



Cook Islands National Broadcasting Corporation Board

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OFFICIAL INFORMATION ACT

A CINBC Position Paper

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Introduction

In 1946 the United Nations General Assembly passed one of its very earliest resolutions. It stated:

Freedom of information is a fundamental human right and the touchstone of all freedoms to which the United Nations is consecrated.

The right to information is guaranteed in international law, and included as part of the guarantee of freedom of expression in Article 19 or the International Covenant of Civil and Political Rights. Many countries are now giving legal effect to that right, by enshrining access to information in their constitutions and by adopting laws which give practical effect to the right and providing concrete processes for its exercise

The CINBC Board has taken steps to see a Cook Islands Official Information Bill drafted using the New Zealand act as a model. The New Zealand model has been slightly changed to better suit and meet the information needs of the Cook Islands – it will guarantee all Cook Islanders the equal right to seek, receive and impart information. It has been distributed to all local media, stakeholders, international media organisations and leading journalists for comment and input.

FOI Training

As part of need to familiarise the Board, local media and stakeholders with the concepts involving freedom of information, the CINBC Board recently organised Freedom of Information training workshops in collaboration with the NZ Journalists Training Organisation. Up to 45 people attended the different sessions, including a cross-section of government officials. A special FOI session was also organised for the former Cabinet

By the end of the workshops, participants were able to appreciate the distinct advantages that a FOI or Official Information Act brings to a country.

Advantages of an Official Information Act

It sets the foundation for:

- ❑ **A less corrupt society**
- ❑ **A healthier society**
- ❑ **A society where the environment is respected**
- ❑ **A society where human rights are respected**
- ❑ **Making sure privacy is respected**
- ❑ **A more secure society**
- ❑ **A society where politics more democratic**
- ❑ **A society in which the government is more efficient**
- ❑ **A society in which the economy is more efficient**
- ❑ **A better informed society**

Without freedom of information people will vote in ignorance – the quality of democracy any nation enjoys depends on how well informed its people are. It is recognised that wealthy, healthy democratically run countries all have freedom of information laws in place. It does away with the culture of secrecy often found in government administrations. It also does away with rumours, or as it is known in the Pacific islands, the coconut wireless.

Media Consultations

The Board has sought input from the local media industry and stakeholders on the freedom of information or official information legislation. Consultations

have also been held with leading New Zealand journalists on that country's Official Information Act.

Generally speaking, all journalists agreed that prior to the introduction of a Official Information Act, it was a struggle to obtain official information in New Zealand. There was the notion that everything in government was secret unless declared otherwise. The same notion exists in the Cook Islands and journalists here have the same difficulty obtaining government information. This has often resulted in information leaks, with the resulting published information being based on rumour, innuendo and unsubstantiated information.

A fact is that NZ politicians use the Official Information Act more than journalists do.

Journalists agree that NZ's attitude towards information is now hugely different to what it used to be. Interestingly, former AFP NZ Bureau Chief Mike Field commented that the Official Information has made a massive difference to the lives of journalists. "It's made it so much harder to get a big story and big scoops because everything is out in the open."

Official Information Acts would make a huge difference in Pacific island countries in that a disclosure regime would do away with rumour mongering. "To build a better society, you have to be open with your information," commented Field. If people are better informed, they are calmer and change doesn't panic the market and they more likely to accept changes and things that are happening.

Journalists agree that they would like to see more government agencies and public institutions placing all information on-line similar to what the Pacific Tuna Commission is doing.

E-Governments

A recent regional Information and Communications Technology conference in Fiji urged Pacific island governments to commence E-governments, exchanging and making available official information. It was noted in the conference that while Pacific island governments are wishing to develop ICT and harness all the benefits, administrations have been sluggish to establish ICT and Official Information legislations. Both are necessary.

In addition, the Cook Islands delegation recommended to the conference that a resolution be prepared for forwarding at the next Pacific Forum Leaders meeting urging Pacific island governments to pass official information and ICT acts as quickly as possible. The conference agreed to this.

The Right to Know

It is important that the right to freedom of information includes the right of officials to make public information about wrongdoing in the institution they work for.

The legislature are the representatives of the public – the people they elected to make and create policy. The public has a right to know what their representatives are doing – even if only to decide how they will cast their vote the next time.

The legislature performs a variety of tasks that are extremely important to know about, laws that are being passed, select committee hearings, debates and so on.

Justice must not only be done, it must be seen to be done. The public nature of the judicial system is a way of showing the law is being fairly and properly enforced. It gives a better guarantee that someone on trial will get a fair hearing.

Media access to official information is important in order to keep the public better informed. The public expects this of the media. Being able to access information also helps the media do their job better and more accurately for the public.

Governments which argue in favour of withholding information from the public usually use the following reasons:

- ❑ **We (the public) would not be able to understand it**
- ❑ **It would cause conflict**
- ❑ **It would cause insecurity**
- ❑ **It would undermine the workings of government**

In most countries, government and other public bodies have worked for decades within a culture of secrecy. There are two aspects to this:

- ❑ **Officials do not understand their obligations to keep the public informed**
- ❑ **The public does not understand its right to information**

Basic FOI principles

The following basic principles (as detailed in FOI Training Manual for Public Officials) to ensure that national law will increase public access to information are:

- 1. Freedom of information or Official Information legislation should be guided by the principle of maximum disclosure**
- 2. Public bodies should be under an obligation to publish key information (particularly to make this information available on line)**
- 3. Public bodies must actively promote an open government**
- 4. Exceptions should be clearly and narrowly drawn**
- 5. Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available**
- 6. Individuals should not be deterred from making requests for information by excessive costs**
- 7. Meetings of public bodies should be open to the public**
- 8. Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed**
- 9. Individuals who release information on wrongdoing – whistleblowers – must be protected**

Limitations to access official documents

- 1. National security, defence and international relations**
- 2. Public safety**
- 3. Prevention, investigation and prosecution of criminal activities**
- 4. Privacy and other legitimate privacy interests**
- 5. Commercial and other economic interests, be they private or public**
- 6. Equality of parties concerning court proceedings**
- 7. Inspection, control and supervision by public authorities**
- 8. Economic, monetary and exchange rate policies of the state**

9. Confidentiality of deliberations within or between public authorities for an authority's internal preparation of a matter

10. Access may be refused if disclosure of information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure

11. Member state should consider setting maximum time limits beyond which the limitations mentioned in paragraph 1 no longer would apply

Sources: NZ Journalists Training Organisation FOI Training Manual; Article 19 International Covenant on Civil and Political Rights; NZ Freedom of Information Act, NZ Pacific Islands News Association, AUT Communications Department, Pacific Islands Review