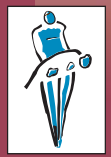
CHRI's 2003 REPORT

Open Sesame

Looking for the Right to Information in the Commonwealth



A Report of the International Advisory Commission of the Commonwealth Human Rights Initiative
Chaired by Professor Margaret Reynolds

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. CHRI was founded by Commonwealth Associations in 1987 because they felt that while the member countries of the Commonwealth had a common set of values and legal principles from which to work, and also provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority issues.

The nature of CHRI's sponsoring organisations* – journalists, publishers, broadcasters, lawyers, legal educators, health professionals, trade unionists, and parliamentarians – ensures both a national presence in each country and a local network. More importantly, these are strategic constituencies, which can effectively steer public policy in favour of human rights by incorporating human rights norms into their own work and acting as a conduit for the dissemination of human rights information, standards and practices. As such, their individual members and collectives are themselves capable of affecting systemic change. In addition, these groups bring knowledge of local situations, can access policy makers, highlight issues, and act in concert to promote human rights. The presence of eminent members of these professions on CHRI's International Advisory Commission assures CHRI credibility and access to national jurisdictions.

Originally based in London, United Kingdom, CHRI moved to New Delhi, India in 1993. It now has offices in London and in Accra, Ghana.

* Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Medical Association, Commonwealth Parliamentary Association, Commonwealth Press Union and the Commonwealth Broadcasting Association.

Artwork by Neha Sharma. Cover design concept by Deepika Mogilishetty-Farias.
Designed and produced by Spectra Visual Word. E-mail: spectravw@vsnl.net. Cover illustration by Simran Singh.
ISBN: 01-88205-03-6

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CHRI Programmes

CHRI's work is based on the assumption that for democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

ACCESS TO INFORMATION

Right to Information: In promoting and protecting the right to information, CHRI acts as a legal resource, catalysing agent and repository of good practices. It informs community level groups about the value of access to information and advocates with policy makers to ensure that laws reflect the real information needs of the community. In South Asia CHRI has pushed for state level and national legislation. In India a federal law was passed in January 2003. In Ghana, CHRI coordinates a right to information coalition comprised of members of the National Media Commission, journalists, human rights activists, religious leaders and members of CHRI's supporting Commonwealth organisations. It promotes participatory processes for law making and conducts awareness-raising seminars for civil servants and civil society groups and, on the request of the Ministry of Justice, has made submissions on the draft law.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines to inform the making and review of constitutions through a consultative process. CHRI is engaged in gauging and promoting popular knowledge and understanding of constitutions.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies including the Commonwealth Ministerial Action Group, and the Expert Group on Democracy and Development. To assist civil society groups with their own advocacy efforts, CHRI is developing a manual on human rights advocacy: this links to a new NGO initiative – the Commonwealth Human Rights Network – that will bring together diverse groups to build their capacity and collective power to advocate human rights issues in the Commonwealth.

ACCESS TO JUSTICE

Police Reforms: In too many Commonwealth countries the police are seen as oppressive instruments of state rather than as protectors of citizen's rights, leading to widespread human rights violations and denial of justice. CHRI promotes systemic reforms of police forces so that they may act as upholders of the rule of law rather than as instrumentalities of any current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa, CHRI is studying police accountability issues.

Prison Reforms: The closed nature of prisons makes them prime centres of human rights violations. CHRI aims to open up prison working to public scrutiny. Its programme is sharply focused on ensuring that the near defunct prison visiting system is revived. CHRI researches prison visiting and undertakes capacity building programmes for visitors, including developing a handbook.

Judicial Colloquia: In collaboration with Interights, CHRI holds colloquia for judges in South Asia on issues related to access to justice, particularly as this pertains to the most vulnerable. The first of the series was held in 2002 and will continue over the next 3 years.

Fact Finding Missions: Such missions are conducted as needed and investigate human rights concerns in member countries. Since 1995, CHRI has sent missions to Nigeria, Zambia, Fiji and Sierra Leone.

Open Sesame: Looking for the Right to Information in the Commonwealth

"Freedom of Information is a fundamental human right and is the touchstone for all freedoms to which the United Nations is consecrated"

— United Nations General Assembly, 1946

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Published by the
COMMONWEALTH HUMAN RIGHTS INITIATIVE
N-8, Second Floor, Green Park Main
New Delhi - 110016, INDIA

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Richard Bourne is Chair of CHRI's Trustee Committee and Head of the Commonwealth Policy Studies Unit, London University. He was a journalist from 1962-1982 until he became Deputy Director of the Commonwealth Institute, London. Associated with CHRI from its inception, he was its first Director. He has also chaired the international executive for Survival International (1983-1997) and is currently Vice Chairman of the Royal Commonwealth Society.

Eunice Brookman-Amissah is a former Minister of Health in Ghana and former Ambassador to the Netherlands. She has been associated with the Commonwealth Medical Association through her capacity as Vice-President of the Ghana Medical Association (1992-1995). She has been active in women's rights for many years and is currently African Vice-President of Ipas.

Murray Burt is the new Chairman of the Commonwealth Journalists Association Trust and immediate past President of the Commonwealth Journalists Association (1997-2003). He is a former City and National Editor of The Globe and Mail in Toronto (1967-79) and Managing Editor of the Winnipeg Free Press (1979-90). He is a contract writer and editor and shares ownership of a media technology company.

Jean Corston has been an MP in the UK since 1992 and since then has been a member of a number of select committees and Chair of the Joint Committee on Human Rights since 2001. She has been a member of the Executive Committee of the Commonwealth Parliamentary Association (UK Branch) since 1999 and was Commonwealth Women Parliamentarians Chair in 2000.

Maja Daruwala is Executive Director of CHRI and is a barrister actively advocating for human rights. She is Chair of the Council for the Minority Rights Group International and a Trustee of the International Records Management Trust. She is a member of the Commonwealth Foundation's Civil Society Advisory Committee, the Board of Directors of the Open Society Justice Initiative and the International Women's Health Coalition.

Alice Jacobs is a Member of the Executive Committee of the South Asian Chapter of the Commonwealth Legal Education Association and a former Director of the Indian Law Institute. She has been a member of the Law Commission of India. She has been actively involved in advocacy and law reform on women's rights issues.

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Zohra Yusuf has been a Council Member of the Human Rights Commission of Pakistan since 1990, was Vice-Chairperson (Sindh Chapter) from 1990-1993 and Secretary-General from 1993-1999. She is also a Collective Member of Shirkatgah Women's Resource Centre and the Steering Committee of the NGO Resource Centre. She is a writer and editor on media and human rights issues.

Foreword

The Commonwealth Human Rights Initiative's 2003 report on the right to information is extremely timely as it coincides with an era of global volatility when governments are responding by placing further restrictions on their citizens and their access to public information.

Democracy depends on open, accountable government and the opportunity for citizens to actively participate, but this cannot occur unless we insist that the right to information is fundamental to this process.

A number of governments throughout the world have introduced a range of legislative measures to guarantee citizens' access to information, but unfortunately only eleven of them are in the Commonwealth. Even the Commonwealth Secretariat itself does not have a disclosure policy. Public release of information is entirely at the discretion of this administrative body and member states.

The Commonwealth must promote the right to information as a core activity providing technical expertise to governments to help establish appropriate mechanisms which reflect the principle and practice of the right to information.

The Commonwealth itself must set an example by implementing openness and transparency at all its meetings to ensure that its functioning is in conformity with these ideals. An important first step for CHOGM 2003 would be full disclosure of both the agenda and decisions taken by Commonwealth leaders.

A specific time-bound commitment by CHOGM 2003 to implementing the right to information in all its member states would facilitate an increased level of communication and understanding between Commonwealth citizens and their governments.

The Commonwealth needs to move from words to actions to enhance greater respect for its work. We expect Commonwealth leaders to enhance their strategies of good governance by adopting a coherent policy which fully accepts citizens' right to information. Failure to do so violates peoples' rights and undermines democracy.

Professor Margaret Reynolds
Chair, International Advisory Commission
Commonwealth Human Rights Initiative

Acknowledgements

So many people across the Commonwealth have contributed in so many ways to this year's report to the Commonwealth Heads of Government from CHRI's International Advisory Commission, that it would be impossible to thank all of those who have made it possible. However, some deserve special mention.

Our thanks go to the many academics, professionals and activists involved in promoting the right to access information, good governance and human rights who contributed to the report with new writing, provided us with anecdotes, stories and comments, or generously allowed us to draw upon their work. We extend our thanks and sincere appreciation to: Bishop Akolgo, Jonathan Allotey, Kevin Aquilina, Allen Asiimwe, David Banisar, Maria Baron, Kojo Bentsi-Enchill, Subhash Bhatnagar, Thomas Blanton, Yaw Boadu-Ayeboafo, Joseph Borg, Shobhakar Budhathoki, Iain Byrne of Interights, Joanne Caddy, Richard Calland, Ian Currie, Helen Darbishire, Manju Dhall, Paula Edwards, Robert Freeman, Lansana Gberie, Jay Gilbert, David Goldberg, Justice Anthony Gubbay, Beris Gwynne, Hameeda Hossain, Florence Igbinigie-Erhabor, Benedict Imbun, Fatou Jagne, Anina Johnson, Kaitira Kandjii, Tanya Karlebach, Mika Kitora, Jonathan Klaaren, N. Douglas Lewis, Neil McCallum, Maeve McDonagh, Toby McIntosh, Mwalimu Mati, Toby Mendel, Laura Millar, Alice Munyua, Betty Wamalwa Muragori, Peter Noorlander, Edetaen Ojo, Sam Ooko, Padmaja Padman, Jeremy Pope, Raphael Jane Prasetyo, Laurence Repeta, Simon Rice, Alasdair Roberts, Lindsay Ross, Farai Samhungu, Manubhai Shah, Meenal Shrivastava, Shekhar Singh, Elizabeth Smith, Tseliso Thipanyane, Hrishikesh D. Vinod, L. Muthoni Wanyeki, Annie Watson, Lissane Yohannes and Justice Nasir Aslam Zahid.

Our special thanks to Greg Terrill who on short acquaintance agreed to assist in formulating the introduction and recommendations, worked with us through many edits and generously donated his time to reading through the report and commenting on it. We are also indebted to Dr Venkat Iyer for his contribution on the legal framework for Chapter 2.

As always, the CHRI team in New Delhi is to be credited with the management of the project, doing a major part of the research and synthesising the many contributions into one whole. The task of bringing to fruition so international an effort across several time zones would not have been possible without: the whole-hearted commitment and devotion of Deepika Mogilishetty-Farias particularly for her tireless efforts on Chapters 2 and 3; Charmaine Rodrigues who hit the ground running just in time to endlessly write, revise and reorder as we came to the final work; Nilza Leandro for her countless hours organising us all and liaising with the contributors; Debashish Sankhari whose work on Chapter 4 was invaluable; and Clare Doube who picked over everything and coordinated the physical production of the report. Our appreciation also goes to the professionalism of: Nicole Leistikow who generously stepped in at a crucial moment to donate editorial assistance and a gentle hand to steer the project; Sandy Feinzig who initially coordinated the project and drew in many contributions; Seema Kandelia who researched Chapter 1; Aditi Datta who struggled valiantly with boxes and footnotes; Venkatesh Nayak who provided the bibliography; and all our colleagues who read over the manuscript and made refinements. Thanks also go to the staff of our Ghana and London offices who were unfailingly helpful and informative and provided valuable contributions about developments in their locations.

We also extend our appreciation to officials of the Commonwealth Secretariat, who took the time to provide us with valuable information and feedback.

This report and the research, advocacy and networking that accompanied the process of developing it were generously supported by the United Kingdom Government Department for International Development and the Ford Foundation. CHRI is deeply appreciative of this support and as always assumes full responsibility for the opinions expressed here.

Maja Daruwala
Director, CHRI

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Introduction

Every two years the Commonwealth Human Rights Initiative (CHRI) makes a report to the Commonwealth Heads of Government Meeting on an issue of human rights concern.* Our present report, *Open Sesame: Looking for the Right to Information in the Commonwealth,* deals with the singularly important human right – the right to know and to access information: a right which has not had the attention its importance to democracy, development, poverty eradication and the realisation of all other rights, deserves.

In 2001, CHRI's Millennium Report had sadly to bring into focus once again the appalling scale and depth of poverty that has for too long been stubbornly pervasive in too many Commonwealth countries. We pointed out that, in this time of unprecedented affluence and excess, poverty is neither inevitable nor acceptable and its presence to such an extent is itself a violation of people's rights. Above all, poverty is a symptom of poor and ineffective governance and global inequities that have failed to be redressed by a careless international community.

Our Millennium Report called on the Commonwealth to radically reorient its workings by committing itself and its member states to addressing issues of poor governance and sluggish development. We advocated that the best chance of success lay in a rights-based approach where the concepts of human development and human rights work vigorously together to create the synergies needed to address these problems urgently. We urged the Commonwealth to adopt a specific, practical and time-bound plan of action within a framework of human rights that acknowledges that the cure lies not merely in providing material inputs, infrastructure and training, but in having rights. These include the right to participate effectively in political economic and social activities and to share equitably in the benefits that accrue from development. All this is underpinned by a guaranteed right to access information.

Our present report is the logical outcome of our prescriptions. The chapters that follow make it obvious that the right to information is a basic human right that obligates every country to put in place effective mechanisms to assure to every citizen its fullest realisation. Not only this, it is also a practical solution to the all too evident systemic governance problems that beset most Commonwealth countries today.

We endeavour to provide a document that demonstrates the value to democracy and development of ensuring that people have an assured right to access information held by government and other powerful institutions and the urgency of enabling that right. We hope the international standards, practice and lessons learned we have included will prove as useful a tool for government as for civil society when securing and advocating this touchstone right.

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* See page 100 for details of previous reports

Chapter Summaries

This report contains the following chapters:

Chapter 1 The Right to Information: Touchstone for Democracy and Development

A liberal information-sharing regime guaranteed by law is the practical answer to the Commonwealth's present search for deeper democracy and people-centred development. Access to information is both a practical short cut to achieving the goals of poverty eradication and good governance and a long recognised human right. Human beings need information in order to realise their full social, political and economic potential. Information is a public resource, collected and stored by government in trust for people. The challenge is to share it equitably and manage it to the best advantage of all of society. But the human right to access information remains undervalued in the Commonwealth, both by member states and the Official Commonwealth. Only a handful of member countries promote and protect the right. The institutions of the Commonwealth do not yet have disclosure policies. This situation needs to change as a matter of priority.

Chapter 2 Balancing the Scales of Power: Legislating for Access

Commonwealth countries must put in place domestic laws that entrench the right to access information. Key principles which should be reflected in all access to information laws, along with examples from throughout the Commonwealth, are provided to give direction to law-makers and activists on developing people-friendly laws. The Commonwealth has some of the best-crafted laws to draw upon. International standards and guidelines also provide assistance.

Chapter 3 Making it Work: Entrenching Openness

Legislation is a valuable first step towards putting in place an access regime, but it is not enough. Opening up government requires complementary systems that support administrative reform. Conflicting laws must be amended. Removing obstructions to open government needs independent arbiters to monitor performance, adjudicate conflict, educate the public and promote good practice and training within bureaucracies. Most of all, open government needs political will to overcome long-standing cultures of government secrecy because experience shows that changing mind-sets has proved very difficult.

