance between openness and the interests of effective government.

EXEMPT INFORMATION AND THE LAW OF PRIVILEGE

Furthermore, the categories of exempt information in the Bill (clauses 7-18), accord with the dictates of justice and public policy as exemplified in the law of privileges, a component branch of the existing Ghana Law of Evidence (see s. 87 - 110 of the Evidence Decree, 1975 (NRCD 323)).

Privilege is an example where on grounds of contemporary public policy and justice, relevant evidence ordinarily admissible in evidence may be rendered inadmissible, or immunity may be granted to persons otherwise competent to be witnesses, thereby exempting them from being compelled either to give oral or real evidence, or else to produce a document in evidence

Four main categories of information are, in accordance with the existing laws of Ghana, exempted from disclosure in this Bill, to wit -

- (a) Any information which tends to incriminate a witness in any proceeding or trial (see also the identically worded rule in S.97(1) of the Evidence Decree, 1975 (NRCD 323)).

- (b) An accused person in a criminal trial shall not be compelled to testify, save on his own application. (see on this the identical constitutional provision in article 19(10). No person who is tried for a criminal offence shall be compelled to give evidence at the trial. See also the identically worded 5 96(1) of NRCD 323).
- (c) The following kinds of evidence are by enactments exempted from disclosure as a general rule in all proceedings (a term defined by S.87 of the Evidence Decree, 1975 (NRCD 323), Subsection 3 thus: a proceeding in this context means any action, investigation, inquiry, hearing, arbitration or fact-finding procedure, whether judicial, administrative, executive, legislative or not before a government body, formal or informal, public or private).

The list of exempted kinds of evidence includes state secrets; the identity of an informant who has supplied to the Government information purporting to reveal the commission of a crime or a plan to commit a crime; trade secrets; professional communication between lawyer and client, between professional minister of religion and member of his congregation, and between medical doctor and patient.

- (d) Cabinet papers, confidential documents affecting the national economy, fiscal or budgetary measures; the internal working documents of the Government prior to publication; confidential documents regulating the conduct of diplomacy between Ghana and other sovereign States, and concerning Ghana's conduct of international affairs or relations with international organisations (see Part II clauses 7 - 18 of this Bill, which are modeled after like provisions in s. 87-110 of the Evidence Decree, 1975(NRCD 323)).

While this Bill follows closely the existing law on privileged evidence, it reserves discretionary power to the Supreme Court to decide, upon application made to it either directly or through an inferior court during the pendency of a case before it, whether or not to lift the *prima facie* exemption from disclosure of proffered privileged evidence in a particular case, having regard to the needs of justice, public policy, and vital national security and defence interests, and the competing needs of administrative law and practice. Following the precedent in S.8 of the Courts Act, Act 459, all inferior courts and tribunals before whom questions of disclosure or non-disclosure or production of official information, state secrets and exempt information arise, are in duty bound to suspend their proceedings forthwith and to refer such questions to the Supreme Court for a ruling and appropriate orders for due compliance therewith (see the proposed clause 20 of this Bill).

ANALYSIS OF THE BILL

The attached Bill is accordingly entitled "The Right to Information Bill". Part 1 deals with the right to access to official information; part 2 deals with exempt information, and embodies a comprehensive list of exempt information tallying with those in the Evidence Decree (NRCD 323) S. 87-110.

Part 3 is devoted wholly to the novel constitutional enactments, art 121, which provide for the testimony of public officials before Parliament and the National Security Council, and the mode and manner of the production and disclosure of official information, including exempt information.

Procedural matters are covered in part 4, section 20; part 5 prescribes a limitation period of 20 years; part 6, S.22 is the interpretation or dictionary section of the Act. Special attention may here be drawn to the extended meaning of document in this Act to include real evidence stored in electronically or mechanically produced records, systems or gadgets, as well as such documents as maps, plans, drawings and photographs

FREEDOM OF INFORMATION vs OFFICIAL SECRETS ACT

It is manifestly clear that the express terms of this new bill and the spirit underlying this enactment, an offshoot of the 1992 Constitution (Act 21(E)) are both inconsistent with, and diametrically opposed to, the Official Secrets Act, i.e. S. 192 of the Criminal Code 1960 (Act 29), which makes it a first degree felony punishable by maximum imprisonment of life imprisonment. Under S. 192/Act 29, any person who for any purpose prejudicial to the safety or interests of the Republic

- (a) enters) approaches, inspects, passes over, or is in the neighbourhood of, any prohibited place; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (c) obtains, collects, records or publishes or communicates to any other person, any secret official code, word or password or any sketch, plan, model, article, or note or other document or information, which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (d) retains any official document when he has no right to retain it, or fails to comply with any lawful directions with regard to the return or disposal thereof, shall be guilty of first degree felony

The Constitution is the supreme law of Ghana, and any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void (art 1(i))

If, as it is confidently hoped, Parliament legislates the attached Freedom of Information Bill, then S. 192 of Act 29 would have to be repealed by the same enactment.

The procedure for the repeal of the existing S 192/Act 29 is simple through the insertion of the following Repeal clause as clause 23, headed REPEAL thus:-

REPEAL

23. S. 192 of the Criminal Code, 1960 (Act 29) is hereby repealed.

A BILL ENTITLED THE RIGHT TO INFORMATION BILL, 1999

An ACT to regulate the production and disclosure of information, including official documents in evidence before Parliament and the National Security Council under article 121 of the Constitution, and also before the courts and tribunals created by the Constitution and other enactments; and to regulate the resolution of issues and doubts arising therefrom in the Supreme Court vested with exclusive jurisdiction by article 135 of the Constitution; and other auxiliary matters.

Date of Assent:

BE IT ENACTED by Parliament as follows:-

PART I

THE RIGHT TO ACCESS TO OFFICIAL INFORMATION

1. All persons shall have the right to information, including official documents, subject to such qualifications and laws as are necessary in a democratic society, and in accordance with the provisions of this Act.
2. The right to information herein called the right to access, is available to any person, herein called applicant, who applies for it in writing from the custodian of information, save such as is exempt under this Act, and subject to the conditions and procedures prescribed by this Act.
3. A persons right of access to information, not otherwise designated exempt by sections 7 to 20 below, shall not be hindered or fettered by conditions precedent imposed on him by the custodian, save those prescribed by this Act
4. The custodian, who has in his or its possession or custody the specific information to which an application for access is made, shall respond thereto fully, openly and promptly
 - (a) If the response does not exceed one folio, ie 100 words in length, then the response shall be delivered to the applicant not later than three days from the date of receipt of the application.
 - (b) If the response, whether in the form of an office document or copy thereof, exceeds one folio in length, it shall be delivered to the applicant within a week; save that if the response either exceeds one hundred folios in length of a typewriter document or is a map or plan or drawing or photograph or reproduction of information stored or recorded mechanical or electronically, then it must be delivered within a month of receipt of the application.
 - (c) If the applicant has not provided the custodian with sufficient details of his request, and further particulars are needed by the custodian in order to identify the request, then the time limit for the grant of the response shall begin to run from the date of supply of these further particulars by the applicant to the custodian.

- (d) If the custodian needs more time either to search for the information sought or to consult other sources or to seek permission from another person or agency for the due discharge of his duties, then the time limit for response may be further extended to not more than one month; whereof due notice must be given to the applicant.
 - (e) If another custodian has in his custody or possession the information sought, the applicant must be immediately informed by the first custodian approached, and furnished with the name and address of such other custodian.
 - (f) If it is impracticable for the custodian promptly to respond to the request received, he must notify the applicant immediately of that fact, giving reasons at the same time why it is impracticable; and he shall further inform the applicant of when the response will be ready for collection.
 - (g) If the information sought is either covered by an embargo or can only be released upon the happening of an event in the future, the applicant must be so informed and also told at the same time when it will be ready for collection.
5. An applicant for information designated exempt information by part II below, must first apply to the Supreme Court for an order for access in his favour before submitting his initial application to the custodian for attention.
6. (1) An applicant for information shall pay to the custodian in respect of each application for access, the fees prescribed.
- (2) The custodian shall upon due payment of the said fees, pay them into the Consolidated Fund after issuing therefore an official receipt to the applicant.

