Commonwealth Human Rights Initiative

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Sen. Burchell Whiteman
Information Minister and Chairman of the Parliamentary Select Committee Reviewing the Access to Information Act 2002
C/o The Clerk of the Houses of Parliament
Gordon House
81 Duke Street
Kingston
Jamaica, West Indies

17 February 2006

Dear Sir

Re: Bank of Jamaica's request to exempt Bank information from the purview of the Access to Information Act 2002

I am writing from the Commonwealth Human Rights Initiative (CHRI). CHRI's Right to Information programme assists Commonwealth member states to develop strong right to information (RTI) laws and to implement them effectively. CHRI has written to you previously regarding the review of the Access to Information Act 2002 (ATI Act) and recently submitted detailed recommendations for consideration by the Parliamentary Select Committee Reviewing the ATI Act, which I have attached again here for your information.

Since we sent our submission, we have read of the submission to the Committee by the Bank of Jamaica (BOJ). We are very concerned at the Bank's recommendations to amend the law so that the Bank is made exempt or can release information only with the permission of the Governor or Finance Minister and to call for the renaming of the Act in order to make it clear that only official documents should be released.

In summary, excluding or severely limiting public access to the minutes of the BOJ's board meetings, Bank documents and correspondence between the Bank's key personnel clearly contradicts the objects of the Act, as set out in its preliminary section: "to give further effect to" the democratic principles of "government accountability; transparency; and public participation in national decision-making … " Clearly, the Bank plays a significant role in shaping the lives of Jamaican people through its economic policy decisions and the Bank's recommendations to widen exemptions would thus severely undermine the aforementioned objects of the ATI Act. Please also see our more detailed submission below, which we hope will be considered by the Committee.

FCRA Registration No. 231 650671; Registration No. S-24565 under Societies Registration Act; Registration No. D.I.T. (Exemption)/94-95/C-390/94/417 U/S 80-G
Supported by: Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Medical Association
Commonwealth Parliamentary Association, Commonwealth Press Union.

No justification for additional BOJ exemptions

The Bank has argued that its role as the "hub and repository for the country's key economic activities" warrants complete protection from the disclosure provisions in the Act. However, it is precisely this role that makes it imperative that information about its policy and decision-making processes should be disclosed to the public under the Act.

Any fears that the disclosure of Bank information may lead to the divulgence of "very sensitive matters", such as those discussed at Central Bank board meetings, are unfounded because the current exemption in section 18(1) of the Act which prohibits disclosures that would "*have a substantial adverse effect in the Jamaican economy, or the Government's ability to manage the Jamaican economy…"* provides sufficient protection. There is no justification for providing a further exemption for the Bank.

Central Bank Minutes should be disclosed

The Bank's submission also recommends that there should be an exemption against the disclosure of the minutes of the central bank's board meetings for 20 years, or for any period specified by the Finance Minister and subject to "affirmative resolution". Granting the Finance Minister or the Governor of the Bank a broad discretion regarding whether and when to exempt information does not accord with best practice. In a democratic system, exemptions of bodies or classes of information must be scrutinised and discussed before being approved by Parliament, to ensure that they are only as broad as required. It is not appropriate that exemptions can simply be decided upon by a Minister. Even if Parliament can review such decisions, in practice, they are less likely to review such Ministerial orders, as opposed to amendment Bills.

The Bank stated that its own research had found very few cases worldwide where freedom of information (FOI) legislation applied or extended to central banks. On the contrary, there exist compelling international examples where central banks are mandated to release information on their decision-making processes. For example, since 1994, even in the absence of FOI legislation, the Government of the United Kingdom has been releasing minutes of the monthly meetings between the Chancellor of the Exchequer (the equivalent of the Finance Minister) and the Governor of the Bank of England, despite the fact that these discussions were historically a closely guarded secret. Minutes are released six weeks after the meeting, reflecting the fact that the deliberations are no longer sensitive once policy has been agreed.

If the Bank were to adopt a similar practice to the UK, this should address concerns that Bank Directors will be restrained in their participation at meetings for fear that their discussions will eventually be disclosed. In any case, any genuinely sensitive issues would not be disclosed in accordance with s.18(1). Notwithstanding that, Bank officials should be able and be required to ensure that their advice can withstand public scrutiny. To fear such transparency raises questions about the soundness of the Bank's decision-making process.

Retain access to information not official documents

The Bank has endorsed suggestions that the Act be renamed the Access to Official Documents' Act, *"so as to avoid any misconception by the public that they are entitled to information whether obtained verbally or through private in-house correspondence in the form of, say inter-office memos and amended drafts...[The ATI Act] is designed to give people access to documents so that they can see for themselves what the source document says or hear what the recording has on it".* This is an astonishing statement, turning the objectives of the Act on its

head. It completely overlooks the usefulness of the law as a means for promoting accountability, public participation and good governance.

In fact, freedom of information laws throughout the world are specifically intended to open up ALL information collected by public bodies, except the most sensitive information where disclosure would actually harm key national interests. The Bank seems to have an opposite view that only official, vetted documents can be released, but information about the decision-making process or which shows how and why officials reached decisions is not for public consumption. This is an extremely traditional - almost colonial - view of governance, which puts decision-makers above the scrutiny of ordinary people.

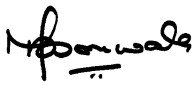
International best practice supports the principle of "maximum disclosure and minimum exemptions", where a freedom of information law will entrench a "presumption in favour of disclosure". This recognises that information held by public authorities is collected for public purposes by public officials using public money and therefore belongs to the public unless there is a clear national interest, enshrined in law, which warrants secrecy.

* * *

I hope that the Committee will support the spirit of openness captured in the preliminary section of the Act and reject the recommendations made by the Bank which would serve to narrow and limit the law.

Please feel free to contact me by email at majadhun@vsnl.com or Ms Charmaine Rodrigues, Co-Coordinator, Right to Information Programme at charmaine@humanrightsinitiative, or telephone on +91 11 2685 0523 or +91 9810 199 754, if you would like to discuss this submission or if CHRI can be of any further assistance.

Yours sincerely



Maja Daruwala
Director

Cc Dr Omar Davies, Finance Minister
Members, Parliamentary Select Committee Reviewing the Access to Information Act 2002