Chapter 4 People Power: Civil Society Advocacy Experiences

Whether working at the grassroots to support demands for economic justice, exposing scandals that save nations millions of development dollars, helping governments to craft laws, or working across jurisdictions to promote best practice, the spur for open government has often come from civil society. The techniques and strategies these groups have used and their success and setbacks are sources of inspiration, as well as providing practical ideas, for other groups across the Commonwealth.

Chapter 1

The Right to Information: Touchstone for Democracy and Development

"The great democratizing power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed."

— Kofi Annan, Secretary-General, United Nations[1]

In 2003, the Commonwealth has a deficit of both democracy and development. In Abuja, the Commonwealth Heads of Government will – not for the first time – be searching for ways to solve these problems. Open government is the answer; and entrenching the people's right to access information is the most practical way of achieving it. Without enabling people to access information *as of right*, the Commonwealth will struggle in its quest for robust democracy and rapid development.

A Public Resource

This is the age of information affluence. Technology, with its capacity for storing, simplifying and communicating information with astonishing speed, has, more than ever, put information at the centre of development.

In a government... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... have a right to know every public act, everything that is done in a public way, by their public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

— Justice K. K. Mathew, Supreme Court of India[2]

Information is a global resource of unlimited potential for all. Government is a vast storehouse of this resource. The information kept by government holds the memory of the nation and provides a full portrait of its activities, performance and future plans. Government information includes: international accords; negotiating briefs; policy statements; minutes of discussions with investors, donors and debtors; cabinet deliberations and decisions; parliamentary papers; judicial proceedings; details of government functioning and structure; intra-governmental memos; executive orders; budget estimates and accounts; evaluations of public expenditure; expert advice; recommendations and guidelines; transcripts of departmental meetings; statistical data; reports of task forces, commissions and working groups; social surveys and analyses of health, education and food availability; assessments of demographic and employment trends; analysis of defence preparedness and purchases; maps; studies on natural resource locations and availability; proof of the quality of the environment, water and air pollution; detailed personal records; and much, much more.

Information is a public good like clean air and drinking water. It belongs not to the state, the government of the day or civil servants, but to the public. Officials do not create information for their own benefit alone, but for the benefit of the public they serve, as part of the legitimate and routine discharge of the government's duties. Information is generated with public money by public servants paid out of public funds. As such, it cannot be unreasonably kept from citizens.

Hoarded by the Powerful

It is well documented that the majority of people in the Commonwealth live in poverty. Yet the majority of the Commonwealth's citizens are not only materially poor, but also information poor. This deprivation is partly because many are unlettered or do not have ready access to mass communication like newspapers, radio or television. However, in

the main, the poverty of information has been created because the large stockpile of valuable information lying with the government is deliberately held away from people. In much the same way as depriving people of food starves physical development, depriving human beings of information robs them of one of the basic means by which they can become all that they should be.

Unfortunately, the assumption that information is secret has always been a major premise of the relationship between ruler and ruled in the Commonwealth. Chieftains and tribal leaders have long been unaccountable arbiters of their people's governance. In some Pacific Island countries for instance, the king or chief is traditionally seen as so omnipotent that his decision-making is beyond question.[3] Colonial authorities owed no duty to subject populations and purposefully used distance to signal their power. A culture of secrecy permeated government, and systems to withhold information became so embedded that they were perpetuated post-independence. In Kenya for example, during the Moi era, fear of the consequences of asking for or giving information culminated in power being consolidated around the presidency to the extent that *serikali* (the Kiswahili word for government) became synonymous with *sirikali* (top secret).[4]

No Information, No Power

Since 1983, hundreds of thousands of Sri Lankans affected by long years of civil war have been forced to leave their homes to live in camps or unfamiliar resettlement areas. As 'internally displaced people' they were dependent on government to protect their basic rights and needs, like food and shelter. However, government distribution was often shrouded in secrecy and delays were common. Food rations were subject to sudden embargoes and often stopped for unknown reasons. People had to rely solely on hearsay to know if they would get food, how much, when and where it would be distributed, and what rules to follow to access it. Lack of a *right* to access information denied them the opportunity to know their rightful entitlements and question the government about its policy on food distribution. This, it was widely felt, allowed for discrimination and arbitrariness and, since the government owed no duty to inform people, it could not be questioned or held accountable for denying food.[6]

Although a few countries have reformed, most still enthusiastically retain and indeed embrace secrecy as a symbol of supremacy, as if there has been no intervening change from colonial to constitutional governance. Anti-terrorist legislation, criminal defamation laws, overly indulgent contempt and privilege laws, media and privacy regulations and restrictive civil service rules all remain very much intact. Broadly-worded official secrets acts linger unamended on statute books, ready to swiftly punish any breach of government confidentiality. Former Chief Justice of Zimbabwe, Justice Gubbay, recalls: "…a member of Parliament with an interest in ecology was convicted under the [Official Secrets] Act for trying to get a civil servant to disclose the State's plans for setting up a national park in the north-east of the country, plans which had nothing to do with State security. So wide is the ambit of the Act that unauthorised disclosure of the number of cups of tea drunk daily by civil servants – or even disclosure of the fact that civil servants drink tea each day – would amount to a criminal offence."[5] Unfortunately, most governments still do not accept that the public has an automatic right to access information; nor do they recognise that government has a duty to make sure that information is routinely available to all.

A Fundamental Human Right

Lack of information denies people the opportunity to develop their potential to the fullest and realise the full range of their human rights. Individual personality, political and social identity and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognised by the United Nations at its very inception in 1946, when the General Assembly resolved: *"Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated"*.[7] Enshrined in the Universal Declaration of Human Rights, the right's status as a legally binding treaty obligation was affirmed in Article 19 of the International Covenant on Civil and Political Rights which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media and regardless of frontiers"*.[8] This has placed the right to access information firmly within the body of universal human rights law.

The right to access information underpins all other human rights. For example, freedom of expression and thought inherently rely on the availability of adequate information to inform opinions. The realisation of the right to personal safety also requires that people have sufficient information to protect themselves. In Canada, a court has recognised

Right On!

It is important that access to information is recognised as a *right* because it:

- Accords it sufficient importance, as being inherent to democratic functioning and a pre-condition to good governance and the realisation of all other human rights.
- Becomes part of the accepted international obligations of the state. This means that the right to access information attracts the *guarantee of protection* by the state.
- Distances it from being merely an administrative measure by which information is gifted by governments to their people at their discretion since a legally enforceable right cannot be narrowed or ignored at the whim of government.
- Creates a duty-holder on the one hand and a beneficiary of a legal entitlement on the other. Non-disclosure of information is therefore a violation and the beneficiary can seek legal remedy.
- Signals that information belongs to the public and not government. The idea that everything is secret unless there is a strong reason for releasing it is replaced by the idea that all information is available unless there are strong reasons for denying it. The onus is on the duty-holder to prove its case for refusing to disclose documents.
- Sets a higher standard of accountability.
- Gives citizens the legal power to attack the legal and institutional impediments to openness and accountability that still dominate the operations of many governments. It moves the locus of control from the state to the citizen, reinstating the citizen as sovereign.

that the right to security creates a corollary right to information about threats to personal safety which would be violated if the police force knew of a threat and failed to provide that information to the threatened individual.[9] The right to food is also often reliant on the right to information. In India for example, people have used access laws to find out about their ration entitlements and to expose the fraudulent distribution of food grains.[10] Quite simply, the right to information is at the core of the human rights system because it enables citizens to more meaningfully exercise their rights, assess when their rights are at risk and determine who is responsible for any violations.

The right to information holds within it the right to seek information, as well as the duty to give information, to store, organise, and make it easily available, and to withhold it only when it is proven that this is in the best public interest. The duty to enable access to information rests with government and encompasses two key aspects: enabling citizens to access information upon request; and proactively disseminating important information.[11]

Commonwealth Action

To their credit, the members of the Commonwealth have collectively recognised the fundamental importance of the right to access information on a number of occasions. As far back as 1980, the Commonwealth Law Ministers declared: "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information."[14] Policy statements since then have encouraged member countries to "regard freedom of information as a legal and enforceable right."[15] The Commonwealth Secretariat has even prepared guidelines[16] and a model law[17] on the subject.

The Official Commonwealth – that is, the intergovernmental agencies and meetings – has recently been making efforts to open itself up to the public, but it has a long way to go. In particular, the Commonwealth Secretariat should lead by example and adopt an explicit and comprehensive policy of maximum disclosure. In the absence of such a policy, the Commonwealth will continue to struggle to rid itself of its reputation for aloof disinterest in communicating with its citizens.

When Is Private...Public?

In a world where non-state actors – such as public and private corporations, non-governmental organisations (NGOs), quasi non-government organisations and international institutions – influence the destinies of millions, the ambit of the right to information needs to encompass more than just governments. Some Commonwealth countries have extended the coverage of their laws to some private bodies,[12] recognising that the issue needs to be "resolved by reference to its role in protecting the fundamental interests of citizens, and not by reference to the provenance or structural characteristics of the institution holding the contested information."[13]

As more and more public functions, like provision of health care, supply of water, power and transport, and even prison management, are privatised, people need to be able to get information from the bodies performing these services. Often, agreements between government and service providers do not require them to make information about their activities available. This removes information from the public domain that would otherwise have been covered under access laws. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if they affect people's rights. For example, the public should be able to access information on a factory's environmental management policies to ensure the factory is managing toxic waste appropriately and therefore, not diminishing their right to health.

Status of the Right to Information in the Commonwealth

Access Regime	No Access Regime		
	Constitution: Specific guarantee	**Constitution: Part of speech & expression**	**No Access Law**
Australia	Ghana	Antigua and Barbuda	Bangladesh
Belize	Malawi	The Bahamas	Brunei Darussalam
Canada	Mozambique	Barbados, Botswana	The Gambia
India	Papua New Guinea	Cameroon	Malaysia
Jamaica+	Uganda	Cyprus	Maldives
New Zealand+	United Republic of Tanzania	Dominica	Nauru
Pakistan		Fiji Islands	Namibia
South Africa#		Grenada	Samoa
Trinidad and Tobago		Guyana	Singapore
United Kingdom		Kenya	Swaziland
Zimbabwe*+		Kiribati	Tonga
		Lesotho	Vanuatu
		Malta	
		Mauritius	
		Nigeria	
		Seychelles	
		Sierra Leone	
		Solomon Islands	
		Sri Lanka	
		St Kitts and Nevis	
		St Lucia	
		St Vincent and the Grenadines	
		Tuvalu	
		Zambia	

+ Not yet fully operational.
# Pakistan promulgated a Right to Information Ordinance in October 2002 but no access legislation has yet been passed.
* The Zimbabwe law is so heavily qualified that it is tantamount to having no access legislation.

Limited Progress

There should be no need to recall to the governments of the Commonwealth the importance of the right to information. Yet there is. Over fifty countries throughout the world now have specific laws that protect the right to access information,[18] and many recently crafted constitutions also contain specific provisions granting the right. But at the time of writing, only 11 of 54 Commonwealth nations – Australia, Belize, Canada, India, Jamaica, New Zealand, Pakistan, South Africa, Trinidad and Tobago, the United Kingdom and Zimbabwe – have passed legislation guaranteeing the right to information. Of these, some contain serious deficiencies. For example, Zimbabwe's law is seriously flawed and Pakistan's and India's lack key provisions. In the United Kingdom, Jamaica and India, although access legislation has been passed by Parliament, the laws have not yet been operationalised fully, if at all.

For the most part, open government is notoriously absent in the Commonwealth; governments continue to drag their heels. When forced to react, some have slowly given ground, often refusing to guarantee the right through explicit legislation, delaying as much as possible and where conceding, providing only a limited right. A handful of other Commonwealth countries are currently considering passing access laws,[19] but progress has been slow.

The Key to Democracy and Development

The reluctance of so many member countries to enshrine the right to access information is surprising considering open government offers the key to deepening democracy and quickening development that the Commonwealth is so desperately seeking. The right to information lays the foundation upon which to build good governance, transparency, accountability and participation, and to eliminate that scourge upon the poor – corruption. As such, it should be embraced as much by the hard-headed economist as by the high-minded reformer.

Making Participatory Democracy Meaningful

To be a member of the Commonwealth, a country must comply with the values and principles set out in the 1991 Harare Declaration, which recognises "the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives."[20] However, while all members of the Commonwealth have made that commitment to democracy, in many countries the democratic principles of good governance, transparency and accountability are largely

Knowing Who You Are Really Voting For

As in many countries, Indian law disqualifies people convicted of serious criminal offences from standing for elections but does not bar those indicted and awaiting trial or appeal. In the 2002 state election in the Indian state of Gujarat, one in every six candidates fielded by major political parties had serious criminal charges pending against them! Twenty-five from the ruling party won, and some have even gone on to hold ministerial posts. Alarmed by the number of people with questionable backgrounds entering parliament and state assemblies, a group of enterprising academics applied to the Supreme Court to direct India's Election Commission to change nomination requirements and make it compulsory for candidates to disclose any charges of serious crimes pending against them.

The Supreme Court agreed, finding that the right to information is inherent to democracy and that the voter has a constitutional right to know a candidate's background. The Election Commission immediately made the necessary changes to the nomination process. However, in a rare show of unanimity, all political parties came together to resist this development and the Government passed an ordinance that effectively nullified the Election Commission's orders. Citizens immediately went back to the Supreme Court and appealed against the Ordinance, arguing that it diminished their constitutionally guaranteed human rights. Once again, the Court agreed and struck down the new Ordinance, holding that the fundamental right to know could not be restricted in such an unreasonable manner. Now all candidates, at the time of nominating, must file an affidavit disclosing if they have been charged with serious crimes, their educational qualifications and the extent of their wealth and liabilities. This information must be made widely available.[21]

Lies, Damned Lies

It is small wonder that citizens today are so distrustful of government. The 2003 Hutton Inquiry, held in the aftermath of the apparent suicide of Dr David Kelly, a highly placed civil servant, at the height of the controversy surrounding the United Kingdom Government's justifications for the country's involvement in the Iraq war, saw an unprecedented amount of information laying bare the working of government and the thinking of civil servants. Revelation after revelation contained in the cascade of documents released during the Inquiry indicated the degree to which governments 'manage' information to suit current political needs. By no means is 'spin doctoring' a new or unusual phenomenon. During the Scott Inquiry, set up in 1992 to investigate arms sales to Iraq, the former Foreign Secretary, Lord Howe, candidly maintained that government should not be criticised for "incompatibility between policy and presentation of policy" and that "in circumstances where disclosure might be politically or administratively inconvenient, the balance struck by the government comes down, time and time again, against full disclosure." During the 1998 inquiry into 'mad cow disease', the Ministry of Agriculture similarly advised that it had adopted a policy of "positive censorship" about the disease, preventing its scientists from even discussing their findings with outside experts. The Inquiry reported that "had there been a policy of openness rather than secrecy, this might have led to a better appreciation of the growing scale of the problem and hence to remedial measures being taken sooner."[23]

absent. The fact is that periodic elections and a functioning bureaucracy do not in themselves ensure that governments are responsive and inclusive. Something more is needed. Access to information is the key for moving from formal to consultative and responsive democracy. In 2002, the Commonwealth Law Ministers specifically recognised that "the right to access information was an important aspect of democratic accountability and promoted transparency and encouraged full participation of citizens in the democratic process".[22]

Information is often withheld even when people are engaged in exercising that most basic of democratic rights, the vote. In the absence of a continuous flow of information that accurately reveals how ministries are functioning, how politicians have performed or the experience and qualifications of new candidates, elections may end up promoting only narrow interests as voters fall back on tribal, clan, religious or class affiliations as the basis for their choice. Likewise, in the absence of a right to scrutinise the financial details of political party funding – some of it no more than bribes – citizens are unable to ensure that special interest groups, including criminal elements, do not co-opt their representatives for private gain. Better-informed voters mean better-informed choices, more responsive legislators and better governance.