EXEMPT INFORMATION

7. (1) The following kinds of information contained in any document official or otherwise, are hereby designated exempt information, and may only be accessed in accordance with the rules contained in this part of the Act, to wit
- (a) Information is exempt if its disclosure will harm or prejudice the security or defence of the State.
 - (b) Information is exempt if its disclosure is or may reasonably be prejudicial or inimical to the Government of Ghana's conduct of its international affairs and diplomacy, or cause damage to the relationship between Ghana and other countries or international organisations.
 - (c) Information is exempt if its disclosure would or might reasonably
 - (i) interfere with, or obstruct an investigation of a breach of the law or failure to comply with the requirements of any statute; or
 - (ii) expose the existence or identity of a confidential source of information in relation to enforcement of the law or the ability of a person to ascertain such existence or identity; or

- (iii) endanger the life or physical safety of a person engaged in the performance of a legal or public duty; or
 - (iv) prejudice the fair trial of a person; or
 - (v) expose lawful procedures for the prevention or detection of a crime or breach of the peace or evasions of the law if disclosure is reasonably likely to render such procedures ineffective, or
 - (vi) prejudice the enforcement of lawful measures for the protection of public safety.
- (2) Where investigation is carried out and information is obtained for the purposes of a criminal trial, such information shall be exempt until after the trial is concluded or until the decision is taken by the competent official not to prosecute, after which it shall cease to be exempt.
- (3)
 - (a) Information is exempt which discloses the identity of informers or persons who give information to the police or other security agencies for the detection of crimes.
 - (b) The Government of Ghana's privilege from disclosure of the identity of an informant who has supplied to the Government information concerning the commission of a crime or a plan to commit a crime, is exempt; subject to S. 107 of the Evidence Decree, 1975.
- (4) A document containing minutes, opinions, advice, recommendations, deliberations or accounts of meetings which have taken place or been given within a government department or public body or authority being an internal working document, is exempt from disclosure where the government department or public body or authority in control of the document, has through its professional head or the Minister in charge thereof issued a certificate accordingly. The said certificate shall specify the nature of the public interest which will be endangered by disclosure, and whether it relates to the whole document or part or parts thereof only, and identifies such part or parts.
- (5) A certificate issued under the foregoing subsection (4) shall be served on an applicant for access not later than fourteen days from the date of request submitted for access; and the applicant shall be informed that access has been refused on the grounds stated in the certificate
- (6)
 - (a) A document submitted to the Cabinet for its consideration, or which has been prepared for submission to the Cabinet for consideration, or any official record of the Cabinet not yet generally published or released to the general public, is exempt from access or disclosure.
 - (b) Unless and until it has been officially published, a document, access to which would involve disclosure of discussions or deliberations or decisions of the Cabinet, is exempt from access or disclosure.
 - (c) A certificate signed by the Secretary to the Cabinet or the National Security Council, as the case may be, certifying that a document falls within category (a) or (b) of this sub-section 6, establishes conclusively that such document is exempt; but is subject to the ruling

of the Supreme Court under S.20 of this Act.

- (7) (a) A document is exempt if it has been submitted to either the President or the Vice-President or has been prepared for submission to either of them, or is an official record of their offices, or is a copy of such a document
- (b) A document containing opinions, advice or recommendations or minutes or consultation given or made to either the President or Vice-President is exempt unless it has been officially published.
- (c) A certificate signed and issued by the Secretary to either the President or Vice-President certifying that a document falls within either category (a) or (b) of this sub-section 7, establishes conclusively that such document is exempt.
- (8) A document is exempt, prior to official publication, if its disclosure would, or could seriously prejudice or endanger the management of the national economy or create undue disturbance in the ordinary course of business or trade in the nation, or unduly benefit or be detrimental to any person or group of persons because it gives premature information about future economic or fiscal measures to be introduced by Government or Parliament.
- (9) Documents which fall under the foregoing sub-section 8 of section 7 include, but are not limited to, documents dealing with
- (i) currency and exchange rates;
- (ii) interest rates and dividends;
- (iii) taxes, customs and excise duties;
- (iv) regulations issued by the Bank of Ghana for the control and supervision of the affairs of commercial banks, or financial institutions, or rural banks, or forex bureaux, or insurance companies; and
- (v) the National Budget and all matters falling under chapter 13 of the Constitution entitled Finance.
- 10 (1) A document is exempt if it relates to purely personal information or details of any person.
- (2) Personal information referred to in the foregoing sub-section includes, but is not limited to, information about a person's physical or mental health or marriage or employment record; unless the person concerned waives his privilege of non-disclosure or consents to the disclosure through a qualified person of his choice.
- 11 (1) Information is exempt if it is, or affects a trade or commercial secret (as defined in S. 22 below), and includes a patent or copyright, or any secret formula or technique or process known and used to advantage by only one manufacturer or his agent.
- (2) The owner of a trade secret or his authorised agent has a privilege of non-disclosure of his trade secret unless the value of the disclosure of

the trade secret substantially outweighs the disadvantages caused by its disclosure.

- (3) When disclosure of a trade secret is required, the competent court, on its own motion or at the request of an interested party, may take such action to protect the trade secret from further disclosure or unauthorised usage as may be appropriate.
12. A person has a privilege of non-disclosure of how he cast his vote at a public election or referendum conducted by secret ballot unless sufficient evidence has been introduced to support a finding of fact that it was cast illegally.
13.
 - (1) A person making a record, report or document required by law has no privilege to refuse to disclose or to prevent any other person from disclosing the contents of the record, report or disclosure except as otherwise specifically provided by any enactment.
 - (2) A public official or public entity by whom a record, report or disclosure is required by law to be made, has a privilege to refuse to disclose the contents of the record, report or disclosure if the law requiring it to be made prevents its disclosure for the purpose in question.
14.
 - (1) A lawyer and his client are entitled to privilege of nondisclosure of their mutual confidential communication reasonably related to professional legal services, and within the limits and exceptions prescribed by the Evidence Decree, 1975 (NRCD 323) S. 100-102.
 - (2) However, in cases falling under S. 100 of the said Evidence Decree, 1975 (NRCD 323), there shall be no privilege of non-disclosure generally, save as is otherwise permitted by the Evidence Decree in the specified cases in S.101 (a) - (e) inclusive.
15.
 - (1) In any trial or proceeding, a person has a privilege to refuse to disclose any matter, or to produce any document or object that will incriminate him.
 - (2) A person's privilege against self-incrimination does not include the matters prescribed in subsections (2) to (5) of section 97 of the Evidence Decree, 1975 (NRCD 323), to wit
 - (a) where the court deems it necessary to the determination of an issue to order that a person shall submit either his body to examination for the purpose of discovering or recording his physical features or other identifying characteristics or his physical or mental condition; or to furnish or permit the taking of samples of body fluids or substances for analysis; or to speak, write, assume a posture, or make a gesture or do any other act for the purpose of identification; or
 - (b) if the accused in a criminal trial voluntarily testifies on his own behalf, he has no privilege under the foregoing subsection (1) of section 15 to refuse to disclose any matter or produce any document that is relevant to any issue in the criminal trial or prosecution.

- (3) A matter or document incriminates a person within this Act if it constitutes, or forms an essential part, or when taken in conjunction with other matters already disclosed, it is a basis for a reasonable inference of a violation of the criminal laws of Ghana; provided that a matter or document which would otherwise incriminate a person will not do so if he has become permanently immune from punishment for a violation of the criminal laws of Ghana.
- 16 (1) A person has privilege of non-disclosure of confidential communication between himself and his medical or professional expert in connection with his diagnosis or treatment for a mental or emotional condition.
- (2) A person has privilege of non-disclosure of confidential communication between himself and his professional minister of religion or spiritual adviser in accordance with, and subject to section 104 of the Evidence Decree, 1975 (NRC 323).
- (3) A person has a privilege to refuse to disclose to a court or tribunal of fact, information concerning the offering or acceptance of valuable consideration in compromising a claim which was disputed either as to validity or amount, or information concerning conduct or statements made as an integral part of such compromise negotiations or award; provided that no such privilege of non-disclosure of information exists if the compromise was made with the intention that it would not be so privileged from disclosure to a tribunal of fact.
17. A person has a privilege to refuse to disclose confidential communication between himself and his spouse during their marriage, whether monogamous or polygamous.
18. A document, the disclosure of which would intrude on purely personal information about any person unreasonably, or is contrary to public policy, is exempt.

PRIVILEGE FROM DISCLOSURE UNDER ART 121 OF THE CONSTITUTION

- 19 (1) A person summoned to attend to testify, or to produce a document before Parliament shall be entitled, in respect of his evidence, or the production of a document, as the case may be, to the same privileges as if he were testifying before a court
- (2) A public officer shall not be required to produce before Parliament a document where
- (a) the Speaker certifies that the document belongs to a class of documents, the production of which is injurious to the public interest; or that disclosure of the contents of the document will be injurious to the public interest; or
- (b) where the National Security Council certifies that the document belongs to a class of documents, the production of which is injurious to the security of the State; or that the disclosure of the contents of the document will be prejudicial to the security of the State.

- (3) Where there is a doubt as to the nature of a document such as is referred to in the foregoing subsection (2) of section 19, the Speaker or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for the resolution of the alleged doubt and the making of an appropriate order.
- (4) An answer by a person to a question put by Parliament shall not be admissible in evidence against him in any civil suit or criminal proceedings out of Parliament, except proceedings for perjury brought under criminal law.

PART IV PROCEDURE

- 20
- (1) The Supreme Court under article 135 of the Constitution, shall have exclusive jurisdiction to determine whether an official document shall not be produced in court because its production or the disclosure of its contents will be prejudicial to the security of the State or will be injurious to the public interest.
 - (2) Where any issue referred to in the foregoing subsection (1) arises as to the production or otherwise of an official document in any proceedings before any court, other than the Supreme Court, the proceedings in that other court shall be suspended while the Supreme Court examines the document and determines whether the document should be produced or not; and the Supreme Court shall make the appropriate order.
 - (3) The proceedings of the Supreme Court as to whether an official document may be produced, shall be held *in camera*.
 - (4) For the purpose of this section, the Supreme Court may
 - (a) order any person or authority that has custody, legal or otherwise, of the document to produce it, and any person or authority so ordered shall produce the document in question for the purpose of inspection by the Supreme Court; and
 - (b) determine whether or not the document shall be produced to the Supreme Court or to the other court from which the reference was made, after hearing the parties to it or their legal representatives, or after having given them the opportunity of being heard.
 - (5) Where the Supreme Court is of the opinion that the document should be produced in evidence, it shall make an order that the person or authority that has custody or possession of the document shall produce it or shall produce so much of the contents of it as is essential for the proceedings in accordance with the terms of the order.
 - (6) Where there is a doubt as to the nature of any document referred to in clause 2 of article 121 of the Constitution (see S.19 above), the Speaker of Parliament or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for determination by that court whether the production or the disclosure of the contents of the document would be injurious to the public interest or public policy, or prejudicial to the security of the State.

LIMITATION

- 21 (1) Every document which falls into the category of exempt information by virtue of part II of this Act shall cease to be exempt after the expiration of a period of 20 years from the date of its coming into existence, hereinafter called the limitation period.
- (2) On the expiration of the limitation period of a document, every person shall have access to a document affected by the limitation period, and the custodian of such a document shall not be entitled to refuse access but shall grant access in accordance with the provisions of this Act.

PART VI

INTERPRETATION

22 In this Act unless a contrary intention appears from the context,

“access”	means the right or privilege to approach or reach or make use of or retrieve information in a document;
“applicant”	means a person who applies for permission to access a document;
“constitution”	means the 1992 Constitution;
“custodian”	means a person or agency or department who has in his possession or under his control or in his keeping, a document to which access may be applied for under this Act;
“department”	means a department of the Public Services of Ghana under chapter 14 of the 1992 Constitution;
“document”	means any paper or writing or any map, plan, sketch, drawing or photograph, or anything from which sounds, images or writings can be or are reproduced, or any article on which information has been stored or recorded mechanically or electronically or by any other scientific method or process;
“internal working document”	means a document which contains opinions, advice, recommendations, deliberations, minutes or consultations within a department, agency, authority or the Public Services;
“exempt information or document”	means information or document which is by the provision of part II of this Act exempt from access for a period of up to 20 years by virtue of S.21 herein;

“state secret” is information considered confidential by the Government which has not been officially disclosed or published to the general public, and which it would be prejudicial to the security of the State, or injurious to the public interest to disclose;

“trade secret” means a secret formula, technique, process, programme, device or product known and used to advantage by only one manufacturer, and the disclosure of which would cause significant economic loss to the owner or manufacturer.

PART VII

REPEAL

S. 192 of the Criminal Code, 1960 (Act 29) is hereby repealed.

EDITORIAL BOARD (IEA)

B.J. da Rocha <i>(Fellow, IEA)</i>	- Chairman
Dr. Charles Mensa <i>(President, IEA)</i>	- Member
Dr. George A. Apenteng <i>(Executive Director, IEA)</i>	- Member
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H. Van Hien Sekyi <i>(Fellow, IEA)</i>	- Member
Dr. John D. Sullivan <i>(Executive Director, CIPE, Washington, DC)</i>	- Member
Lord Harris of High Cross <i>(House of Lords, London)</i>	- Member

ANNEX TWO

QUANTITATIVE RESULTS OF THE ATTITUDE SURVEY

1	Do you believe that the right to information is a fundamental human right? (mark one ✓)	Number	Percent (%)
	Yes	32	100%
	No	0	0
	Do not know	0	0

2	Are the existing rights of access to information: (mark one ✓)	Number	Percent (%)
	Good	1	3.1
	Adequate	2	6.3
	Not adequate	19	59.4
	Poor	8	25
	Do not know	1	3.1
	Not responded	1	3.1

3	Do you feel there needs to be a law governing the right to information? (mark one ✓)	Number	Percent (%)
	Yes	32	100
	No	0	0
	Do not know	0	0

4	Do you think a law will improve access to information? (mark one ✓)	Number	Percent (%)
	Yes	28	87.5
	No	3	9.4
	Do not know	1	3.1

5 Should Freedom of Information legislation be a priority for government in light of other policy initiatives? (eg poverty alleviation, health, education and so on)	Number	Percent (%)
Yes	27	84.4
No	5	15.6
Do not know	0	0

6 The press are often accused of producing sensational or even unfounded stories. Will not Freedom of Information just give the press more licence to be irresponsible? (mark one ✓)	Number	Percent (%)
Yes	4	12.5
No	27	84.4
Do not know	0	0
<i>“They need education, to base issues on facts; they must also recognise what is in public interest”</i>	1	3.1

7 With which of the following statements do you most strongly agree? (mark one ✓)	Number	Percent (%)
Information held by the government is held for official purposes and effectively belongs to the government	0	0
Information held by the government is held on behalf of the public interest and should be made available wherever and whenever this would not damage the public interest or harm private individuals	29	90.6
It is solely for the government to decide what information should, and what should not, be made available to the public	0	0
Not responded	3	9.4

8a Do you believe that all citizens have equal access to government information under existing arrangements?	Number	Percent (%)
Yes	2	6.3
No	28	87.5
Do not know	1	3.1
Not responded	1	3.1

8b If no, do you feel that it is easier for certain classes or groups of individuals to gain access than others because of (mark all that apply ✓)	Number	Percent (%)
Gender	3	9.4
Economic level	15	46.9
Religious affiliation	2	6.3
Geographic area	5	15.6
Ethnic orientation	1	3.1
Other: please specify		
• <i>Political status/affiliations</i>	10	31.3
• <i>Social status</i>	3	9.4
• <i>Awareness of rights</i>	1	3.1
• <i>Depends on purpose of use of information</i>	1	3.1
• <i>Personal contacts</i>	1	3.1

9 What aspect of government do citizens most want information about? (mark all that apply ✓)	Number	Percent (%)
Health	18	56.3
Education	20	62.5
National budget and expenditure	28	87.5
Local government expenditure	21	65.6
Legal system	18	56.3
Pensions	15	46.9
Land ownership	13	40.6
Public works, eg roads, bridges, etc.	19	59.4
Police	11	34.4
National defence	15	46.9
Passport	11	34.4
Licensing	12	37.5
Other please specify		
<i>Native/chieftancy affairs</i>	1	3.1
<i>Combination of above</i>	1	3.1

10 Who do you feel most benefit from the implementation of Freedom of Information legislation? (Choose the three (3) most important and number 1 2 3 in order of priority)	Not prioritised		Priority 1		Priority 2		Priority 3	
	No.	%	No.	%	No.	%	No.	%
Ordinary Citizens	3	9.4	13	40.6	3	9.4	3	9.4
Members of Parliament	3	9.4	4	12.5	1	3.1	3	9.4
Press	4	12.5	8	25	14	43.8	4	12.5
Lawyers	4	12.5	1	3.1	0	0	1	3.1
Opposition Parties	4	12.5	0	0	3	9.4	2	6.2
NGOs	3	9.4	0	0	0	0	1	3.1
Private Enterprise	3	9.4	0	0	0	0	1	3.1
Researchers	4	12.5	1	3.1	6	18.8	10	31.3
Other (please specify)	0	0	0	0	0	0	0	0

11 Do you believe that the information provided by government about their activities is: (mark one ✓)	Number	Percent (%)
Good	2	6.2
Adequate	3	9.4
Not adequate	20	62.5
Poor	7	21.9

12 If you are not satisfied that the information you have received from a Ministry or government office is accurate and complete, would you know where to go to seek redress? (mark one ✓)	Number	Percent (%)
Yes	8	25
No	23	71.9
Do not know	1	3.1

13 Which categories of information is it reasonable for government to exempt under Freedom of Information? (mark all that apply ✓)	Reasonable		Not reasonable		Do not know	
	No.	%	No.	%	No.	%
Defence	23	71.9	2	6.2	2	6.2
Government policy	5	15.6	15	46.9	0	0
Policy advice to Cabinet	14	43.8	9	28.3	1	3.1
Relations with foreign powers (diplomacy)	12	37.5	9	28.3	2	6.2
Government revenue	6	18.75	16	50	0	0
Government expenditure	7	21.9	15	46.9	0	0
Law enforcement and national security	14	43.8	9	28.3	2	6.2
Information given in confidence	19	59.4	4	12.5	2	6.2
Commercially sensitive information	18	56.3	2	6.2	3	9.4
Personal information (unless related to the person making the request)	20	62.5	6	18.8	1	3.1
Minutes of Cabinet meetings	20	62.5	7		0	0
Other (please specify) <i>None reasonable if exempted permanently</i>	0	0	1	3.1	0	0
Not responded	2		6.2%			