Cementing Trust In The Government

Democracy and national stability are enhanced by policies of openness which engender greater public trust in their representatives. This is a crucial aspect of effective governance – without the support and trust of the people, governments will be more likely to face resistance to their policies and programmes and implementation will be more difficult. It is a concern therefore, that a Commonwealth Foundation study in 1999 which sought the views of some 10,000 citizens in over 47 Commonwealth countries showed that there is a growing disillusionment of citizens with their governments: "Citizens are suspicious of the motives and intentions of their governments. They feel ignored or

even betrayed by their elected representatives. Indeed, they feel suspicious of the very programmes and agencies created to meet the needs they have. They feel neglected, ignored and uncared for."[24] The integrity of governments needs to improve – and be *seen* to improve. Open government and access to information provide a means of achieving both these ends.

Enhancing people's trust in their government also goes some way to minimising the likelihood of conflict. Over the years, instability and conflict have resulted in huge setbacks to development in the Commonwealth. Openness and information-sharing contribute to national stability by establishing a dialogue between citizens and the state, reducing the distance between government and people and thereby combating feelings of alienation. Systems that enable citizens to be part of, and personally scrutinise, decision-making processes reduces their feelings of powerlessness and weakens perceptions of exclusion from opportunity or unfair advantage of one group over another.

Supporting People-Centred Development

At the turn of the century, all members of the Commonwealth came together in their broader membership of the United Nations and pledged their commitment to the Millennium Development Goals (MDGs) – the most comprehensive poverty reduction and development agenda the international community has ever forged. At Coolum in 2002, the Commonwealth Heads of Government made a commitment "to work to eliminate poverty, to promote people-centred and sustainable development, and thus progressively to remove the wide disparities in living standards among us."[25] Sadly, in 2003, poverty remains the hallmark of the Commonwealth. Almost two thirds of the people living in the Commonwealth still live on less than US$2 a day.[26] Half of the 130 million children in the world who do not have access to primary education live in the Commonwealth.[27] Sixty per cent of HIV/AIDS cases worldwide are found in the Commonwealth.[28] Sub-Saharan Africa and South Asia (home to more than 85% of the Commonwealth) have within them the largest concentrations of hungry people in the world.[29] With just seven years to go to reach the MDG targets, many countries are slipping far behind schedule.

The sad fact is that while poor people throughout the Commonwealth have strong views on their own development destinies,[30] they remain excluded. Tragically, this has often resulted in governments taking advantage of the marginalised populations they should be helping. For example, from the Pacific to Africa to South Asia, the rural poor and indigenous communities who are so heavily reliant on their local natural resources for survival have often been excluded from decisions about their use and sale which have been made by governments dominated by urban elites who have then co-opted the benefits.

Millennium Development Goals*

- Between 1990 and 2015:
  - Halve the proportion of people whose income is less than $1 a day
  - Halve the proportion of people who suffer from hunger
  - Ensure that children everywhere will be able to complete a full course of primary schooling
  - Eliminate gender disparity in primary and secondary education
  - Reduce the under-five mortality rate by two-thirds
  - Reduce the maternal mortality ratio by three-quarters
  - Have halted and begun to reverse the spread of HIV/AIDS and the incidence of malaria and other major diseases
  - Halve the proportion of people without sustainable access to safe drinking water
- By 2020, have achieved a significant improvement in the lives of at least 100 million slum dwellers
- Integrate principles of sustainable development into country policies and programmes and reverse the loss of environmental resources
- Develop a global partnership for development

* This is a summary of the Millennium Goals and Targets. For a full list see UNDP (2003) *UNDP Human Development Report 2003*, New Delhi, pp. 1-3.

Likewise, women, who battle discrimination across the Commonwealth, continue to be ignored and their contribution to development undervalued. With assured information, marginalised groups will be given their rightful voice and a powerful tool to scrutinise and engage with the development processes being directed at them.

Much of the failure of poverty reduction and development strategies to date can be attributed to the fact that, for years, they have been designed behind closed doors by governments who consulted with 'experts' but shut out the very people who were supposed to benefit. Even a parliamentarian in Ghana complained that the interim Poverty Reduction Strategy Paper required by the World Bank, as well as crucial decisions to take advantage of the Highly Indebted Poor Country Initiative which will affect government policy directions for years to come, were not referred to Parliament at large.[31] Donors have been complicit in keeping development planning processes closed. Multilateral institutions, such as the World Bank and the International Monetary Fund, are now beginning to open up following pressure from civil society groups, but much more work still needs to be done.

Power To The People!

Instead of being dependent on vague suppositions and assumptions, people armed with sound factual information have the confidence to take on those in power. Even the most marginalised can act in their own interests. For example, a daily wage earner can ask to see work registers to check if they are being paid what a contractor is claiming on their behalf from the government. A parent can challenge the basis on which school admission is given. A pensioner can check if personal records held by government are accurate or misinterpret their entitlements. A small business can sue for compensation if it discovers that a tender it lost was corruptly awarded to another bidder. A resident can question the quality of a road being laid in their locality against specifications stated in the government contract. A citizens group can examine the viability of a development project because it can access documents that indicate if a project would have a detrimental impact on the environment.

Facilitating Equitable Economic Growth

The Commonwealth is relying on free markets to quicken development. But markets, like governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of 'perfect information' and 'perfect competition'. Foreign and local investors need to be able to rely on the routine availability of timely and accurate information about government policies, the operation of regulatory authorities and financial institutions and the criteria used to award tenders, provide licences and give credit. Easy access to fulsome information that is not mired in bureaucratic processes creates long-term investor confidence in the local economic environment. A guaranteed right to information supports the market-friendly good governance principles of transparency and accountability, which in turn encourage strong growth.

Notably, not merely economic growth, but also economic equity is promoted by access to information. At Coolum in 2002, the Commonwealth called on governments to "work to reduce the growing gap between rich and poor" and declared that "the benefits of globalisation must be shared more widely and its focus channelled for the

Plugging Leaks By Opening Up The System

Despite increased expenditure in the 1990s, an expenditure tracking survey revealed that, during a five-year period, 87% of all funds meant for primary schools in Uganda went into the pockets of bureaucrats, while enrolment remained less than 50%. Astonished by these findings, the national government began publicising details about monthly transfers of grants to districts through newspapers and the radio in a bid to curb the siphoning of funds. At the other end, primary schools were required to post public notices on receipt of all funds. Primed with this information, parents were in a position to monitor the educational grant programme and demand accountability at the local government level. In five years, the diversion of funds dropped phenomenally from 80% to 20% and enrolment more than doubled from 3.6 million to 6.9 million children. Schools with access to newspapers were able to increase their flow of funds by 12 percentage points over other schools. Information dissemination, though a simple and inexpensive policy action, enforced greater accountability in local government and ensured proper use of taxpayers' money.[32]

elimination of poverty and human deprivation."[33] The liberation from government of information that would otherwise have remained unutilised increases economic opportunity for the less powerful as much as for the big player. A worker can access information about labour regulations and their entitlements, a businessperson can find out about licensing requirements, taxation and trade regulations; or farmers can get hold of land records, market trend analysis and pricing information.

Tackling Corruption

A guaranteed right to access information is an essential and practical antidote to corruption, which is rife in too many Commonwealth countries. Corruption is destroying the rule of law and has created a mutually supporting class of overlords who need secrecy to hide their dark deeds in dark places. In the worst instances, it has led to the 'criminalisation of politics' and 'the politicisation of criminals', turning elections into futile exercises which merely legitimise bad governance and bad governors.

Corruption is leaching away the economic lifeblood of many Commonwealth societies. The World Bank estimates that corruption can reduce a country's growth rate by 0.5 to 1.0 percentage points per year. Transparency International estimates that over US$30 billion in aid for Africa – an amount twice the annual gross domestic product of Ghana, Kenya and Uganda combined – has ended up in foreign bank accounts.[34] The need to give 'speed money', 'grease' or 'baksheesh' in return for public services or rightful entitlements amounts to an additional illegal tax. Corruption is especially severe on the poor, who are least capable of paying the extra costs associated with bribery and fraud or surviving the embezzlement of scarce public resources.

It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with access to information laws are also perceived to be the least corrupt. In 2003, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than nine had legislation enabling the public to access government information. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning access to information regime.[35] The right to access information acts as a source of light to be shone on the murky deals and shady transactions that litter corrupt governments. It enables civil society and especially the media to peel back the layers of bureaucratic red tape and political sleight of hand and get to the 'hard facts.'

Corruption In The Commonwealth

Transparency International's Annual Corruption Perceptions Index surveys the degree of corruption in a country as perceived by business people and risk analysts. Scores range between a top of 10, which is considered very clean, to 0 or highly corrupt. In 2003, 31 of the countries surveyed were from the Commonwealth – more than half the Commonwealth's members. Of these, only eight – just over 25% – got past the halfway mark of 5. The remaining 23 countries scored extremely poorly, with corruption ratings ranging from moderate to rampant. Nigeria and Bangaldesh ranked at the very bottom of the entire list of 133 countries.[36]

Rank	Country	CPI Score
3	New Zealand	9.5
5	Singapore	9.4
8	Australia	8.8
11	Canada	8.7
	United Kingdom	
27	Cyprus	6.1
30	Botswana	5.7
37	Malaysia	5.2
41	Namibia	4.7
43	Trinidad & Tobago	4.6
46	Belize	4.5
48	Mauritius	4.4
	South Africa	
57	Jamaica	3.8
66	Sri Lanka	3.4
70	Ghana	3.3

Rank	Country	CPI Score
83	India	2.8
	Malawi	
86	Mozambique	2.7
92	The Gambia	2.5
	Pakistan	
	Tanzania	
	Zambia	
106	Zimbabwe	2.3
113	Sierra Leone	2.2
	Uganda	
118	Papua New Guinea	2.1
122	Kenya	1.9
124	Cameroon	1.8
132	Nigeria	1.4
133	Bangladesh	1.3

Bolstering Media Capacity

In robust democracies, the media acts as a watchdog, scrutinising the powerful and exposing mismanagement and corruption. It is also the foremost means of distributing information; where illiteracy is widespread, radio and television have become vital communication links. Unfortunately, this power to reach the masses has often been perceived as a threat by closed governments, which have carefully regulated private ownership of the press and attempted to curb the media's ability to gather news, investigate and inform. Zimbabwe's repeated attempts to close the independent *Daily News* newspaper is an example of this sinister tendency. Satellite television and the internet are making slow inroads, but even the content of these are sometimes restricted.

Where the media is unable to get reliable information held by governments and other powerful interests, it cannot fulfil its role to the best of its abilities. Journalists are left to depend on leaks and luck or to rely on press releases and voluntary disclosures provided by the very people they are seeking to investigate. Lack of access to information also leaves reporters open to government allegations that their stories are inaccurate and reliant on rumour and half-truths instead of facts. A sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and is as much in the interests of government as it is of the people.

A Powerful Tool For The Media

A 1995 study in Australia found that 16.6% of hospital admissions suffered an "adverse event"; of these, 13.7% resulted in permanent disability, 4.9% in death and 51% were judged as highly preventable. Government action in response to these findings was excruciatingly slow. In June 1998, two reporters from *The Age* newspaper attempted to bring things to a head in the state of Victoria by lodging freedom of information requests with six health care networks. They were interested in statistics that would enable comparisons between hospitals for infection rates, falls by patients, medication errors, needle stick injuries and so on, as well as information on how hospitals dealt with mistakes.

It took 18 months for their requests to be finally determined, but not without a legal battle that ended in the Victorian Civil and Administrative Tribunal. Even then, the reporters were given only some information and not the detailed documents they had requested. Regardless, their final story revealed such a serious problem with infection rates at one hospital that a state commission was ordered to look into cases. A second inquiry was ordered when the reporters used the Freedom of Information Act to uncover that some Australian hospitals were not using so-called 'safety syringes', such that doctors and nurses were at increased risk of contracting HIV and hepatitis.[37]

But Resistance Persists

Despite the obvious benefits of open government for democracy and people-centred development, bureaucrats and politicians unused to opening themselves to scrutiny still offer many justifications for not allowing citizens to access information as of right. None are compelling.

Officials argue that access to information on policy development would inhibit decision-making, because the threat of public scrutiny would curb free and frank discussions, inhibit the candour of advice and therefore seriously hamper the smooth running of government. But the area of official decision-making – how criteria are applied, assessments made, contracts awarded, applications rejected, budgets prepared, or benefits distributed, whose advice counts and whose is ignored – is traditionally an

area prone to bias and abuse of power. Without the possibility of disclosure, there is little possibility of checking these tendencies. Conversely, it has been shown that just the threat of disclosure improves the quality of government decision-making. A 1995 report of the Australian Law Reform Commission found that: "the FOI Act has focused decision-makers' minds on the need to base decisions on relevant factors and to record the decision-making process. The knowledge that decisions and processes are open to scrutiny... imposes a constant discipline on the public sector."[38] Doing public business in public also ensures that honest public servants are protected from harassment and are less liable to succumb to extraneous influences.

Many governments appear to be wary that open government will result in the disclosure of sensitive high-level communications between senior officials or even with other states. They argue that it is not in the public interest to disclose information that would weaken them in the eyes of the world, especially in the areas of national security, foreign relations or negotiations with international financial institutions. While there may be value in protecting these interests, access laws can easily be crafted to do so. What they will not do though, is protect officials from inconvenient disclosure or criticism that could affect the electoral fortunes of ruling regimes or cause embarrassment to individual government leaders or bureaucrats. Perhaps it is actually a fear of the latter that is at the heart of many governments' resistance to openness.

Concerns are also raised about breaching privacy rights or damaging important commercial interests. But there is no special mystique attached to these communications. Indeed, it is increasingly recognised that the mere fact that something is certified as politically or commercially 'sensitive' is not enough to keep it out of the public eye. Transparency in the public interest is increasingly preferred to secrecy in the private.

Much of the debate over the sensitivity of disclosure is only valid in relation to a very narrow selection of information held by government. In reality, the bulk of government-held information does not fall into sensitive categories where real harm may be caused by its release. Much that is requested by the public is either about personal matters or is uncontroversial: what a person's welfare entitlements are; how government insurance schemes calculate the cost of their premiums; what additives are permissible in food; and so on. In any case, well-drafted access laws inevitably provide for exemptions for certain types of sensitive information, allow for the balancing of competing interests in difficult cases and permit external adjudication where there is a dispute. For example, while it may not be in the national interest to know where a squadron of new aircraft is to be deployed, there is no reason why, merely because the defence department is involved, citizens should not be given copies of the purchase agreement and information on how much an air force jet cost, who is being paid a commission, of what amount and on what terms.

Officials, particularly in developing countries, often argue that guaranteed access to information is a luxury that must await better times. This ignores the truth that access to information is, in fact, a fundamental precondition for development and democracy. Cash-strapped countries also argue that the cost of managing and disseminating information is an insurmountable barrier to open government. While this argument may initially appear to have some merit, especially where nations are struggling just to feed their populations, it is actually seriously flawed as good record-keeping is in any case a basic duty of government. It also overlooks the amount that governments already spend on creating systems of secrecy and distributing their own propaganda. For example, in the mid-1990s it was estimated that the Freedom of Information Act in Victoria, a state of Australia, cost about $3 million to administer, compared to the $75 million spent each year by government departments distributing their own glossy brochures.[39] The costs to private business and individuals of paying bribes to access everyday information can also not be ignored. Expenditure incurred in opening up government is more than offset by the many benefits – economic and social – that result from greater openness. Adequate information regimes are a long-term investment, which not only pay for themselves many times over, but also generate more wealth for the country as a whole.

The War On Terror: A War On Information?

In the wake of 'the war on terror', the impetus to rewrite access laws has gathered momentum. Developed and developing countries alike have been quick to introduce draconian anti-terrorist laws or strengthen existing ones to give sweeping powers to government agencies. An outstanding feature is the curbs imposed on access to public information.

For example, in Canada a new law empowers the Minister of Justice to conceal all information related to terrorism and gives the Minister overriding powers to terminate any investigation launched by the Information Commissioner.[40] In India, the *Prevention of Terrorism Act* 2002 now allows the annual reports of central and state governments to exclude information they believe "would be prejudicial to the security of the country or to the prevention or detection of any terrorist act."[41] Trials under the Act can also be conducted in camera and orders can be made for proceedings in court not to be published if it is "in the public interest."[42] While this is envisaged for the protection of witnesses, it severely constrains the public's right to know whether trials are conducted in a fair manner.

National security and the need to protect the public from harm are of course important considerations for any government – and for citizens too. But the temptation to expand protective provisions to stifle all disclosures is a matter of profound concern. Nations must remain steadfast in their commitment to open government and not give in to knee-jerk instincts to claw back hard won rights at the first sign of danger, citing 'security considerations'. To continue this dangerous trend allows the mere threat of terror to realise the very objectives of the terrorists.

Old Habits Die Hard

Resistance to change is not limited to countries new to the notion of providing information as a right; it remains strong in countries that have had access laws on the books for decades. In a recent review of Canada's *Access to Information Act* 1983, the Information Commissioner ruefully reported that, despite their law being over 20 years old, "there remains a deep nostalgia in the bureaucracy for the days when officials controlled information and the spin of the message. Officials have not given up the fight to weaken the law, but they have come to realize that the only effective strategy left to them is to rewrite the law".[43] Such a strategy is in train and it prompted the Information Commissioner to submit a Special Report to Parliament waving a flag of concern about the Government's proposals to rewrite the Act.

Governments Have a Duty to Act Right Now!

Perhaps the most serious obstacle to transforming closed and often corrupt government is lack of political will. Without it, little can change. New, transitional and established democracies all have work to do. Many are failing to live up to the long established democratic ideals and declarations of the Commonwealth to promote democracy and development.

Knowledge is too valuable a common good to be a monopoly of the few. In this interconnected information age, the combination of technology and easy availability of know-how – coupled with guaranteed access to information – offers unprecedented opportunities for the radical overhaul of governance. Shared equitably and managed to the best advantage of all, information offers a short cut to development and democracy. The means are available, but sadly the commitment is often not. This must change.

Chapter 2

Balancing the Scales: Legislating for Access

> ***[F]reedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.***
>
> **— Commonwealth Expert Group on the Right to Know, 1999[44]**

It is the duty of governments to promote and protect the internationally recognised human right to access information. This is most effectively done by enacting specific legislation. To evolve a law that is truly in tune with the context and the needs of users, the process of making law in partnership with people is as important as what the law contains. Over the years, international organisations and civil society have developed principles and guidelines that encapsulate minimum standards to assist the development of effective laws. While many of the access laws within the Commonwealth leave much to be desired, there are also many examples of good practice to draw on.

Key International Standards

The Commonwealth

As early as 1980, the Commonwealth Law Ministers' Meeting recognised that official information needs to be accessible to enable public participation in a democracy.[45] Yet little was done to promote the right to information until 1999 when the Commonwealth Secretariat set up the Expert Group on the Right to Know and the Promotion of Democracy and Development. Based on the Expert Group's final report, the Commonwealth Law Ministers adopted the Commonwealth Freedom of Information Principles, recognising the right to access information as a human right whose "benefits include the facilitation of public participation in public affairs, enhancing the accountability of government, providing a powerful aid in the fight against corruption as well as being a key livelihood and development issue."[46]

Commonwealth Freedom of Information Principles (1999)

- Member countries should be encouraged to regard Freedom of Information as a legal and enforceable right;
- There should be a presumption in favour of disclosure and governments should promote a culture of openness;
- The right of access to information may be subject to limited exemptions, but these should be drawn narrowly;
- Governments should maintain and preserve records;
- In principle, decisions to refuse access to records and information should be subject to independent review.

Unfortunately, the final set of Principles adopted by the Commonwealth Law Ministers is much less comprehensive and liberal than those recommended by the Expert Group. The principle of *maximum* disclosure was watered down, and the exemptions provision does not include the requirement that information be withheld "only when disclosure would harm essential interests [and] provided that withholding the information is not against the public interest". Also, the Guidelines recommended by the Expert Group, which focus on ensuring that appropriate administrative provisions are in place to ensure effective implementation, largely did not find their way into the Law Ministers' final set of Principles.

Disclosure In The Commonwealth: The Need To Lead By Example

Despite the Commonwealth's stated commitments to openness and transparency, it has failed to lead by example in the area of information-sharing. Its main agency, the Commonwealth Secretariat, does not have a comprehensive disclosure policy in place, and despite some welcome good practice at recent meetings of its officials, the Official Commonwealth continues to hesitate to engage civil society in its working or functions. Information such as communiqués of meetings are released, but records of policy formation and decision-making, and even the internal administration of the Secretariat, are automatically deemed confidential and remain secret for thirty years. Even after that time access can be difficult.

By contrast, the United Nations Development Programme's (UNDP) Public Information Disclosure Policy is extremely wide and inclusive. The Policy's objective is stated clearly to be to "ensure that information concerning UNDP operational activities will be made available to the public in the absence of a compelling reason for confidentiality".[47] There is "a presumption in favour of public disclosure of information and documentation generated or held by UNDP".[48] Anyone can ask for copies of any document in the UNDP's possession, except those expressly exempted on such grounds as commercial confidentiality, confidentiality of internal deliberative processes, legal privilege and privacy of employees.[49] Where a request is refused, an appeal can be made to an Oversight Panel consisting of three UNDP professional staff members and two outsiders.[50] Such policies are an important step forward, facilitating citizens' participation in projects that affect them and working to ensure that economic development reaches its target.

The Commonwealth can also usefully draw on the information disclosure example provided by the European Union (EU), an organisation similar in its composition and mode of operation. The EU gave explicit legal status to the right to access information in 1997 through the Amsterdam Treaty.[51] The 2000 Charter of Fundamental Rights of the European Union explicitly guarantees access to documents of the European Parliament, Council and Commission.[52] In 2001, the EU passed a specific regulation on freedom of information to "ensure the widest access possible to documents".[53] It covers "all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union".[54] The Regulation obligates both the European Union Commission and the European Parliament to maintain updated public registers of documents on the internet. The European Ombudsman's Code of Good Administrative Behaviour, which applies to all institutions of the EU,[55] also requires officials to "provide members of the public with the information that they request". The Code enjoins officials to deal with requests in a timely fashion,[56] and to take effective steps to inform the public about their rights under it.[57]

The Commonwealth Law Ministers encouraged the Commonwealth Secretariat to actively promote the Principles which the Commonwealth Heads of Government approved in November 1999.[58] To this end, the Secretariat has designed a Model Law on Freedom of Information[59] to serve as a guide to law-makers. Overall, the Model Law is progressive and contains a good set of provisions. However, it has some limitations and omissions, which do not accord with generally recognised international standards. For example:

- It focuses on access to "documents" rather than "information".[60] If interpreted narrowly, this could result in a more restrictive application of the law.
- It allows for excessive exemptions. A general ministerial override provision allows for exemption in any category if required by the "national interest". Ministerial certificates that disclosure would be contrary to the public interest in certain specified areas are conclusive and not open to independent review.[61]
- There is no statement that the law overrides inconsistent legislation, like secrecy laws, or that such laws should be repealed or amended.
- The only avenue for independent appeals is through the courts.[62] There is no provision for independent review by a specialist commissioner, tribunal or ombudsman because the Commonwealth felt that creating separate oversight bodies could prove too difficult for developing countries and small states with limited resources.[63] However, many of these countries already have general independent oversight bodies like an Ombudsman, who could provide citizens with an additional forum to appeal information refusals without the expense of the courts.

All these shortcomings make the Commonwealth's standards less comprehensive than those endorsed by other international bodies. For example, the African Union recognises the right to access information from private bodies, clearly recognises the need to amend secrecy laws in order to enable access to information and accepts the need for an independent appeals body. The principles endorsed by the UN Commission for Human Rights especially incorporate the government's obligation to protect whistleblowers and make provision for public education. None of these requirements are present in the Commonwealth Model Law.

Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.

— Mr Abid Hussain, UN Special Rapporteur, 1999[68]

United Nations

In furtherance of its early recognition of the right to information as a human right, in 1993 the UN Commission on Human Rights appointed a Special Rapporteur on Freedom of Opinion and Expression whose mandate included monitoring and reporting on the implementation of the right. The Special Rapporteur has unequivocally clarified that freedom of information under Article 19 of the International Covenant on Civil and Political Rights imposes "a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems."[64] In 1998, the Commission passed a resolution welcoming this view.[65] In 2000, the Special Rapporteur endorsed a set of principles on freedom of information,[66] which the Commission has noted.[67]

UN Principles On Freedom Of Information (2000)

- ***Maximum disclosure*:** Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; "information" includes all records held by a public body, regardless of the form in which they are stored.
- ***Obligation to publish:*** Public bodies should publish and widely disseminate documents of significant public interest, for example, on how they function and the content of decisions or policies affecting the public.
- ***Promotion of open government:*** At a minimum, the law should make provision for public education and the dissemination of information regarding the right, and include mechanisms to address the problem of a culture of secrecy within government.
- ***Limited scope of exceptions:*** A refusal to disclose information may not be based on trying to protect government from embarrassment or the exposure of wrongdoing. The law should include a complete list of the legitimate grounds which may justify non-disclosure and exceptions should be narrowly drawn to avoid including material which does not harm the legitimate interest.
- ***Processes to facilitate access:*** All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide strict time limits for processing requests and require that any refusal be accompanied by substantive written reasons.
- ***Costs:*** Fees for gaining access should not be so high as to deter applicants and negate the intent of the law.
- ***Open meetings:*** The law should establish a presumption that all meetings of governing bodies are open to the public.
- ***Disclosure takes precedence:*** The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. The exemptions included in the law should be comprehensive and other laws should not be permitted to extend them.
- ***Protection for whistleblowers:*** Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing.[69]

The value of the right to access information has not only been recognised by the UN's human rights agencies, but also in a number of the UN's other areas of activity. In 1992 for example, the Rio Declaration on Environment and Development recognised that: "[E]ach individual shall have appropriate access to information on hazardous materials and activities in their communities…States shall facilitate and encourage public awareness and participation by making information widely available".[70] In 1997, the UN General Assembly endorsed the Rio Declaration's provision on access and specifically resolved that: "Access to information and broad public participation in decision-making are fundamental to sustainable development".[71] The Plan of Implementation adopted at the Rio+10 World Summit on Sustainable Development in Johannesburg in 2002 also called upon governments to "ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters".[72] Likewise, following the World Summit for Social Development, the Copenhagen Programme of Action affirmed the obligation to "enable and encourage access by all to a wide range of information" and recognised that "an open political and economic system requires access by all to knowledge, education and information".[73]

Regional Organisations

Outside their UN obligations, many Commonwealth states are also members of regional, security and economic groupings. Every major grouping – including the Organization of American States, the African Union and the European Union – has stressed the importance of freedom of information and either laid down policy guidelines, created codes to open up their own working or legislated to protect the right in their foundational documents.

African Union

Signed over twenty years ago, the African Charter on Human and Peoples' Rights, signed by all nineteen of the Commonwealth's African member states, explicitly recognises the right to receive information.[74] In 2002, the African Union's African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression in Africa and reiterated that "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information".[75] Part IV deals explicitly with the right to information. Though not binding, it has considerable persuasive force as it represents the will of a sizeable section of the African population.

African Union Declaration Of Principles: Part IV (2002)

- Everyone has the right to access information held by public bodies.
- Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right.
- Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts.
- Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest.
- No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment.
- Secrecy laws shall be amended as necessary to comply with freedom of information principles.[76]

Organization of American States

The laws and standards of the Organization of American States apply to twelve countries of the Commonwealth, including all the Commonwealth Caribbean states,[77] Belize, Canada and Guyana. The American Convention on Human Rights includes as part of the right to freedom of thought and expression the "freedom to seek, receive and impart information and ideas".[78] The Inter-American Court of Human Rights, which oversees the implementation of the Convention, has made it clear that "a society that is not well informed is not a society that is truly free".[79] The Inter-American Declaration of Principles on Freedom of Expression adopted in 2000 specifically recognises that

International Financial & Trade Institutions: Not Exempt

International financial and trade institutions such as the World Bank, International Monetary Fund (IMF) and World Trade Organization (WTO) preach openness as a key factor in national government reform and development, but have themselves resisted giving information with any ease. Yet this is vital – as much to ensure the effectiveness of their interventions, as for the maintenance of their institutional image. Many Commonwealth countries are members of these international institutions and are bound by their policies. Conversely, membership and associated voting rights offers them the opportunity to encourage these institutions to implement the principles of good governance that they preach.

The international financial and trade institutions have long maintained that they are not subject to international rights regimes or national laws and that they are accountable only to member states. In recent times though, however reluctantly, in response to the demand for greater accountability the institutions have been putting in place information disclosure policies. The policies implement varied degrees of openness; much continues to be secret and criticism remains that information is more readily given about structure and function than about governance and decision-making. Ironically, the very volume of information released can make relevant information difficult to pinpoint, and lack of familiarity with the complex workings of their systems and the technical jargon used can make documents difficult to interpret.[80] To be valuable for democracy and development, information from influential international institutions must be accessible to the people to whom it matters, meaningful enough to allow input into the decision-making process, and detailed enough to enable citizens to hold these powerful institutions and member governments accountable for their policies.

World Bank: Under the new disclosure policy, implemented since 2002, governments are now required to disclose some previously confidential structural adjustment material and have the option to release other documents on a voluntary basis. However, by making the release of most final documents voluntary rather than mandatory, the Bank has side-stepped responsibility for its own transparency, giving governments power over deciding whether or not to disclose World Bank documents.[81] Information on operations and policies is available, such as environmental assessments and resettlement plans, but other useful information remains secret, such as country assistance reviews, board minutes, draft policy papers, supervision reports, project completion reports and performance audit reports.