14 What obstacles do citizens face in obtaining access to government information? (mark all that apply ✓)	Number	Percent (%)
do not know where or who to ask	21	65.6
distance to travel	9	28.1
inconvenient office hours	3	9.4
obstructive officials	26	81.3
information considered confidential	25	78.1
cost, e.g. photocopying charges	4	12.5
complicated procedures	18	56.3
records too disorganised for staff to locate relevant information	23	71.9
information does not exist	18	56.3
Not responded	2	6.2

15 Well-maintained records are essential to support access to information principle. In Ghana, are government records (mark one ✓)	Number	Percent (%)
Very good	0	0
Adequate	2	6.2
Inadequate	15	46.9
Poor	11	34.4
Do not know	2	6.2
Not responded	2	6.2

ANNEX THREE

EXAMPLES OF PROCEDURES

Copies of the full texts of the following material were made available to workshop participants. Full sets were distributed to the following locations after the workshop:

Research Centre, Parliament Ghana	University of Ghana Faculty of Law Library Legon, Ghana	Public Records and Archives Administration Department Accra, Ghana
Law Reform Commission Accra, Ghana		National Media Commission Accra, Ghana

Legislation	
AUSTRALIA Ombudsman Act 1976 Freedom of Information Act 1982	http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/ http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/
CANADA Access to Information Act 1982 Privacy Act 1983	http://canada.justice.gc.ca/FTP/EN/Laws/Chap/A/A-1.txt http://canada.justice.gc.ca/FTP/EN/Laws/Chap/P/P-21.txt
IRELAND Freedom of Information Act 1997 (edited version)	http://www.irlgov.ie/finance/free1.htm
SOUTH AFRICA Promotion of Access to Information Act 2000	http://www.polity.org.za/govdocs/legislation/2000/index.html
UK Data Protection Act 1998 Freedom of Information Bill 1999	http://www.hmso.gov.uk/acts/acts1998/19980029.htm http://www.publications.parliament.uk/pa/cm199900/cmbills/005/2000005.htm

USA Privacy Act 1974 Freedom of Information Act 1968 Electronic FOIA 1996 (HR 3802)	http://www.usdoj.gov/04foia/foiastat.htm http://www.usdoj.gov/04foia/privstat.htm http://www.gwu.edu/~nsarchiv/nsa/efoia.html
Codes of Practice	
EUROPEAN UNION Code of Conduct concerning public access to Commission and Council documents	http://europa.eu.int/en/comm/accdoc/code.html
HONG KONG Code of Access on Information	http://www.info.gov.hk/access/code.htm
UK Lord Chancellor's Code on the Management of Records under Freedom of Information, Version 21a (21 June 2000)	http://www.pro.gov.uk/recordsmanagement/CodeOfPractice.htm
UK Code of Practice on Access to Government Information, 2 nd edn., 1997	http://www.homeoffice.gov.uk/foi/ogcode981.htm
Manuals	
UK <i>Access to Public Records</i> , 1 st edn., September 1999	Public Records Office, Kew, Richmond, Surrey TW9 4DU, UK Tel: +44 20 8876 3444 Website: http://www.pro.gov.uk/
UK <i>Open Government: a guide for staff to the Code of Practice on Access to Government Information</i> , Jan. 1997	Department for Education and Employment (DfEE), Records and Information Management Unit, L5 Caxton House, London SW1H 9NF, UK
Citizens Charters	
AUSTRALIA Office of the Commonwealth Ombudsman	http://www.comb.gov.au/publications/service_charter/charter2.html
CANADA Canadian Charter of Rights and Freedoms	http://insight.mcmasters.ca/org/efc/pages/law/charter/charter.text.html
INDIA Reserve Bank of India, Exchange Control Department	http://ns.securities.ru/Public/Public98/RBI/PR/char980604.html

<p>UK Charter for Inland Revenue taxpayers Citizen's Charter for Northern Ireland The Public Record Office Citizen's Charter Statement</p>	<p>http://www.inlandrevenue.gov.uk/pdfs/irl67.htm http://www.ni-charter.gov.uk/charter.htm http://www.pro.gov.uk/readers/charter.htm</p>
Information access initiatives	
<p>INDIA MKSS, Rajasthan Public Affairs Centre</p>	<p>Village and PO Dev Dungri, Via Kabeda, District Rajasmand, Rajasthan, India 578 16thB Main, 3rd Cross, 3rd Block, Koramangala, Bangalore 560 034, India Tel: +91 80 5520246/5525453/ 5525452 Fax: +91 80 5537260 Email: pacblr@blr.vsnl.net.in</p>

*Please note that web site addresses may be subject to change.
Addresses are correct as of September 2000*

ANNEX FOUR

RESOURCE MATERIAL

National Information Clearing House Project Ministry of Communications, Government of Ghana

The Ministry of Communications recognises that access to reliable and timely information is essential for transparent and accountable government. In addition, Government, private business, NGOs and the general public require information for effective planning and decision-making. A core component of the national communications policy is the use of information communications technologies (ICTs) to integrate electronic information systems being developed by public institutions in Ghana. The intention is to make more effective use of existing capacity and to support information exchange between public institutions.

The National Information Clearinghouse Project of the Ministry of Communications is part of the national communications strategy. The pilot will be launched on 7 September 2000. The aim of the project is to establish links between the electronic information systems operating within different institutions of government to facilitate improved access to and the sharing of information. This includes:

- building capacity through the provision of training and awareness raising within government
- developing Web-based information systems within institutions
- developing a website for Ghana with links to various government institutions.

The initial pilot comprises a feasibility study involving Parliament and nine Ministries, as below, with the Ministry of Education as the first participant. It is expected that this will lead to a programme extending throughout Government if sponsorship is secured.

- Office of the President
- Communications
- Finance
- Foreign Affairs
- Education
- Health
- Trade and Industry
- Food and Agriculture
- Employment and Social Welfare.

The expected outcomes for the pilot are:

- mechanisms for effectively managing information
- functional information and advisory services
- trained information managers and two support staff in each participating institution
- necessary hardware supplied to each participating institution.

TRAINING

It is important that within the framework of the project, capacity for managing electronic information systems is built within each institution. It is intended that training will be provided to the Information Manager and two supporting staff in each ministry. These will co-ordinate with the Information Services Department of the Ministry of Communications.

Building capacity within government for creating sustainable information systems is a critical objective of the project. In addition to technical and data entry skills, the project hopes to sensitise participating institutions to the need to collate and update information in order to maintain their systems as useful resources for citizens.

INFORMATION/USERS

The purpose of the project is to provide mechanisms and training for establishing web-based information systems that will allow them to be accessed by remote users, both citizens and other government institutions. Information that will be made available is likely to include statistical data, Ministry reports, information about services and contact details, etc. For example, the Ministry of Education will make available data such as the number of placements in individual schools, the location of schools, and the courses offered in each institution. Each institution will have an email address for enquiries and the support staff trained as part of the project will be responsible for directing these to the appropriate officer.

The ability to obtain information about Government institutions remotely will enhance service delivery and strengthen transparency. Citizens will be more informed about what services are provided and how they can access them. The provision of enquiry services will help to reduce the perceived gap between government and its citizens. The national communications policy encompasses the provision of telecentres to provide Internet access for citizens. It is intended that these will be established through the activities of private enterprise.

WEBSITE

The existing Government of Ghana website was operated by private organisations due to the lack of capacity within Government. It has not been updated since October 1998. It is intended that the Ministry of Communications will manage the website. The existing site will be updated and may be redesigned. It will provide a central point of access to the Web-based information systems of the individual Ministries.

Client Services Units

Civil Service Performance Improvement Programme, Office of the Head of Civil Service, Ghana

The Civil Service Performance Improvement Programme (CSPIP) is a public sector reform initiative to reorient the civil service to be ‘customer-focused and client sensitive’. CSPIP recognises that there is a need to change the structure and systems of the civil service in order to deliver services more effectively and transparently. This supports Vision 2020, a government initiative to establish Ghana as a middle-income country by the year 2020. In order to achieve this development target, the government must put in place mechanisms for obtaining feedback on the delivery of services in order to plan effectively improvements in public services.