International Monetary Fund: The IMF has been severely criticised for operating in secret. Its 1998 disclosure policy lists documents that can be made available; but disclosure is only possible if concerned governments consent. Agendas and minutes of meetings of the governing board are excluded from what is already a very bare list of documents for disclosure. Successive managing directors have stated that the IMF is only accountable to its member countries, and increased openness will require consensus among governments.[82] On the positive side, the IMF is currently examining the legalities of requiring member states to make mandatory disclosures.

World Trade Organization: Information about the governing structure and descriptions of key bodies and functions are available, as are final agreements and summaries of governing body decisions and statements. However, all trade negotiations and dispute settlements are closed to the public. Critics argue that providing access to agreements only after they are signed is unsatisfactory because without knowing what really goes on during negotiations, it is difficult to hold the WTO or country representatives to account. The new 2002 Derestriction Policy[83] though, is very comprehensive, shortening the time frame in which documents can be released from an average of eight to nine months, to six to eight weeks.[84] Some documents can still be withheld (most commonly, documents the member itself has provided to the WTO) if a WTO member-government demands non-disclosure, but the list of undisclosed documents has been cut down.

Although these institutions are now beginning to pay more attention to transparency in their operations, there are still some fundamental flaws in their information disclosure policies. Firstly, all conform to the principle that member states must consent to information disclosure regarding their activities and that a change in policy requires a consensus of member states. Secondly, there is no provision for independent review where requests for information have been refused. Thirdly, the documents released are usually geared towards informing people of decisions after they have been made, rather than providing information throughout the decision-making process; but information supplied after decisions are taken does not help broaden participation. While progress has been made in opening up, clearly there is still work to be done.

"access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies".[85]

Developing National Legislation

The right to information can be protected through a variety of legal mechanisms, from explicit constitutional safeguards to individual departmental orders that allow for access. For example, information can be obtained through the provisions of citizens charters adopted voluntarily by departments or through codes or executive orders. The United Kingdom has been providing access to information since 1997 through the *Open Government Code* which will be in force until the *Freedom of Information Act* 2000 comes into effect in 2005. However, enabling access to information through executive orders and administrative directives is not ideal, as they can be easily overturned at any time. Specific access legislation remains the ideal legal mechanism by which to entrench the right to information.

Even where there is no specific access legislation, sector-specific laws sometimes mandate disclosure. For example, environmental laws may require publication of impact assessments, or corporate laws may require the dissemination of annual reports and financial statements. Constitutional protection is also often provided. The constitutions of Ghana, Malawi, Mozambique, Papua New Guinea, South Africa, Tanzania and

Not Just Any Old Law

Some access laws in the Commonwealth have been hailed as extremely comprehensive, as in South Africa, but others are mere window dressing. For example, when taken cumulatively, the weaknesses of both the Pakistan Freedom of Information Ordinance 2002 and the Indian Freedom of Information Act 2002 cast serious doubt on the capacity of the Acts to effectively secure the right to know. They both grant excessively broad exemptions and refusals to give requested information are not subject to the test that the public good would be significantly harmed by releasing the information. In addition, the provision for appeals are unsatisfactory; in the case of Pakistan, neither the procedure for hearing before the appellate authority nor the authority's investigative powers have been specified; and under the Indian Act, all recourse to the courts is barred.

The Zimbabwe Access to Information and Protection of Privacy Act 2000 is also deficient. The Act deals not only with access to information, but also use of personal information by public bodies and control of the media. The Act has been criticised as having been crafted to prevent, rather than promote, accountability and disclosure and its media registration provisions have, for instance, been used against Zimbabwe's privately-owned newspaper, the Daily News. The law makes no statement in favour of openness and there are so many and such wide exemptions that disclosure is unjustifiably constrained in practice.[86]

Uganda[87] all give the right to information explicit protection. Elsewhere, a number of Commonwealth constitutions recognise the right to receive and communicate information as a part of the fundamental right to freedom of speech and expression.[88] In other countries, such as India and Sri Lanka, although the constitution does not specifically mention the right to information, courts have read this right into the constitutionally recognised right to freedom of speech and expression or freedom of thought.

Even where there is a constitutional guarantee, there is still a need for legislation to detail the specific content and extent of the right. The constitutions of Fiji, South Africa and Uganda[89] specifically require that governments draft legislation to protect the right. Legislation sets a clear framework for putting in place systems and creating cultures of openness that are uniform across public bodies.

Objectives

The law must begin with a clear statement that establishes the rule of maximum disclosure and a strong presumption in favour of access. Well-worded objectives clauses serve to unequivocally commit the government to certain key principles, and assist administrative and judicial interpretation.

Preambles and objectives clauses detail the reasons for passing the law and broadly indicate its scope. Strong statements supporting the principles of maximum disclosure, transparency, and accountability and explicitly recognising the peoples' right to information send the right message to citizens and public officials about government commitment to open governance. Conversely, failure to explicitly recognise the citizen's right to information or an emphasis on the limits of the right tempt restrictive interpretations.

South Africa's *Promotion of Access to Information Act* 2000 states that one of its objectives is to "foster a culture of transparency and accountability."[90] Australia's *Freedom of Information Act* 1982 expressly states that its object is to "extend as far as possible the right of the Australian community to access to information in the possession of the Government".[91] However, at the other end of the spectrum, the Pakistan Ordinance fails to explicitly declare that individuals have the right to information at all.

Objectives clauses also provide guidance on striking the balance between disclosure and non-disclosure. The Trinidad and Tobago *Freedom of Information Act* 1999 clarifies that where discretions are to be exercised about providing information they "shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information".[92] The Canadian *Access to Information*

Act 1983 makes it clear that "government information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of government information should be reviewed independently of government".[93]

Extent of Coverage

The principle of maximum disclosure must underpin the law, and the extent of coverage should be defined as widely and inclusively as possible.

Who is covered?

The law should cover all public bodies, as well as private bodies and non-government organisations that carry out public functions or where their activities affect people's rights.

Traditionally, access laws have concentrated on getting information from the executive branch of government, rather than the legislature and the judiciary, although even within the executive, exemptions have been granted for heads of state.[94] The need for these blanket exemptions in a modern electoral democracy is questionable.

In setting out the coverage of access to information legislation, a general definition of "public authorities" or "prescribed authorities" is usually provided. Most Commonwealth access laws cover ministries, government departments, public bodies, local authorities, state-owned corporations, commissions of inquiry and pubic service commissions. The Indian Act extends to any authority or body established under the Constitution or by Government law, or any body "owned, controlled *or* substantially financed by Government funding".[95] The South African Act includes all three branches of government, provincial and local bodies, and any public functionary or institution performing a public function under law, but excludes the Cabinet and its committees, courts and tribunals insofar as their judicial functions are concerned, and Members of Parliament in that capacity.[96]

In a world where non-state actors influence the destinies of millions, access laws are increasingly being extended to cover private bodies. The provisions of the South African Act are indicative of this trend.

Increasingly, access laws are being extended to cover private bodies. The provisions of the South African Act are indicative of this trend, granting access to information held by private bodies if that information is required "for the exercise or protection of any rights".[97] The Act also specifically covers records "in the possession or under the control of…an independent contractor engaged by a public body or private body" which is subject to the Act.[98] The United Kingdom *Freedom of Information Act* 2000 extends its basic definition of "public authority" to cover information held by other persons "on behalf of [an] authority",[99] thus including government contractors

in the duty to give information. The Jamaican *Access to Information Act* 2002 gives the responsible minister the discretion to make the law applicable to any other body or organisation that provides services of a public nature, which are essential to the welfare of Jamaican society.[100] Of course, under these provisions not all information concerning private bodies will be released. Traditionally accepted limits such as privilege, personal privacy, and commercial confidentiality may still weigh in to balance the need for disclosure against the need to protect business and personal interests.

Who can access?

Any person at all should be able to access information under the legislation, whether a citizen or not. People should not be required to provide a reason for requesting information.

Some laws permit any person at all to ask for information,[101] while others require the requester to be a citizen,[102] a lawful permanent resident[103] or to furnish an address in the country for correspondence.[104] The New Zealand *Official Information Act* 1982 specifically includes corporate bodies or those having a place of business in that country in the list of potential requesters.[105] Where the laws permit access to personal information, such as medical records, tax files or social security documents, stricter conditions apply; the need to protect individual privacy usually permits only the person whose records are at issue to have access.

In no Commonwealth country is the requester required to state the reasons for their request, although in some jurisdictions reasons are sought if the requester is making a case for an urgent response.[106] In some jurisdictions, however, application forms sneak in provisions that require people asking for information to state the purpose for which it is sought.[107] Bureaucrats resisting disclosure argue that they need to know requesters' reasons because there may be mischievous motives behind information applications. But the motive for requesting information is irrelevant; access to information is not a needs-based concept, but a right premised on the fact that information is a public resource for the free use of individuals and groups.

What is covered?

The definition of "information" should be wide and inclusive.

In law, every word counts. Hence, in determining what can be made available, access to 'information' rather than access to 'documents' or 'records' is preferred because, if pedantically interpreted, these latter two terms are more limiting. 'Information' on any given subject may not always be in one 'document/record'. For example, the number of times a particular contractor has been awarded government contracts (which gives a more complete picture about their relationship with government) may be scattered in various documents through various departments.

The notion of a right to information holds within it the duty on public bodies to actively disclose, publish and disseminate, as widely as possible, information of general public interest even when not asked for.

People asking for information may not know which specific document they are looking for or may want information that will be useful only if compiled from many sources. For example, statistical information such as the annual incidence of a disease, may not be available in one or several documents, but may become intelligible 'information' if collated from several records held by different agencies. 'Information' includes the notion of more than just written documents and covers things like samples of materials used in construction or scale models of buildings, which may be of importance to someone seeking knowledge of government sponsored projects or on the quality of materials used for construction.

Many Commonwealth laws refer only to official 'documents' or 'records'.[108] The Indian Act however, permits access to "information in any form relating to the administration, operations or decisions of a public authority".[109] Likewise, the United Kingdom Act refers to a broad right to information and does not specifically limit access to documents or records.[110] Most access laws cover information contained in a variety of media and are drafted broadly to cover newer technological innovations for creating and storing information.

Proactive disclosure

The law should impose an obligation on government to routinely and proactively disseminate information of general relevance to citizens, including updates about structure, norms and functioning of public bodies, the documents they hold, their finances, activities and any opportunities for consultation.

The notion of a right to information holds within it the duty on public bodies to actively disclose, publish and disseminate, as widely as possible, information of general public interest even when not asked for. This is a particularly important aspect of access laws because often the public has little knowledge of what information is in the possession of government and little capacity to seek it. A larger supply of routinely published information also reduces the number of requests made under access to information laws. Particularly valuable are laws that make it compulsory for government agencies and departments to regularly publish: the structure and activities of every department; information about all classes of records under each department's control; a description of all manuals used by employees for administrative purposes; and names and addresses of officers who deal with information requests.

A number of Commonwealth laws require departments to publish a statement setting out: the particulars of the organisation; its functions, including its decision-making powers; arrangements that exist for consultation with the public on policy formulation; and categories of documents held by the organisation.[111] In South Africa, contact details of departmental Information Officers must be published in every telephone directory – an effective and low-cost option for dissemination.[112] The Belize *Freedom of*

Information Act 1994 even requires that if a document containing basic departmental procedures is *not* made available, any person can be excused for any shortfall in conduct arising from the non-availability of that document.[113] The Indian Act has taken a positive step forward and requires public authorities to publish all relevant facts concerning important decisions and policies that affect the public when announcing such decisions, and likewise, before initiating any project to communicate all facts available to people likely to be affected and the public in general.[114]

Limits on Disclosure

The limits on disclosure need to be tightly and narrowly defined. Any denial of information must be based on proving that disclosure would cause serious harm and that denial is in the overall public interest.

The acid test of any access law lies in the limits that it imposes on disclosure. That not all information held by governments and private bodies can be released is generally accepted, but disagreements arise about where the boundaries of 'protected' information lie. The issue of exemptions from disclosure involves a complex balancing act between different legitimate interests. But too often, the leeway to keep information away from the public in certain circumstances is used to retain more than is justifiable. The overriding principle needs to be that all information should be disclosed, unless the harm caused by disclosure is greater than the public interest in disclosure. The burden and the cost of proving that disclosure is not in the public interest should lie with government.

The recent Hutton Inquiry in the United Kingdom has provided ample evidence of the subjectivity that is applied when determining what is exempt and what will be disclosed. As a prominent civil society advocate has pointed out: "The level of disclosure at the Hutton Inquiry has gone far beyond that which a British law would normally provide. [Freedom of Information] laws balance the right of access against exemptions, one of which invariably gives government some privacy for its internal thinking. But the material we are now seeing is not filtered in this way".[115] The reams of documents released during the Inquiry – many of which were originally classified as 'confidential', 'secret' or 'private' – has demonstrated in a compelling fashion that many disclosures that governments argue should be exempt because they would harm the public interest are actually protected only because of the harm they might cause to the ruling government.

Keeping Things Under Wraps

Too many access laws allow government to keep secret information relating to investigations and proceedings conducted by public authorities. Such provisions usually cover commissions of inquiry, which are set up to examine matters of urgent public concern such as riots, financial scams and political scandals. Long drawn out inquiries can become an expedient means of overcoming periods of public outrage, while ensuring that damaging facts are still kept secret. In Pakistan, this was evidenced in the handling of the Commission of Inquiry set up to examine the 1971 War. The Commission was set up in December 1971, but its report, produced in July 1972, was not made public. Only a few copies were prepared and the distribution list was kept secret. In August 2000, an Indian newspaper disclosed a lengthy excerpt from the report – which was then widely reproduced by newspapers inside Pakistan. Eventually, in 2001, almost thirty years after the Commission was held, a major part of the report was declassified and released. However, at that late stage, accountability issues were almost impossible to pursue, frustrating the very objectives of the Commission.[116]

Openness Is Its Own Reward

Politicians and bureaucrats closely guard the 'deliberative process' and the formulation or development of government policy on the basis that disclosure would affect the frankness and candour of discussions. While it may sometimes be necessary to protect official information from disclosure at certain stages of policy-making, the same degree of confidentiality is hardly necessary once the policy has actually been agreed. Recognising this, in 1994 the United Kingdom Government decided to release the minutes of the monthly meetings between the Chancellor of the Exchequer and the Governor of the Bank of England – information that had previously been kept a closely guarded secret – six weeks after each meeting. Initial fears that the policy would create self-censored and bland discussions proved ill-founded. The *London Times* has commented: "Instead of papering over disagreements with platitudes, the minutes are impressively clear and sharp."[121]

Specific exemptions by person/ organisation or class/category

Legislation should avoid broad, blanket exemptions. In most cases, each document and the context of its release is unique and should be judged on its merits.

Access laws often explicitly provide a blanket exemption for a particular government position or agency of state, such as national security and intelligence organisations.[117] But excluding whole organisations from any duty to give information at all gives them unjustified protection from accountability. It is only a very narrow band of information held by military, security, and scientific agencies that is 'sensitive' in nature; for the rest it is pretty routine fare. For example, recruitment criteria of a national security organisation or travel allowances paid to members of parliament hardly merit secrecy. There is also a risk that the protection of such blanket provisions will be extended too far. In Australia, for example, even the Sydney Organising Committee for the Olympic Games[118] and the Australian Grand Prix Corporation[119] have been exempted from the coverage of certain state access regimes.

Frequently, documents are automatically exempted because they relate to specific topics or belong to a certain class of information. Among the most common categories are documents related to: defence; national security; foreign policy and international relations; deliberative processes of government and cabinet; investigations and proceedings conducted by public authorities such as commissions and inquiries; law enforcement and the prevention or detection of crime; federal-provincial relations; legal privilege; personal privacy; public safety; the safety of individuals; confidential inter- and intra-departmental dealings; and sensitive economic and commercial information.

Additional grounds include documents whose release would: endanger public health; cause material loss to members of the public; affect the sanctity of constitutional conventions; or impair the confidentiality of ongoing research or information contained in the electoral rolls. In a narrow category of cases, such as those affecting national security or when information is supplied by an intelligence agency, governments can even refuse to confirm or deny that information exists.[120]

Bureaucratic discretion and ministerial veto

Disclosure is often made subject to discretionary exemptions or veto. But internal government discretion being exercised subjectively really amounts to being judge in one's own cause and is a major defect in any effective access to information regime. The most pernicious of these types of discretionary provisions give ministers the power to unilaterally issue certificates that prevent disclosure of information, usually in specified areas such as national security or foreign affairs. The Australian and Jamaican provisions are much wider and include cabinet proceedings, law enforcement, public safety and the economy. Ministerial certificates are usually conclusive and cannot even be revoked by the appeals tribunals overseeing the legislation.[122] Under the United Kingdom Act, the Information Commissioner cannot revoke ministerial certificates, but the Information Tribunal can.[123]

When discretionary powers are granted to officials without being subject to any supervision or scrutiny, their use can be arbitrary and contrary to the fundamental purpose of access legislation. That such unfettered discretionary powers are not always used sensibly is witnessed by vetoes exercised in Australia, where the costs of a proposed national identity card and a review of the effectiveness of certain health programmes was vetoed, and in New Zealand, where the successful tender price for wall plugs, unemployment estimates and an evaluation of computer use in schools were vetoed.[124] In the United Kingdom, the veto power was recently invoked when the Prime Minister's Office refused to comply with an Ombudsman recommendation that it release a list of gifts received by ministers. The Ombudsman revealed that the Lord Chancellor, who favoured disclosure, was overruled when the Prime Minister's Chief of Staff decided that press coverage of a "huge list of gifts" would be embarrassing.[125]

Public interest override and harm tests

Exemptions should be subject to content-specific case-by-case review and non-disclosure only permitted where it is in the public interest and release would cause serious harm.

While an absolute bar against disclosure sometimes applies to certain categories of information, such as cabinet papers or deliberative documents and advice, in other cases 'override' provisions allow access to be granted even to exempted information where it is shown that the public interest in disclosure outweighs any harm that is likely to occur upon release. Examples include cases where the information would reveal evidence of: substantial contravention of the law; injustice to an individual; unauthorised use of public funds; an imminent and serious safety or environmental risk; or abuse of authority or neglect in the performance of official duty by a public servant.[126]

The Australian, Trinidad and Tobago and South African Acts are quite liberal in their use of public interest overrides. They adopt an open-ended approach, allowing the interest in release to be balanced against non-disclosure. The New Zealand Act adopts

Balancing The Public Interest

A case from New Zealand illustrates the practical value of a public interest override. Following a boating accident in which two men were killed, the Maritime Safety Authority, a government body, conducted an investigation. When a copy of the investigation report was sought, the Authority declined after consulting the widows of the victims who asked that the information be kept out of the public domain. On appeal, the Ombudsman agreed that the information in question was indeed protected by a privacy interest, but he noted that there was also a public interest in the release of the information, as it would help in preventing similar accidents in future. He therefore ruled that the public interest in disclosure was stronger than the privacy interest in withholding.[127]

a multi-tiered approach under which withholding of some types of information is justified if disclosure would 'prejudice' certain interests,[128] whilst in other cases a higher threshold of 'serious damage' is required before information can be withheld.[129] The Canadian override is narrower, coming into play exclusively in relation to third party commercial information; but even then, the only public interest issues that can be taken into account are those of public health, public safety or protection of the environment.[130]

The United Kingdom Act, in particular, has come in for heavy criticism because it allows whole classes of information to be withheld without subjecting them to any 'harm test'. These include information relating to the formulation and development of government policy, investigations by law enforcement and regulatory agencies, advice received from law officers and information concerning the security services. Whether or not it is in the public interest to release information, the Minister responsible for the department has an ultimate veto, even where the Information Commissioner orders the concerned department to produce a certain document, and can overrule the decision and stop its release.[131]

Openness can be supported by a creative use of available legal tools, such as partial disclosure, disclosure to a limited number of people or staggered disclosure over a period of time.

Partial disclosure

Sometimes documents contain *some* information that falls within an exempt category, but the remainder of the document is not exempt. Most laws recognise the principle of 'severability', so that where requested information is in a document which is otherwise exempt from disclosure, it may still be provided after being severed from the rest of the document.[132] Openness can be supported by a creative use of available legal tools, such as partial disclosure, disclosure to a limited number of people or staggered disclosure over a period of time.

Procedural Requirements

A key test of an access law's effectiveness is the ease, inexpensiveness and promptness with which people seeking information are able to obtain it. The law should include clear and uncomplicated procedures that ensure quick responses at affordable fees.

How to make a request

Most laws require requests in writing, although the Jamaican Act permits requests to be made by telephone.[133] The Indian and South African Acts are well-crafted to facilitate access by the poor and unlettered; they specifically provide that where a request cannot be made in writing, the officials shall render all reasonable assistance to the person to reduce their oral request to writing.[134] Nearly all the laws oblige government departments to render reasonable assistance to applicants so as to minimise refusal, including assisting applicants to formalise their request, referring them to another department or transferring their request to the right department(s).[135]

In order to discourage 'fishing expeditions' and to reduce the time taken to process requests, there are usually stipulations which require that requesters provide sufficient information about the document or record being sought to allow authorities to identify it.[136] Providing people with the right to inspect documents and requiring departments to maintain lists of available documents moderates the strictness of such provisions by making it easier for applicants to identify the information they are looking for and formulate a specific request.

Forms of access

User-friendly laws make accommodations for the diverse capacities of information-seekers. Most laws allow applicants to inspect, read, view or listen to official records or ask for photocopies, transcripts or computer print-outs.[137] The New Zealand Act expressly permits the government to furnish applicants with oral information about the contents of any document.[138] This affords the opportunity to get information without waiting for a written copy. The South African Act confers a right on disabled requesters to get information in a form that they can read, view or hear, albeit on payment of an additional fee.[139] The Indian and United Kingdom Acts leave open the form of access, allowing the authorities room to comply with any *reasonable* request.[140]

In places where there is more than one official language, many access laws provide for information to be kept in several languages and provided in the language of choice. Without such provisions, whole groups could otherwise be excluded from accessing information. In Canada for example,

information is often kept in French and English. There is also a provision allowing a head of department to provide a translation if it is "in the public interest".[141] The South African law requires that information be provided in the language of choice if the records are maintained in that language.[142] Surprisingly, the new Indian Act is silent on this matter, despite India having sixteen officially recognised languages.[143]

Fees

All Commonwealth access laws allow for fees to be charged, although in Australia at least, the federal freedom of information regime did not impose fees in the first four years of its operation.[144] Fees are now said to be an important element in deterring frivolous requests. Governments also sometimes contend that it costs money and takes time to develop and maintain records or information systems and that the public must bear some of this cost when seeking information. These arguments are of questionable merit. Record-keeping and information dissemination are basic and essential functions of effective government and are anyway already funded by public money. In countries where most people are poor, fees are a serious obstacle.

Record-keeping and information dissemination are basic and essential functions of effective government and are anyway already funded by public money. In countries where most people are poor, fees are a serious obstacle.

Nevertheless, most access laws charge a fee at the time of application, as well as an additional charge based on the time taken by officials for a search[145] and/or for replication of the document.[146] But if imposed at all, fees should only cover the actual cost of reproducing the information requested; they should not be charged on application, nor for the time taken to process a request. Some laws provide for fees to be waived or reduced, either at the discretion of the authorities[147] or on specified grounds, such as where insistence on payment would cause financial hardship to the requester or where the grant of access is in the interest of a substantial section of the public.[148]

Time limits

Bureaucratic delay is a prime device for defeating requests for information. All laws set down time frames within which information must be given, usually between 14 and 30 days from the date of filing of the request. In order to avoid the habit of giving information at the very last minute, some laws usefully direct public officials to give information "as soon as practicable" or "as expeditiously as possible".[149] Certain types of information can be requested within shorter timeframes. For example, the Indian Act makes a distinction between information concerning the life and liberty of a person, which is required to be provided within 48 hours, and other information, which is to be provided within 30 days.[150] The Canadian and South African Acts try to force timely compliance by providing that if a decision on a request is not communicated to the requester within the stipulated time limits, it will be construed as a deemed refusal, thereby allowing appeals mechanisms to come into play.[151]

Appeals and Enforcement

Effective enforcement provisions ensure the success of access legislation. Any body denying access must provide reasons. Powerful independent and impartial bodies must be given the mandate to review refusals to disclose information and compel release. The law should impose penalties and sanctions on those who wilfully obstruct access to information.

Appeals

It is not sufficient for administrators simply to refuse applications from citizens; they must state why an application has been denied, so that the disappointed applicant can meaningfully appeal. In fact, the duty to give reasons for refusing information is increasingly a general requirement under administrative law in many Commonwealth countries, with the courts coming down heavily upon public authorities who fail to comply with this basic requirement of fair play. Most Commonwealth access laws require public authorities to give reasons for their decisions to refuse access, to furnish the grounds in support of those reasons and to inform the requester about remedies available to them by way of internal review, appeal, complaint or judicial review.[152]

The natural tendency of governments to confuse their own interests with the public interest requires that appeals go beyond departmental reviews, which make the government judge and jury in its own cause. All laws provide for some form of appeal from a decision to reject a request for information. Most use a tiered method that first allows for an internal review, and then goes on to adjudication by an independent specialist tribunal and/or court. While internal appeals provide an inexpensive first opportunity for review of its decision, oversight by an umpire independent of government pressure is a major safeguard against administrative lethargy, indifference or intransigence and particularly welcome where court-based remedies are slow, costly and uncertain. The fear of independent scrutiny ensures that exemption clauses are interpreted responsibly and citizens' requests are not unnecessarily obstructed. Special independent oversight bodies that review or decide complaints of non-disclosure are a cheaper, more efficient alternative to courts and enjoy public confidence when they are robustly independent, well-funded and procedurally simple.

The natural tendency of governments to confuse their own interests with the public interest requires that appeals go beyond departmental reviews, which make the government judge and jury in its own cause.

Commonwealth laws variously provide for: quick, time-bound internal reviews; specialist external review mechanisms like Information Commissioners, Ombudsmen and Information Tribunals, which may have a mix of powers and duties to both promote the law, review its working and deal with individual complaints of non-disclosure; or court-based appeals. In South Africa, for example, after an internal review requesters can approach the High Court.[153] The Australian Act has an option to approach the Ombudsman for mediation, and if the Ombudsman fails to resolve the issue, appeals can then be made to the Administrative Appeals Tribunal.[154] The Belize, New Zealand and Trinidad and Tobago Acts similarly allow first recourse to their Ombudsman, but then permit appeal to the courts.[155] The Canadian Act allows the Information Commissioner to mediate disputes between requesters and agencies and make recommendations, but provides no power to order agencies to release information. Requesters can also take their complaint to the courts.[156] The United Kingdom Act provides for initial appeals to the Information Commissioner, a second appeal to the Information Tribunal, and appeals on points of law to the courts.[157] The Canadian and United Kingdom Acts also confer powers of entry, search and inspection on enforcement authorities.[158] The Indian Act has been heavily criticised because it bars approach to any court whatsoever,[159] relying instead exclusively on administrative remedies.

Enforcement & penalties

Rights must have remedies. Penalties for unreasonably delaying or withholding information are crucial if an access law is to have any real meaning. Lack of penalties weakens the whole foundation of an access regime. Sanctions are particularly important incentives to timely disclosure in jurisdictions where the bureaucracy is unused to hurrying at the request of public. Without penalties, it is easy for bureaucrats and their political masters, especially in countries with lax or corrupt administrative systems, to subvert the purpose of the law.

Unfortunately, only some laws provide tough sanctions for non-compliance. The Indian Act, for example, is severely weakened by the lack of any penalty provisions. Ideally, heads of departments should be made personally responsible for compliance with access laws by their departments. In certain circumstances, there is every justification for insisting that responsible officers be fined and made to pay out of their own pockets for non-compliance, with further sanctions under the criminal law in more extreme cases where there has been wilful obstruction or serious harm resulting from their actions. Many Commonwealth access laws make it an offence to destroy, conceal, erase, alter or falsify records and contain penalty provisions for these actions.[160]

New Zealand's Privacy Commissioner has pointed out though, that "[i]f an Official Information Act request is not delivered in a timely fashion, the most that will happen on review is that the documents ultimately are required to be handed over",[161] and has suggested that consideration be given to whether victims of delay might also be entitled

to damages.[162] The Trinidad & Tobago Act usefully provides that where requests are not responded to within time, the fees usually payable upon disclosure may not be imposed.[163] Under the United Kingdom Act, if an enforcement notice issued by the Information Commissioner is ignored or a public authority knowingly or recklessly makes a false statement in purported compliance with the notice, the matter can be dealt with by the High Court as a contempt of court.[164] However, on public policy grounds, the Act expressly bars any civil suits for non-compliance, such that disappointed requesters cannot launch civil actions for damages.[165]

Most laws protect government officials and agencies from legal action regarding acts carried out in good faith in exercise of their functions.[166] These measures make it difficult for political pressure to obstruct requests.

Facilitating Implementation

A body should be given specific responsibility for monitoring and promoting the Act. The law should obligate government to actively undertake training for government officials and public education about the right to access information. Records management systems should be created and maintained which facilitate the objectives of the Act.

Monitoring

Independent monitoring of implementation ensures that the purposes of the law are met and the law is not subverted or watered down in course of time. Most Commonwealth laws require some form of monitoring and periodic reporting. For example, under the Belize Act the responsible minister must annually table a report to the National Assembly.[167] Under the Canadian Act, the Information Commissioner is required to present an annual report to the national legislature and heads of government departments must also present Parliament with annual reports.[168] The South African Human Rights Commission monitors the implementation of the South African Act.[169]

Education & training

Raising awareness is vital to effectuating legislation and creating a demand for information. Recognising this imperative, the South African Act specifically obligates the Human Rights Commission to conduct public education programmes, in particular in disadvantaged communities, and to encourage the participation of private and public bodies.[170] Resources permitting, the Commission is also encouraged to train government information officers. Under the United Kingdom Act, the Information Commissioner is under a duty to promote good practice by public authorities, as well as to disseminate information to the public about the operation of the Act.[171] These provisions are useful in directing specific attention – as well as tangible resources – to implementation.