As part of the CSPIP programme those institutions most directly concerned with the delivery of services to the public were targeted for the implementation of Client Services Units. The Head of Civil Service Support Unit, initially called the Customer Services Improvement Unit, is responsible for establishing Client Services Units (CSUs) in the ministries, departments and agencies (MDAs) and for monitoring their performance. The key aims of this department are:

- to facilitate the development of explicit standards for prompt and efficient service delivery by MDAs
- to monitor standards of service delivery from a central perspective
- to facilitate regular improvements in service delivery standards, year-on-year.¹

Without clearly defined and publicised standards those delivering services cannot effectively measure their performance. More importantly, if citizens do not know what services are on offer, how much they cost and how long the process will take, there are opportunities for corruption. In such an environment the dissatisfaction with the government agencies will be increased. Without easy to use and well-publicised complaints procedures, there is no opportunity for citizens to obtain redress. To address these issues the CSUs:

- facilitate and improve the standards of the services delivered by their organisation
- publicise services of the MDA to ensure that citizens know about them, how to use them and how to complain if the services are substandard
- deal with complaints from the public about services and ensuring that genuine problems are redressed.²

The first CSUs were established in February 1999. There are now CSUs in 30 MDAs and the programme is being rolled out to the district and metropolitan assemblies. The reporting lines of staff of the CSUs are within their respective MDA – they are not directly supervised by the Head of Civil Service Support Unit.

STANDARDS

Service delivery standards have been worked out for each MDA in consultation with both staff and users. These define both the types and levels of service to be provided by the institution and include:

¹ Office of the Head of Civil Service, *The Public Complaints Unit*, LNO:PCU1 [brochure]

² Office of the Head of Civil Service, *Guidelines on setting up Client Services Units*, LNO: PCU2 [brochure]

- fees to be charged for services
- timeframes for processing applications
- procedures to be followed.

Brochures setting out these standards are drafted and then validated through a consultative process. This process ensures that realistic targets are set that can be delivered by the institution, and to make clients aware of the constraints within which services operate. These are made available to the public in the relevant MDA. Existing brochures include:

- The Passport Office Service Delivery Standards
- How to Register Your Land
- Preparation of Parcel and Cadastral Plans for Land Title Registration
- Procedure for Change of Ownership of Vehicle
- Resolutions of Disputes between Landlords and Tenants
- How to Acquire a Ghanaian Passport
- The Public Complaints Unit
- Regulations and Procedure for Issuance of Building Permit.

The intention is to streamline and regularise service delivery. By improving access to information about services, citizens can be more aware of their rights. Not only will this reduce opportunities for corrupt practices by officials but it will also speed up the processing of applications by giving citizens with clear guidance on what supporting documents they must provide.

INFORMATION DISCLOSURE

The Code of Conduct for the Ghana Civil Service, issued by the Office of the Head of Civil Service, clearly states that

Civil servants should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict access to information only when the wider public interest clearly demands that the information should not be released.³

Routine information about the provision of services may be disclosed to the public and is vital in improving public perceptions and customer satisfaction. Information may not be disclosed because civil servants are unclear what information falls within provisions that preserve secrecy, for example:

A Civil Servant shall not seek to frustrate the policies, decisions or actions, of Government by the unauthorised, improper, or premature disclosure of any information to which he has had access as a Civil Servant.⁴

The Client Services Units provide an important focus for disseminating information about public services. This may help to reduce the gap between public perception and the reality of the civil service.

³ Office of the Head of Civil Service, *Code of Conduct for the Ghana Civil Service: Part II – Guiding Principles* of Code 2 (e) Transparency

⁴ *ibid*, Part V – Information/Disclosure of Classified Material 16 (2)

COMPLAINTS

The Client Services Unit is the recipient of customer complaints. They are expected to publicise the complaints procedures and establish performance targets for responding to customer complaints or complaints from citizens. This is an important part of the system of collating feedback in order to improve services.

In addition, the Head of Civil Service Support Unit provides a secondary appeal channel if citizens fail to get satisfactory redress from the relevant CSU. The complaint must have been processed by the CSU before the Support Unit becomes involved. Details of the procedure are made available in the brochure *The Public Complaints Unit*.⁵

SUPPORT TO CSUs

The Head of Civil Service Support Unit provides guidance to the CSUs in the following areas:

- setting and publicising standards
- marketing services
- streamlining procedures to make them more efficient
- providing training in service delivery and audit of services.

The Unit does not impose service delivery standards but does provide advice on reaching realistic targets. It also offers guidance on marketing services through public education programmes involving radio and television interviews, advertisements in the press, notice boards in offices and the production of brochures.

In addition, the Office of the Head of Civil Service (OHCS) issues circulars to MDAs, eg notifying of requirements to publish standards, prices and complaints procedures; setting down the appropriate rank of the Head of the Client Services Units, etc.

MONITORING

The CSUs are required to submit annual progress reports to the Head of Civil Service Support Unit. Part of their role is to monitor service delivery in their MDA and to identify areas for improvement. They are supposed to review service standards annually and to look for opportunities to market their services more effectively.

⁵ The Public Complaints Unit was a former name of the Head of Civil Service Support Unit.

Freedom of Information (FOI)

Access to information legislation provides citizens with a statutory ‘right to know’. In practice the specific provisions of the legislation as well as the government’s commitment to administer requests will determine the extent to which citizens are able to obtain access to records of government activities. The intention is to provide access whenever a request is framed within the provisions of the Act, not for public officials to use the legislation as a secrecy law.

Key points of freedom of information laws are that they:

- confer legal rights on citizens that can be enforced
- seek to change the culture of secrecy within the civil service
- provide access to records not just information
- define exemptions
- require agencies to identify their reasons for withholding information
- provide an administrative appeal process for challenging denials.

RIGHT OF ACCESS TO INFORMATION

In many countries the principles of freedom of expression and free exchange of information are enshrined in the constitution. However specific freedom of information legislation is required for citizens to exercise these rights. For example, the 1996 Constitution of South Africa contains provisions for the rights of access to information, requiring that these rights be enabled by specific legislation. The Promotion of Access to Information Act was passed in February 2000. The Act sets out its aim in the Preamble:

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights....

RECOGNISING THAT-

- *the system of government in South Africa before 27 April 1994 ... resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations...*

AND IN ORDER TO-

- *foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;*
- *actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.*

Many countries that have introduced FOI are seeking to replace the ‘culture of secrecy’ that prevails within civil service with a ‘culture of openness’. FOI laws are intended to promote accountability and transparency in government by making the process of government decision-making more open. The intention is to make disclosure the rule, rather than the exception. Although some records may legitimately be exempt from disclosure, exemptions should be applied narrowly (see section on exemptions below).¹

¹ See Appendix 1 for a list of countries that have freedom of information laws.

FOI serves to make government more accountable to the legislature as well as directly to citizens. By making information on executive programmes more accessible, the members of the legislative branch of government will be able to exercise their monitoring role more effectively. By making FOI requests or utilising the information published by governments under the FOI legislation, the legislature is better informed and can ask more searching questions of government. This does not replace the formal checks and balances built into the balance of power, rather it enhances their role.

SCOPE

The jurisdiction of FOI legislation varies a great deal and it should be determined by the structure of government in the particular country. For example, in the USA the federal FOI Act applies only to the executive branch of the federal government. Most US states have supplemented the federal law by enacting their own ‘sunshine’ laws to apply the principles of FOI to state and local government. However in Ireland, as in many other countries, the Freedom of Information Act applies not only to the executive, but also to local government, companies that are more than 50% state-owned and even to the records of private companies that relate to government contracts.

FOI laws can, but do not have to, be applied retrospectively. Many countries have adopted a non-retrospective law, adopting a progressive ‘rolling back’ approach. This means that only records created after the date the Act becomes effective fall under the jurisdiction of the Act. However others, for example South Africa, have adopted fully retrospective acts. This provision does not normally apply to information held on individuals (see section on Privacy Acts).

RIGHTS OF ACCESS TO RECORDS

Under freedom of information laws citizens usually have the right to request copies of documents, not just the information contained within. Many FOI laws provide that, where only part of the information may be disclosed, agencies should provide a copy of the document excluding (redacting) the exempt information rather than refusing access. Fees may be charged for the provision of information but they should not be prohibitive. For example, in the USA charges are levied for lengthy requests but these are usually restricted to cost-recovery.

In the USA the government disseminates a lot of information at no cost. To aid this programme the World Wide Web is utilised. However, in addition, agencies can levy reasonable charges for search, review and copying. Different classes of users may also be charged different scales of fees, i.e. academic use as against commercial use.

Time limits for responding to requests and appeals should be set out in the FOI Act. These are legally binding. Failure to comply with these should constitute grounds for appeal to the Act’s external monitors, as would the imposition of unreasonable charges.

It is important to note that under many FOI Acts requests for information must be made in writing, whether by mail, fax or email. Requests made over the telephone often do not constitute FOI requests.

PRIVACY ACTS

Some freedom of information legislation incorporates provisions for accessing records held on individuals. Alternatively this aspect may be dealt with separately in a Privacy Act. This is the planned approach in South Africa.

Unlike the access provisions for general records of government in many FOI laws, access to personal records held by government agencies is usually applied retrospectively. However the legislation is structured, access to personal information is usually restricted to records held within a system of filing and that are retrieved by some form of personal identifier, ie personal name, number, index, etc. For example, the Canadian Privacy Act established the requirement that personal information should be managed throughout its life cycle, that is from its creation through to its ultimate destruction or preservation in the National Archives. Along with the right of access to these personal files, a key provision of some privacy laws is that citizens should have the right to have incorrect information amended.

In the USA the right of privacy only extends during the lifetime of the individual concerned. Individuals have the right to access their own files however, after death, their file may be requested by anyone.

RECORDS MANAGEMENT

Even legally enforceable rights of access to information are meaningless if government records are chaotic. Even where the information would be available in principle, if it cannot be found then it cannot be made available to citizens. Not only does this limit government accountability and their credibility in the eyes of their citizens, it has a serious impact on the capacity of government to discharge its duties efficiently.

Records management issues should be addressed by a FOI law and ideally improvements implemented prior to its introduction. One of the provisions of most FOI laws is that agencies must publish lists of the records series that they hold. Therefore series must be organised and captured within a record keeping system. In Canada, in addition to the requirement that descriptions of records are published, there was a commitment to the introduction of policies, standards and best practice as well as systems to ensure that information was managed through its life cycle. This was in recognition of the fact that without such procedures, FOI could not be successfully implemented.

Sound records management principles must be adhered to if governments are to successfully implement the requirements of access laws. Poor records management practices should not be allowed as an excuse for lengthy replies and sub-standard document searches.

APPEALS

The right of appeal against a withholding decision is one of the most important provisions of a Freedom of Information Act, protecting against undue secrecy by providing a mechanism for the scrutiny of decisions. Without this safeguard, the effectiveness of FOI would be minimised. Laws usually require agencies, when denying requests, to notify requesters of their rights of appeal and the procedure to be followed. These are then legal rights and are enforceable.

If access to records is denied the agency concerned should notify the requester of the reasons for their refusal, and cite the exemption that covers the records. Sanctions for non-compliance should be provided for in the legislation.

Most freedom of information legislation provides for a two-stage appeal.

- Firstly, there is an administrative appeal to the agency concerned. Citizens can lodge an appeal requiring the agency to conduct an internal review of the decision. This appeal should be heard at a more senior level than the original decision-maker. If the denial of access is upheld it is important that citizens then have recourse to an independent arbitrator.

- The second stage of the appeal process under most existing FOI Acts is to an independent Ombudsman or Information Commissioner. Alternatively the second appeal stage could be for judicial review as is the case in the USA. In the US, if an administrative appeal fails, complainants can apply to the district courts. This is made easier by allowing the individual seeking access to file their suit either in the district in which they are resident, or in the district in which the records are lodged. In some countries the Ombudsman could also take the complaint to the courts.

Whichever option is chosen, the key point is that there is an effective provision for impartial review. However the power of the appeal process lies in the sanctions that can be applied for non-compliance. See the paper, *The Role of the Ombudsman*, for a fuller discussion of their powers.

EXEMPTIONS

There are legitimate exemptions to the freedom of information provisions. One of the criticisms of many existing FOI laws is that categories of exemptions are defined quite broadly and may therefore be used to preserve secrecy. The intention should be that exemptions are defined as narrowly as possible, whilst protecting the public interest, to ensure maximum disclosure. Typical categories of exemptions are:

- national security
- records relating to the formulation of government policy
- law enforcement and security
- confidential and commercially sensitive information
- personal information (unless related to the person making the request)
- information exempted by other statutes.

EDUCATING CITIZENS

Freedom of information legislation not only establishes the citizen's legal right of access to information, it also confers on government the obligation to facilitate access. The law should include provisions requiring agencies subject to FOI to publish information relating to:

- their structure, functions and operations
- the classes of records held by the body
- arrangements for access
- the internal procedures used by the agency in the conduct of its business.

Monitoring the extent of compliance with these requirements should be part of the remit of the Ombudsman. Governments should be required to actively inform citizens of the rights conferred on them by FOI and privacy legislation. This demonstrates their real commitment to openness and increased accountability.

**EXAMPLES OF COUNTRIES WITH
FREEDOM OF INFORMATION LEGISLATION**

Sweden	1766
USA	1966
Denmark	1970
Norway	1970
Holland	1978
France	1978
Australia	1982
Canada	1982
New Zealand	1982
Hungary	1992
Belize	1994
Ireland	1997
Thailand	1997
Korea	1998
Israel	1998
Japan	1999
South Africa	2000

Code of Practice on Access to Government Information

A Code of Practice is a method of promoting and regulating access to information. As such it is a flexible tool for making government more open and accountable. The intention of a Code of Practice should be to make information available to the public unless good reasons are explicitly communicated as to why it should be withheld. It is not intended as an instrument for withholding information unless that information is legitimately exempt. However without the force of legislation and the powers of enforcement this implies it is possible that its impact may be limited.

Key elements of a Code of Practice are that it:

- does not require legislation
- provides access to information not documents
- defines categories of exemptions for information
- defines an appeals procedure
- determines performance criteria.

The UK Code of Practice commits those departments and agencies that come under its jurisdiction to:

- publish facts and analysis of facts that the Government considers relevant and important in framing major policy proposals, usually when policies are announced
- publish explanatory material on dealings with the public, including rules, procedures, internal guidance to staff, administrative manuals, etc except where publication would breach an exempt category
- give reasons for administrative decisions to those affected
- publish information on how services are run, how much they cost, who is in charge and what complaints procedures are available and how to access these
- publish comparable information about services provided, performance targets set, and results achieved
- release, following requests, information relating to policies and actions in their areas of responsibility.

NON-STATUTORY CODE: A CASE STUDY FROM THE UK

A non-statutory *Code of Practice on Access to Information* was adopted by the United Kingdom in 1994, subsequently revised in 1997. The provisions of the *Code* are subject to any restrictions imposed by both existing and subsequent legislation.

Scope

The extent of the application of a Code will vary. The extent of coverage may be related to the existing jurisdiction of an Ombudsman as is the case in the UK or, if a new Ombudsman is to be created to oversee the Code, it may be determined by the administrative structure of government. For example, in the UK the jurisdiction of the *Code* extends to central government departments and their non-departmental public bodies only, including private firms under contract to a department for information related to that contract. Implementation of a Code could be phased to allow more effective training and impact assessment, perhaps extending initially from central government to the districts, or from line ministries through to their executive agencies and associated branches.

Purpose

In essence the UK *Code of Practice* seeks to promote open government by introducing procedures and performance targets for providing access to government information rather than an ad hoc system that relies on the attitudes of individual civil servants. It could be incorporated into or used as support to a civil service-wide Code of Conduct. Such Codes of Conduct are intended to improve service delivery and an essential part of that is the accessibility of information. Therefore prior to the introduction of a Code government must be committed to citizens' rights of access to information.

In the UK the declared aims of the Code are to:

- improve policy-making by extending access to the facts and analyses on which policy is based
- ensure that reasons are given for administrative decisions
- support and extend the principles of public service
- protect the privacy of personal and commercially confidential information
- preserve confidentiality where disclosure would not be in the public interest.

Use

Citizens can use such a code as a means to gain access to government information. This applies not only to private individuals and businesses, but also to interest groups and the media. A code will also provide a mechanism for members of the legislature to obtain information on government programmes.

ACCESS TO INFORMATION NOT DOCUMENTS

The UK *Code of Practice* is explicit in restricting provision of access to *information* and not necessarily to the document in which it is contained. There is no requirement to provide copies of any government documents. For example, salient information provided in a document may be summarised and presented to a requester however a photocopy of the document will not necessarily be provided. If a copy were provided, requesters would be able to see if some parts of the document had been redacted. In addition, government departments are not required under the Code to acquire information they would not normally hold or to provide information that is already published elsewhere.

A fee may legitimately be applied for the provision of information; this should not be prohibitive. Existing charging policies in UK departments tend to apply a sliding scale, many departments offering the first 4 or 5 hours work on a *Code* request free of charge, then recovering the cost of staff time or applying an hourly rate for enquiries that take longer to deal with. Departments are free to determine their own charges although, if these were deemed to be excessive by enquirers, an appeal could be made to the Ombudsman as described below.

EXEMPTIONS

There are many legitimate exemptions to information disclosure that are necessary to protect the privacy of individuals and the ability of Ministers to govern. Typical categories for consideration may include:

- national security or defence
- the conduct of international relations
- law enforcement and legal proceedings

- public safety/order
- immigration and nationality
- effective management of the economy/collection of taxes
- effective management of the public service
- time-consuming or unreasonable requests
- individual privacy
- information given in confidence
- disclosure prohibited by statute.¹

However, even where information falls within an exempt category a ‘harm test’ is applied to ascertain whether the potential damage from release outweighs the public interest in disclosure. A Code of Practice is not intended as a protection for corrupt or inept officials. It should be clear that where the only harm from the release of information would be the embarrassment of a public official that the information should be released as requested.

WRITTEN GUIDANCE

In the UK written guidance is offered to both citizens and staff about making and handling requests. This guidance is intended to ensure that

- citizens are aware of their rights
- staff are aware of their responsibilities
- citizens can get the most from the *Code*
- best practice for handling requests is identified.