Records management

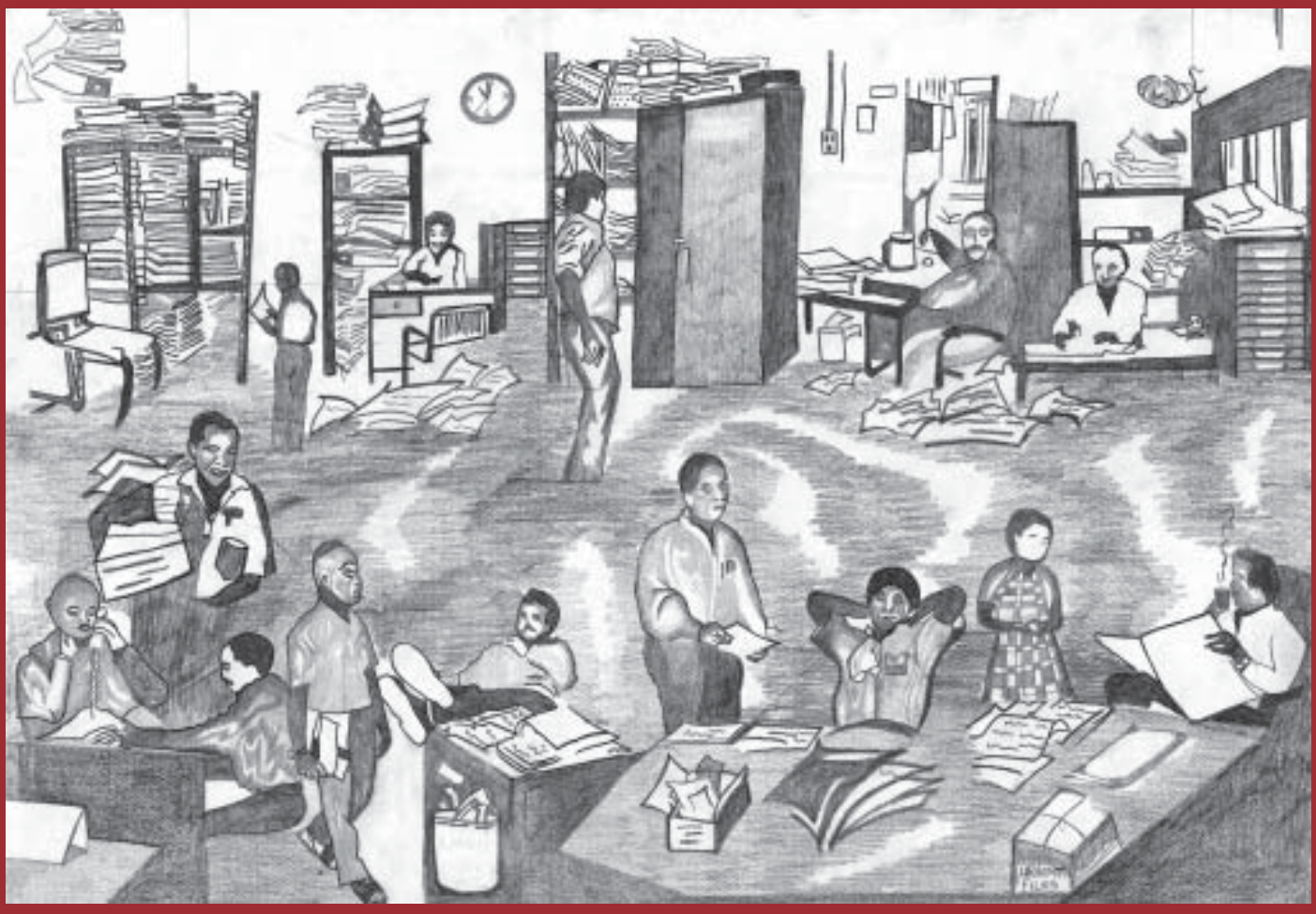
The huge volume of information in governments' hands requires that information be carefully managed so that authorities can locate and provide requested information in a timely and efficient way. The key is to ensure a comprehensive framework is in place which is capable of supporting the objectives of the access legislation. The United Kingdom Act specifically requires the development of a code of practice to provide guidance to authorities on appropriate practices for "the keeping, management and destruction of their records".[172] Under the Canadian Act, the responsible minister is required to keep under review the manner in which records are maintained and managed to ensure compliance with the Act.[173] In Australia, a separate National Standard On Records Management provides guidance to all public bodies.[174]

Legislation is a Start

Developing the content of access laws presents formidable challenges. Design matters as do details. Much depends on the balance that the system is able to achieve between ensuring the right of every citizen to be adequately informed of public affairs, and safeguarding those other interests, such as national security and public safety, which are no less prized. While a law alone cannot *always* ensure an open regime, a well-crafted law, which strengthens citizens' democratic participation, is half the battle won.

Chapter 3

Making it Work: Entrenching Openness



"Since the earliest civilised societies there has been a tug of war between the democratic and the dictatorial impulse."

— Rick Snell, Editor FOI Review, Australia[175]

A law on access is essential, but it is not enough. By itself, legislation will do little to transform a closed, secret, elitist governance environment into an open democracy. Strong bureaucratic resistance, inconsistent legislative frameworks, process and systems constraints and lack of understanding of the law by the bureaucracy and the public all create hurdles on the road from secrecy to openness.

Change happens only when there is unequivocal political commitment to tearing down all barriers to access and well-crafted and deliberate strategies are developed that support each element of a new access regime. Upholding transparency, accountability and participation requires governments to break bureaucratic resistance; remove restrictive laws from the books; enact supporting legislation; and put in place effective records management and information delivery systems.

Changing Mindsets

Battling The Dictatorial Impulse

Entrenched cultures of secrecy in the political and bureaucratic hierarchies hinder the drive towards openness. The dictatorial impulse, which is often given free rein in environments where secrecy allows public officials to remain unaccountable, can be difficult to combat.

Political will: the foremost obstacle

Foremost amongst the obstacles to effective change is uncertain political will. Governments may give in to demands for enacting freedom of information laws, but then have little genuine commitment to their effective functioning. Drafted behind closed doors, the laws are feeble. They do not include core components necessary to make access to information effective, with the result that implementation is made more difficult from the very start.

Lack of political will undermines the entrenchment of openness by sending conflicting messages to those responsible for administering the law and manifests itself in many different ways. For example, in many Commonwealth countries public officials are routinely required to take pledges of loyalty or oaths of secrecy. Though there is value in a proper level of confidentiality in the workplace, a blanket ban on information disclosure can confuse people about their duties: is their duty solely to their superiors or are they governed by a more general duty to serve the public interest? In modern democracies, oaths of secrecy to government need to give way to oaths of openness to the public. Otherwise, the very existence of an oath to maintain secrecy reinforces the message that public officials are expected to resist all disclosure.

Government delays in putting laws into practice also send mixed signals and pander to the bureaucratic penchant for secrecy. Often justified on the ground that time is needed to put in place systems that enable efficient information disclosure, delays often mask

the battle against openness being waged within the bureaucracy. Delays in implementation can range from the reasonable – such as in Australia and Canada which operationalised their laws within a year of enactment – to the unreasonable, such as the United Kingdom, which has insisted on a five year gap following enactment to get its house in order. In India, the Government has gone one step further and refused to put a date on when it will operationalise the law passed by Parliament in 2002. It excuses itself on the ground that "in the UK, a more efficient system has already taken many years. India will take time and is not setting any time limit for implementation."[176] In a country notoriously slow to force bureaucratic change, these comments do not augur well for open democracy.

Bureaucratic resistance

Even when political leadership supports change, the steel frame of the bureaucracy can inhibit the sure transition toward openness. For example, before India passed its access law, a member of the Indian Cabinet, the Minister of Urban Affairs and Employment, decided of his own volition to allow anyone to inspect any file in the department on payment of a small fee, only to have the Cabinet Secretary, who reportedly kept the file containing the Minister's order in his custody, swiftly suspend this exemplary decision.[177] Even in countries which have had laws for years, bureaucratic resistance remains a problem. For example, in 1995 the Australian Law Reform Commission review of the Australian *Freedom of Information Act* 1982 found that, despite being in place for thirteen years, "it is clear that the Act is not yet accepted universally throughout the bureaucracy as an integral part of the way democracy in Australia operates…[T]here still appears to be a certain level of discomfort within the bureaucracy with the concept of open government. Some observers consider it may well take a generational change before there is a good working relationship with the FOI Act in the public sector generally."[178]

Every request for information has the potential to cause a disruption in a process, expose a scam or put a roadblock on a possible policy direction.[180] The response of public servants therefore, ranges from proactively providing information, to blaming poor implementation on technical constraints, such as poor record-keeping and inadequate resources, to avoiding requests through harassment. Sometimes bureaucrats even cross the line of what is legal, removing information from files, manipulating information and destroying records. Citizens asking for uncontroversial information about land records, the quality of construction work or available food stocks have been known to be turned away with abuse and even violence. In some cases, persistent information seekers have had to deal with complaints filed with the police on the ground that the requester was obstructing public works.[181]

There can be no significant and lasting improvement of access to information without the…understanding, co-operation and support [of public servants]. Prescriptive legislation and coercive measures are useful for defining rights and deterring non-compliance. They are less effective, however, in encouraging public servants to act, day in and day out, in ways that further the objectives of the [Freedom of Information] Act. This should be the ultimate goal.[179]

In the Indian state of Rajasthan, activists instrumental in the state's access law being passed, and therefore well known to officials, nevertheless have had to visit the offices of civil servants no less than sixty times before being able to get hold of important expenditure information.[182]

Resistance is often not so publicly demonstrated. Bureaucrats can be passively aggressive in their refusal to comply, employing tactics such as waiting for the last possible moment to provide information, rejecting requests on flimsy grounds and relying on endless appeals or court approaches to block disclosure. Behind closed doors, the tricks of the trade are many, for instance: using removable sticky labels to make important notes and comments rather than writing directly on a file; or folding over the top corner of a document and writing comments on its back, so that when a request is made only the front is copied and provided.[183] Canada, in fact, has had to amend its access law to deal with such activities and now imposes penalties for officers caught destroying, mutilating, falsifying, altering and concealing records.[184]

Information: Worth Its Weight In Gold

Ironically, even a good law can provide shelter to bureaucrats determined to resist openness. In most countries, a small charge is attached to making a request for information, but high fees can be an effective means of frustrating access attempts, along with delays – especially for groups such as the media who inevitably work to very short deadlines. In Australia, the *Herald Sun* newspaper was quoted $1.25 million for the 62,840 hours it was told it would take to process a request about federal politicians' travel. After trying to revise the request and litigating for two years, the paper gave up the hunt.[185] If the costs were too high for a wealthy media company, what chance does an ordinary citizen have?

Manipulation

Anyone denying information should have to justify their action, but practice shows that the inveterate rule maker can defeat the purpose of access laws by developing practical regulations which put the onus back on the public. For example, in the state of Karnataka in India the application forms developed under the legislation ask for the "purpose for which information is being sought" – even though there is nothing in the law that requires this. Inquiries suggest that leaving the column blank or giving an 'unsatisfactory' reason will not result in outright refusal, but might result in the application being returned in order to get a 'satisfactory' reason. Such practices sneak in restrictions on access through the backdoor, as laws meant to create habits of transparency and openness are twisted to make citizens feel that they must justify their need for information.

Access to information laws usually have time limits within which information must be given, but officials often defeat the intent of the law by waiting until the last date to reply and then providing incomplete or inadequate information. Seemingly reasonable time limits can be stretched inordinately by determined officials intent on avoiding disclosure. The Canadian Information Commissioner identified a worrying trend of departments taking extensions of several years beyond the 30-day time limit prescribed by the law to respond to requests.[186]

Lack of awareness of new access laws

Lack of awareness about the law among public officials is another hurdle and points to the need for constant training. A year after the South African access law came into force, one study found that 54% of public bodies contacted were unaware of the law, 16% were aware but not implementing it and only 30% were aware and implementing it.[187] Even these modest levels of awareness may not be matched in other similarly placed jurisdictions with more recent laws. In the state of Karnataka, India, one particular government agency refused to accept requests for information simply because it did not have a copy of the relevant legislation. Another, with nearly fifty requests for information pending, did not respond to even one, either because officers did not know what was expected of them under the law or perhaps just did not care.[188]

Nurturing The Democratic Desire...

The first step towards breaking down bureaucratic resistance is for high-level political leadership to send a clear message down the line that the government takes transparency seriously and that providing information is an integral part of every public official's job.

Getting bureaucrats ready and raring to go

Insisting on compliance and raising awareness is a work in progress and requires long-term commitment. As long as government employees believe that providing information to the public is an inconvenience and of little value to their careers, openness will never take root. Training begun even before an access to information law is enacted demonstrates government commitment to openness. For example, before the law came into force in Trinidad and Tobago in 2001, sensitisation sessions were held for the Cabinet, Permanent Secretaries, Heads of Divisions of Ministries and the media. In the period between enactment and implementation of the new law, the United Kingdom has been steadily designing codes of practice on various topics like 'publication schemes' and 'records management' to equip government agencies to deal with requests.

Since access laws are meant to bring about such a radical change to prevailing norms, capacity-building needs to encompass public officials in all departments and at all

levels. Training cannot be a mere cosmetic, ad hoc exercise, limited to specifically designated 'information officers'. Beyond the mechanics of knowing what the law says, what records management systems hold and how information is to be provided, holistic training emphasises the role of public servants in implementing 'openness' as a core value of public service.[189] Training needs to focus on changing the attitudes that distance government from people and must aim at mitigating the disquiet that changes in institutional culture always create.[190]

Keeping a watch on implementation

With habits of secrecy so deeply entrenched, access laws require strong monitors to oversee the process of change, evaluate the performance of public bodies and promote bureaucratic and public knowledge of the law. Specific positions can be created to fill this role or existing oversight mechanisms, such as Ombudsmen, can be given these responsibilities. In the United Kingdom, this role is performed by an Information Commissioner.[192] In South Africa, the Human Rights Commission has the duty to create user guides on access to information, train public officials, act as a repository for the manuals containing lists of records and information held by public and private bodies which are required by law, conduct educational programmes, assist members of the public with requests, monitor the implementation of the law and report to parliament.[193]

Timely Training Lays Strong Foundations

The Jamaican *Access to Information Act* was passed in 2002. Although the legislation is still not yet in force, with the date for implementation postponed again, the Jamaican government has created an Access to Information Unit attached to the Prime Minister's office with a mandate to spearhead and guide implementation and administration of the law. The Unit's training agenda includes exposing officials to the fundamentals of change management, the details of the law and information management. The first phase of training of about 400 officials to prepare them to handle requests for information efficiently and effectively began in early 2003 and included NGOs as resource people.[191]

Sometimes special units created by the government perform these functions, as in Jamaica and Trinidad and Tobago. These regularly scrutinise departments to measure levels of compliance year by year, identify roadblocks to access, make assessments of the best and worst practices, provide guidelines and training, disseminate judgments clarifying the parameters of the law, make recommendations for reform, create literature for public education and run public education campaigns.

In the case of Trinidad and Tobago, the Freedom of Information Unit facilitates the implementation process by educating members of the public about

Delays – A "Silent, Festering Scandal"

Successive Information Commissioners in Canada have battled the endemic problem of bureaucratic delays in responding to requests. Identified by the first Commissioner as a grave threat to the public's right of access, the second Commissioner called the propensity to routinely delay disclosure a "silent, festering scandal."[194] To address the problem, the current Commissioner instituted a system of 'report cards' to measure the performance of specific departments, identify specific causes of delay, make suggestions for change and track action taken. Since 1998, 26 report cards have been placed before Parliament.