Providing such information for citizens and staff is an important method of improving the effectiveness of implementation. As stated above, the intention of a Code of Practice is to promote open government and officials are supposed to encourage access rather than scouring the Code for relevant exemptions. Providing guidance to staff minimises the risk that staff will not make information available because they are unclear what can be disseminated and what is legitimately restricted. The Code is intended to provide a clear and comprehensive framework to support disclosure.

APPEAL PROCEDURES

Procedures for reviewing decisions to refuse requests for access to information should be included in a Code of Practice. The UK *Code of Practice* provides a two stage review as follows:

- i) internal review at senior level within the department
- ii) appeal to the Parliamentary Commissioner for Administration (the Ombudsman) through a member of Parliament.

It is good practice for those reviewing cases internally not to have been involved in making the original decision. If a request is again refused the petitioner may appeal to the Ombudsman but only through a Member of Parliament. However further investigation is at the discretion of the Ombudsman and he may not take the complaint any further. There is no recourse beyond the Ombudsman under the *Code*.

¹ For further details see the *UK Code of Practice on Access to Information*, 2nd edn., 1997

This external check on the actions of government is important for the effective implementation of the *Code*. It lessens the risk that applicants who have been refused information on spurious grounds from being unfairly treated. However in the UK this process is weakened as the Ombudsman does not have the power to order and enforce the release of information, his influence is limited to the negative publicity for government attached to adverse decisions.²

MONITORING COMPLIANCE WITH THE CODE

It is important for policy development that there are some means of monitoring the performance of the Code so that government can see whether it is working and, if not, identify where it is failing. Useful measures include:

- target response times for
 - ◊ dealing with requests
 - ◊ holding inquiries.
- annual statistical returns by departments of
 - ◊ total number of requests under the Code³
 - ◊ number of requests refused and exemption cited⁴
 - ◊ number of departmental inquiries and outcomes
 - ◊ number of inquiries by Parliamentary Ombudsman and outcomes.

Minimum targets, with which departments ought to comply, are laid out in the Code. Many departments in the UK have chosen to adopt their own more stringent performance targets. For example, the UK *Code of Practice* sets a target response time of 20 days for *Code* requests, the Department for Education and Employment employs its own target of 15 days for dealing with simple requests. Their performance is then assessed against these more stringent targets.

Annual reports are compiled that correlate statistics from agencies covered by the Code and these are made publicly available. This is an important mechanism for helping to deliver accountability of government departments to citizens for service delivery.

Where to find more information:

See **UK Home Office**, *Open Government: Explaining the Code of Practice on Access to Government Information and Guidance note on handling openness cases under the Code of Practice on Access to Government Information*.

UK Home Office, Freedom of Information Unit, <http://www.open.gov.uk/index.html>

² See paper on Ombudsmen for more information on the ombudsman system.

³ NB In the UK this only includes requests that refer specifically to the *Code*.

⁴ NB In the UK this applies to all requests for information regardless of whether the *Code* is cited.

The Role of The Ombudsman

An Ombudsman's role is to investigate complaints by citizens against agencies of government. This paper will focus principally upon the role of the Ombudsman in promoting access to information; in this paper the terms *Ombudsman* and *Information Commissioner* are used interchangeably. Freedom of information (FOI) legislation often establishes an ombudsman as the external monitor. Depending upon the particular country concerned, there may be a different Ombudsman to regulate this specific area or the Office of the Ombudsman may cover the whole spectrum of government, including FOI.

Key points regarding the role of the Ombudsman are that they:

- are established by law
- are independent
- act as mediator between citizens and government
- have powers to investigate complaints
- may have powers to enforce rulings.

RESPONSIBILITIES

The Ombudsman is usually given responsibility for the monitoring of government services, ensuring that the minimum standards for public service are observed. This should not be restricted to determining whether the exercise of government decision-making power complies with the law, but also whether their duties were administered fairly according to accepted standards of civil service conduct. The responsibilities of the Ombudsman under FOI usually include:

- investigating complaints
- promoting the following of good practice and agencies' compliance with the Act
- publishing reports –annual reports to the legislature and investigations of complaints
- encouraging the dissemination of information by agencies subject to FOI, and by their own office
- assessing whether an agency is following good practice.

In Australia the job of monitoring the FOI legislation has been given to the Commonwealth Ombudsman. They, along with Canada, have chosen to establish a separate Privacy Commissioner to safeguard the rights of individuals to privacy under the FOI laws.

Canada's Information Commissioner has observed:

A culture of secrecy still flourishes in too many high places even after 15 years of life under the Access to Information Act. Too many public officials cling to the old proprietorial notion that they, and not the Access to Information Act, should determine what and when information should be dispensed to the unwashed public.¹

¹ Quoted in Snell, Rick. Administrative Compliance and Freedom of Information in Three Jurisdictions: Australia, Canada and New Zealand. Paper presented at *Freedom of Information - One Year On*: Dublin. 23 April 1999.

INDEPENDENCE

The position of Ombudsman must be established in law, usually through an Ombudsman Act. It is important that this provides for the independence of the office from government. It is clear that, if the Ombudsman is to be effective as a government watchdog, it cannot investigate its own master.

SCOPE

The scope of the Ombudsman will be determined by legislation, i.e. an Ombudsman Act, given the size and structure of government in a particular country. Their powers of investigation may be limited to the executive or, as in Ireland, be extended to include local government and associated agencies. Their role may also be limited to responding directly to formal complaints or they may also have wider scope to investigate the conduct of public agencies on their own initiative.

As with other access to information mechanisms, these are of limited impact without a programme of awareness-raising for citizens and government officials. Publication of the services offered and details of how to access them will increase the use of the Ombudsman by citizens. This demonstrates government commitment to the office. In addition awareness-raising in departments ensures that officials are aware of their obligations to respond to the ombudsman's requests for information and to address poor practices once highlighted.

MEDIATION

One of the most important points regarding the role of an Ombudsman is that they act as mediators between government and their citizens. They offer an alternative to an adversarial approach through the judiciary where government and citizens become hostile opponents.

To perform this role effectively they must be seen to be:

- easily accessible
- offering their services at no cost
- fair in their dealings with both complainants and public agencies
- effective in resolving complaints.²

As well as protecting the rights of citizens, the Ombudsman can help to protect public officials. For example, one of the roles of the Office of the Ombudsman in Hong Kong, China is 'indicating the facts when public officers are unjustly accused.'³ Providing a service for the resolution of complaints about public services is an important mechanism for maintaining public confidence. In many countries there are no private sector alternatives to services provided by the government, therefore the role of the Ombudsman as mediator can be particularly vital.

POWERS OF THE OMBUDSMAN

Although the office of Ombudsman is a statutory body their powers are often quite limited. Typical strengths are that they have the power to:

² Kevin Murphy, Ombudsman and Information Commissioner Designate, Ireland: 'Accountability and the Citizen', Address to the *Annual Conference of the IPA*, Dublin, 7 Nov 1997

³ Office of the Ombudsman, Hong Kong, China: *Vision, Mission, Values and Roles*, http://www.sar-ombudsman.gov.hk/english/about_ocac/vision.htm

- examine the records of an agency under investigation
- require the attendance of witnesses
- sequester documents
- enter any premises in connection with an investigation
- publish reports.

However these must be offset by the usual restrictions on the weight of adverse rulings by the Ombudsman. There are three models for the powers of enforcement usually allocated to them, as follows:

- making decisions binding on ministers
- making decisions binding, subject to ministerial veto or judicial appeal on a point of law
- making recommendations.

The most common option chosen is to limit the power of the Ombudsman to recommending disclosure. This is the case under the Code of Practice on Access to Information in the UK, and under the FOI legislation in Australia and Canada. The argument in favour of this is that ultimately accountability should reside with an elected minister who is directly responsible to the legislature and the electorate, rather than with an appointed official. It is also argued that, in practice, ministers would rarely ignore the recommendations of an Ombudsman because of the negative publicity this would generate.

In Canada, although the Information Commissioner's decisions are not in themselves binding, they also have the power to take a case to the courts. The decision of the court in these cases carries all the weight of the rule of law. This is an important tool for the Commissioner whose position may otherwise seem relatively weak. Relationships with the judiciary built into Ombudsman legislation can have a significant impact on their powers.

However proponents of strengthening the powers of the Ombudsman point to the example of New Zealand. Contrary to claims that decisions of the Ombudsman would not be overturned, in the first six months of the operation of their FOI law, a ministerial veto was used seven times. The law on the use of the veto was subsequently amended in 1987, making any decision to use the veto a collective Cabinet decision requiring an Order in Council, which is subject to judicial review. Since that time it has not been used.⁴

The Ombudsman can play an important role in facilitating access to information for citizens and encouraging and monitoring openness in government. The extent to which they can be effective varies according to the powers they have been awarded. By acting as mediators, they serve to reduce the adversarial nature of business between government and citizens.

⁴ Maurice Frankel, Campaign for Freedom of Information, UK: Seminar, UK London School of Economics, 16 Feb 2000

Citizens' Charters

Citizens' Charters are documents that summarise details of the services provided by government agencies, how to obtain these services and what to do if services do not meet expectations. They aim to introduce measurable standards of service, arrived at through consultation with both staff and users. Their purpose is to increase accountability through the publication of information about and requirements for government services. They may be introduced at central government or local government level, and at the level of national or local services. Key points of a Citizen's Charter are that they:

- are non-statutory
- are intended to increase citizen participation
- define standards of service
- require publication of information about services.

SCOPE

Citizen's Charters may be drawn up as part of an overall strategy for improving government services or as a means of addressing localised problems within a particular sector. They define the services that will be provided and the minimum standards that citizens should expect to encounter. However it is important that these provisions are set out clearly to enable their easy application in practice. If definitions are vague and general then civil servants will be unclear as to the targets they are expected to meet, and user satisfaction will be reduced.

There must be effective mechanisms to ensure that public sector staff are aware of the charter provisions. One way to ensure this is to incorporate the standards into the staff's contractual commitment. Not only does this raise awareness within government, but also confers an obligation on staff to adhere to the principles.

STANDARDS

Key principles of public service are embodied by citizens' charters. One example is the charter programme in the UK that identifies nine principles for public service delivery, as below:

- Set standards of service that are
 - ◊ relevant
 - ◊ simple
 - ◊ measurable
 - ◊ monitored
 - ◊ published
 - ◊ reviewed
- Be open and provide full information – about costs, performance, availability, etc.
- Consult and involve both staff and users
- Encourage access and the promotion of choice
- Treat all fairly
- Put things right when they go wrong
- Use resources effectively
- Innovate and improve
- Work with other providers¹

These guiding principles can then be applied to particular services and performance targets.

Some easily measurable targets include

- number of requests handled/processed/denied
- response times
 - ◊ for written enquiries
 - ◊ for complaints
- waiting times for appointments
- charges and fees.

Charters seek to change the culture of service provision by ensuring that users are consulted and their needs and apprehensions are addressed by the system. Standards should be drawn up after consultation with members of the public and staff. This process identifies the needs of users and the realities faced by those delivering the services. This should help to ensure that these are more closely matched.

COMPLAINTS

Charters set out the procedure for making complaints. The intention is to shift the emphasis from complaints as something negative which are to be avoided, to viewing complaints as an important form of communication and feedback. Citizen's comments can then be analysed for targeting improvements in public services in areas seen to be failing.

The complaints process should include provision for an internal review and also external impartial adjudication, perhaps to an Ombudsman (see paper on *The Role of the Ombudsman* for more information). However it is important to note that failure to meet the performance targets laid out in a Charter, whilst constituting grounds for complaint, does not normally carry any sanction in law.

MONITORING

Charters should provide the means for monitoring public sector performance. One key aspect of this is the requirement for agencies to publish information about their performance. Agencies are required to collate and publish statistics as set out in the charter, allowing citizens and the legislature the opportunity to assess the performance of the service. If the charter applies across a national service, eg schools or hospitals, the performance of local units can be compared by using this process. As well as identifying problem areas, this provides an opportunity to identify areas of strength and to track improvements in services. In particular, they can be used to identify and promote best practice.

ACCESS TO INFORMATION

Charters can be used to support freedom of information (FOI) legislation. These laws usually require the publication of information regarding the structure, functions, and operations of public sector agencies. Even in countries without FOI laws, charters can be used to establish a provision for the disclosure of such information. Information should be made widely available using all available means; these may include the media, public libraries or information technology.

¹ UK Cabinet Office, *Service First*, 1998

Citizens' charters are intended to improve public sector accountability as well as service delivery. For example, in India citizen's charters are being used to tackle low level corruption by providing citizens with access to information about services where bribes were often levied. These charters describe the services that the government will provide, the time frame for each service, the government officer who should be contacted and a remedy should the service not be provided.²

² SD Sharma, 'Mobilising Civil Society: NGO initiatives to fight corruption and promote good governance – in the Indian context', Paper presented at the *Workshop on Promoting Integrity in Governance* at the *World Conference on Governance*, Manila, Philippines, 31 May-4 June 1999. This initiative is the result of co-operation between Transparency International India and central government.

Citizens Advice Bureaux

Citizens' Advice Bureaux (CABx) comprise a network of offices that provide free advice and information to those who need assistance on issues such as housing, debt, homelessness, and obtaining benefits. Key points about CABx are that they:

- have their own mandate and structure
- disseminate information on public services
- provide free and independent advice to citizens
- provide a two-way channel of communication between citizens and government

SCOPE

CABx should extend over the whole country, both urban and rural areas, guaranteeing the principle of equal access to their advisory services. Each office should adhere to the central mission of the CABx service. A key feature of CABx is that the advice they give is free of charge. Often they are staffed by trained volunteers.

Impartiality is key to the role of CABx. Although they may be funded by government, the CABx must retain some independence to ensure that the service they provide is seen to be impartial. For example, in Mauritius the Ministry of Urban and Rural Development runs the CABx. In the UK they are run by the National Association of Citizens Advice Bureaux in England and Wales, and its sister organisations in Scotland and Northern Ireland – these bodies are registered charities. However much of their funding is provided by statutory grants as well as charitable donations.

AIMS

Citizens Advice Bureaux advise on the typical social problems encountered by ordinary citizens. Their aims are twofold as illustrated by those of the New Zealand CABx service:

- 1 *To ensure that individuals do not suffer through ignorance of their rights and responsibilities, or of the services available; or through the inability to express their needs effectively.*
- 2 *To exert a responsible influence on the development of social policies and services, both locally and nationally.¹*

INFORMATION PROVISION

Governments may be required by freedom of information legislation, or other provisions such as Citizen's Charters, codes of practice, etc., to publish and disseminate information about government services. The CABx can provide an effective means of reaching citizens through their national offices, thereby helping government to fulfil its obligations. In New Zealand local CABx distribute a whole range of guidance leaflets produced by the government. However it is important to note that this role is limited by the availability of resources.

¹ Glen Innes Citizens Advice Bureau, New Zealand: <http://www.geocities.com/SoHo/Veranda/2934/cabgi.html>

Information could be made available on:

- what services are available
- how to obtain them
- how to make complaints
- how to obtain redress

Information technology is being utilised by the National Association of Citizens Advice Bureaux in the UK to make their advisory service more accessible. Local CABx are using email to deal with enquiries, and there is a national *Advice Guide* available through the Internet. This draws on the information sources used by the advisers. In New Zealand local CABx are also developing web sites to make their services more accessible and in Mauritius information about the CABx service can be found on the government website.

ADVICE

The CABx provide advice on a whole range of issues that concern services provided by both the public and private sectors. In this paper we will focus upon their role relative to government services.

CABx advice is usually delivered through personal consultations where advice is given in response to a particular enquiry. They identify the citizen's legal rights and advise on how these can be upheld, the services available to assist them, and what to do if these services have not met expectations.

As well as providing an advisory service for citizens, the CABx also provide valuable advice to government on the development of services and the common grievances of citizens, providing a useful channel of communication for government.

In countries where Freedom of Information legislation has been enacted citizens have the right to request access to public sector information, subject to exemptions provided under the law. However in practice citizens require a mediator between them and government as the obstacles, both practical and cultural, may restrict requests by citizens. CABx do not currently provide this service but they may be best placed to act as mediator. In the USA, the National Security Archives performs this role. There is no equivalent to this organisation elsewhere. It may be a gap the CABx could fill. Again this would require the investment of substantial resources.

COMPLAINTS

It is important to note that CABx cannot act for citizens when they wish to obtain redress for grievances. They are able to provide information on the process that must be undertaken, but they do not usually handle the cases themselves. They may also provide information about civil society organisations that can directly assist with cases where the citizen involved may not have the resources (money, education, travel) to act themselves.

They can provide advice on the choices available for obtaining redress, and the necessary steps. CABx acknowledge that the recognition that citizens' have rights is difficult to enforce without specific enabling legislation, for example, anti-discrimination laws, a minimum wage, etc. The CABx can advise on how to use the enforcement mechanisms that are built into legislation for the protection of citizens. Alternatively they can act as a pressure group for change in government programmes.

As well as providing guidance on complaints about public services, they can inform the government about problem areas, enabling the government to target limited resources on the programmes that most need them. They can also provide valuable information to government about local needs and complaints about conditions that are not directly impacted by government services, but that should be addressed by the public sector.

For example, in Mauritius an important function of the network of Citizens Advice Bureaux is to provide a channel of communication from citizens to government regarding attitudes to local developments and planned projects. In the UK feedback from citizens enquiries is channelled from the local Bureaux to the national association through *Bureau Evidence Forms*. These are completed for enquiries that represent an example of a wider social problem. This information then forms the basis for widely distributed published reports.