In the early days of the Act, the Information Commissioner would generally investigate complaints about delay, negotiate a revised deadline and then negotiate further if this was also missed. Only when even that deadline was missed would the aid of the Federal Court be sought to force a decision. Inevitably however, a final determination was eventually made before the court process could wend its way to a hearing. In 1998, the Commissioner adopted the 'one-chance-to-correct' approach. Failure to commit to a fixed response date or failure to meet the revised response date negotiated with the Commissioner now triggers a 'deemed refusal' investigation. Senior officials of the department must then justify, in formal proceedings, the legal basis for the deemed refusal to grant access. Complaints of delay to the Commissioner, which regularly ran to almost 45 percent of all complaints, in 2001-2002 had dropped by a third to 28.8 percent.[195]

their rights and public authorities about their responsibilities under the Act. Since it was established in 2001, the Unit has:

- Conducted seminars for key officials;
- Established a freedom of information website;
- Produced a manual on CD for public authorities;
- Distributed 224,000 brochures explaining the law to national households by post;
- Produced radio and television features, newspaper advertisements on various aspects of the law and posters for members of the public (on rights and responsibilities) and officers in public authorities (on responsibilities);
- Undertaken Community Outreach through the "FOI Caravan": with assistance from the Ministry of Community Development, the Unit conducted sessions to sensitise members of the public in communities throughout the country; and
- Upon request, conducted sensitisation sessions for management/staff members at public authorities (93 such sessions have been carried out so far).[196]

Crafting a Supportive Legislative Regime

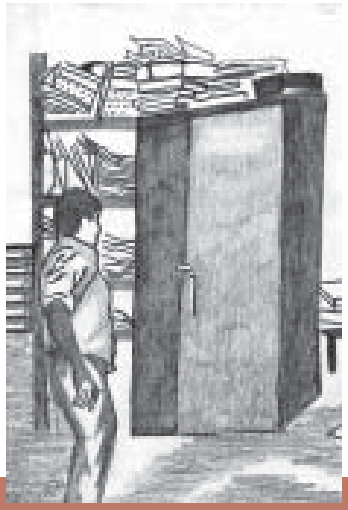
Access laws do not exist in isolation. Rather, they are part of a suite of legislative and policy measures designed to secure openness. Thus, once an access law is passed, it is imperative that all inconsistent legal provisions are repealed or, at the very least, amended to comply with the spirit of open government. Supplementary laws and regulations may also need to be enacted.

Overriding Inconsistent Legislation

The uncertainty created by the continued existence of restrictive legislation sometimes makes it hard for public officials to know exactly how much to disclose under the new access law. Undoubtedly in today's world, many of these laws cannot withstand scrutiny and while they remain on the books, they cumulatively create a level of chill that freezes out information-sharing as a routine bureaucratic activity.

Old Official Secrets Acts can undermine openness

Many countries of the Commonwealth have official secrets acts which are designed to keep government closed. They often contain sweeping clauses that appear to forbid the disclosure of every kind of information. They allow for presumptions of guilt, often cover a multitude of bewildering circumstances in which any communication could be punishable and create serious offences that can ground accusations of traitorous behavior and espionage that could bring down harsh prison sentences. The basis on which documents are categorised as 'public', 'restricted', 'confidential' or 'top secret' is often left to the discretion of officials, and how classification criteria are developed and applied is neither well-known nor questioned.



While there is a place for official secrets acts, they must be very tightly drafted such that their provisions are invoked only sparingly, in very specifically-defined circumstances. Unfortunately, old official secrets acts remain largely unaltered in most post-colonial jurisdictions in the Commonwealth. Laws that are meant to cover only documents that contain 'official secrets' are stretched to cover any 'official' document. In Bangladesh, newspaper editors have been arrested under the Official Secrets Act for nothing more than reproducing already 'leaked' secondary school examination questions which were published to expose corrupt officials who routinely sold such questions before the examination period.[198] In Malaysia, an opposition politician was jailed in 2002 for two years after being found guilty of revealing to the press the contents of two anti-corruption agency reports on a minister and a chief minister.[199]

Civil service rules can inhibit bureaucrats

Myriad rules that curb disclosure by prohibiting government servants from 'unauthorised' communication of information are also to be found buried in civil service manuals. These are sometimes so widely cast that it is not entirely surprising that many bureaucrats decide it is safer to err on the side of discretion than disclosure. In Bangladesh, civil service conduct rules prohibit officials from communicating any

The Continuing Tussle Between Secrecy and Access

When the Jamaican Government passed its Access to Information Act in 2002, it still refused to repeal the ancient Official Secrets Act of 1911 that gags public servants from disclosing government-held information. The Attorney-General specifically clarified that the new law overrode the Official Secrets Act and that any disclosure made under the new law would not be an offence under the Official Secrets Act. However, the decision to retain it runs counter to the spirit of the new access legislation and may well stifle the system of open government that is struggling to be born. The resistance to scrapping a law well-known to be anachronistic demonstrates once again the difficulties of changing deeply rooted government attitudes.[197]

information of an official nature to non-officials and the press.[200] In Malaysia, administrative guidelines prevent officials from revealing any information in any form to the public or the media without prior written approval from their superiors. Common to too many countries across the Commonwealth, these rules can prevent disclosure of the most uncontroversial information without requiring consideration of the merits of such strict secrecy. In Kenya, for example, a file full of nothing more than newspaper cuttings was marked 'very confidential' and access to it denied without the permission of the Permanent Secretary.[201]

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All other laws need to comply

Difficulties in harmonising data protection, privacy and access regimes also create easy excuses for refusing requests. Data protection and privacy laws are designed to protect rights with regard to information held on individuals. At times, privacy rights may compete with public disclosure rights. But where they conflict, privacy rights should not automatically be preferred. Rather, the pros and cons of disclosure and the competing merits of the public and private rights need to be balanced according to the public interest. Unfortunately though, privacy laws are too easily invoked to deny information on the ground that the information is protected and may not legally be released. In this vein, the Privacy Commissioner for New Zealand has received complaints that the government unjustifiably refuses requests "because of the Privacy Act."[202]

Provisions in evidence acts also sometimes protect "unpublished official records relating to any affairs of State" and can leave wide discretion with officials "who shall give or withhold such permission as [they] think fit". In many cases, public officers can also not be "compelled to disclose communications made to them in official confidence, when they consider that public interests would suffer by the disclosure."[203] Such provisions need to be amended to accord with the new environment of openness.

Enacting Complementary Laws To Promote Openness

Access laws focus primarily on getting information out of government. They are not always entirely comprehensive, such that other aspects of open government may need to be addressed through separate legislation. This can be beneficial, as it can ensure that the issues are given proper treatment and due importance. It also allows public participation in the legislative process to be more targeted and avoids disparate issues being combined by government and pushed through parliament without sufficient research and input.

Opening up government meetings

To bolster open government, encourage informed participation and inspire confidence, progressive governments are putting in place laws that make participation and consultation with the public a legal requirement. South Africa values this so highly that

it is mentioned in the Constitution[204] and New Zealand has had its so-called 'sunshine law' in place for more than 15 years.[205] 'Sunshine laws' legally require government meetings to be open except in certain specified cases. These laws habituate government to functioning under the public's gaze. Sunshine laws increase public understanding of government actions; build effective citizenship at the grassroots level; make both elected and appointed officials more accountable; foster a free press able to acquire information without currying favour; and improve procedural and record-keeping standards of governmental bodies.[206]

Protecting whistleblowers

A properly functioning open governance regime is also aided by complementary legislation that makes it safe and acceptable for people to raise concerns about illegality and corruption plaguing organisations with which they are involved. Honest folk, constrained by employment contracts or public service secrecy rules and without legal protection or clear pathways through which to raise concerns, are often legally unable or too intimidated to speak out or 'blow the whistle' against wrongdoing.

Public interest disclosure laws, also known as 'whistleblower protection' laws, are designed to encourage reporting of wrongdoing and provide protection from subsequent victimisation. Whistleblowing is a means to promote organisational accountability, maintain public confidence and encourage responsible management. Australia does not have a federal public interest disclosure law, but most of its states do and these laws protect *all* persons reporting wrongdoing, not just employees or workers. South Africa passed whistleblower legislation simultaneously with its access law.[207] The United Kingdom passed legislation prior to its access to information law after a number of investigations into disasters showed that early disclosure might have had a preventive effect.[208] For example, investigations into the collapse of the Bank of Credit and Commerce International found that a corporate climate of fear and intimidation stopped employees from saying anything about corrupt practices. Similarly, after the Clapham rail disaster that killed 35 people, investigations found that workers did not feel safe voicing their concerns even though they were aware of the hazard posed by unsafe wiring systems.[209]

Any Freedom of Information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if arrangements for their eventual archiving or destruction are inadequate.

— Draft UK Code of Practice on the Management of Records[210]

The Challenge of Records Management

The right to information means having access to *full and accurate* information. This rests on the ability of governments to create and maintain reliable records because even the most well-meaning officials can be defeated by their working environments. Financial constraints, insufficient hardware and filing systems, poor categorisation procedures and difficulties in information delivery are all common ills that bedevil governments' efforts to open up their functioning.

Records are a government, as well as a public, asset. They contain the evidence that helps citizens understand the 'how' of governmental actions and the 'why' of official decisions. They are the means by which governments can answer queries ranging from a parent asking about the basis for their child's examination results, to investigations by parliament, the auditor-general or the ombudsman about multi-billion dollar defence deals. Accurate records beget accurate answers.

Access to information laws grant the right to obtain records from government agencies, but often fail to impose a *duty to create and maintain* these records in any specific manner. This is a problem because, although record-keeping is an essential part of any access regime, it is often a low priority for governments. In many countries, even where official transactions are noted and filed, they soon become unknown and unavailable as filing clerks and archivists change and move on, and records continue to pile up endlessly. In one country, the records centre held 10,000 linear feet of departmental files for more than fifteen years in no discernable order, with cabinet minutes lying alongside copies of dog licenses and extra copies of government publications.[211]

Without proper systems, records can be manipulated, deleted or destroyed and the public can never be sure of their integrity. The methods of manipulations are as varied as human ingenuity but increasingly sophisticated technologies are making verification easier. Recently in India, a highly-placed government official had to resign when forensic tests revealed he was guilty of fudging files and back-dating notes to cover up a scam.[212] The human cost of poor record-keeping is often seriously under-estimated. Across the Commonwealth, newspapers regularly tell the stories of life-long tragedies caused by careless record keeping: some poor ticketless traveller is imprisoned awaiting trial for years beyond the maximum sentence, or a long cured young woman is abandoned in a mental institution for decades because the system has misplaced a file.

Conversely, good record-keeping benefits both government and citizen alike. For example, in The Gambia, the National Records Service worked with the Accountant-General's Department to ensure that accounting records were properly arranged, listed and stored for easy access. A records centre was built specifically to enable the Department to gain control over a huge mass of financial information that in the past had been left to degenerate into disorder. This had direct benefits for the country's ability to effectively manage its economic affairs. Similar efforts with the Department of State for Justice helped retrieve records that provided evidence of property title, marital status and company and trademark registrations which would otherwise have been lost forever.[213]

RECORDS INCLUDE

agendas
minutes
documents
reports
diaries
forms
statistical data
file notings
memos
files
notes
financial statements
balance sheets
certificates
business records
manuscripts
ledgers
drawings
maps
CDs
photographs
e-mails
scale models
audio-video tapes
registers
floppies
samples
microfilm

Life Cycle of a Record

Record-keeping is the process of creating, capturing, organising and maintaining the records of an individual or agency.[214]

Compounding poor departmental record-keeping is the fact that the laws that govern the national archives in many Commonwealth countries are inadequate to provide for good records management. The priority of archivists, which is to preserve historic documents, does not serve the aim of active record management, which is to ensure that records are systematically maintained through their entire life cycle and systematically destroyed. New legislative provisions – either in the access law itself or in a separate act – that mandate the use of uniform procedures and systems to manage a variety of records, whether paper-based or electronic, help ensure that the public's information needs are met.

The Challenge of Information Delivery

The very volume of information generated in a modern world, low literacy rates, a proliferation of languages and remote habitations pose challenges to information delivery, even where there is a right to access it. In poorer countries in particular, ensuring that information reaches the masses can be difficult. For example, important government information is often in writing, but this form of communication is inaccessible for unlettered citizens for whom verbal communications are their main source of information. Information must be made easily digestible. It must also be comprehensible to populations that are linguistically diverse.

Countries have innovated to meet challenges of remoteness and illiteracy by: holding regular community level meetings in rural areas; using wall newspapers posted at local council centres, schools, post offices and community centres to disseminate key messages; using the official 'beating of drums' through villages to inform citizens of development projects in their local area; driving vans with loud speakers through the countryside; and even sending up smoke signals to keep people abreast of important happenings.

Mass media, of course, provides a singularly effective means for information dissemination. Accurate, reliable broadcasting bridges the distance between government and citizenry. In the Commonwealth's developed countries, modern information

technology, a high level of connectivity and the reach and competitiveness of mass media usually ensures that well-targeted messages regularly get out to the vast majority of people. Even in developing countries, the penetration of radio and television is considerable and provides an inexpensive means of getting government-held information out to the public. In a great many countries, large portions of the media are under government control; this imposes a greater responsibility on government to maximise the use of media for sending useful information to the public in a timely fashion. Talk back radio shows in Jamaica, for instance, have helped educate citizens about regulatory systems.[215] In South Africa, community radio is bringing unprecedented amounts of information to remote areas.

E-governance is also an increasingly useful tool for information-sharing. E-governance uses information and communication technologies to engage citizens in dialogue and feedback and thereby promote greater participation in the processes of governance. E-governance aids in streamlining procedures, standardising rules and improving service delivery to citizens.[216] The Commonwealth Centre for Electronic Governance is currently working to develop sets of best practice on using technologies to implement the goals and objectives of public administration.

The Challenges Of Electronic Record-Keeping

New technology poses opportunities for managing records well and making information readily available to larger numbers of people than ever before, but electronic record-creation and storage also throws up complex challenges. Paper-based systems are tangible and relatively easily centralised. Increasingly though, official communication is becoming virtual and being done via email. Communication is faster, but more records are created and more are stored in personal spaces rather than common work areas. Details of sequencing, opinions and decisions can be easily distorted or lost unless modern systems of storage and retrieval are in place.

The authenticity of records can be seriously compromised if electronic records and paper records do not correlate. If not managed carefully, institutional memory will be severely harmed and governments' ability to remain accountable to the public can disintegrate. Electronic records are increasingly being accepted in courts as evidence. Therefore, if systems are not in place to guarantee integrity of these documents, justice could be the casualty.

In cash-strapped developing countries, installing comprehensive record-keeping systems is seldom a priority and often appears financially unviable. Lack of equipment, space, staff and know-how are common concerns. In particular, many governments fear that electronic systems are beyond their reach, because installing hardware is seen as expensive, requiring frequent upgrading and needing specialist personnel for maintenance and operation. Yet, equipment is becoming cheaper over time, and today there are a number of international programmes directed at ensuring that developing countries can affordably access the benefits of information technology.

E-Governance Demonstrates The Power Of Information-Sharing

Accessing land records

'eLandjamaica', a state-run service of Jamaica's National Land Agency, brings together detailed information on a broad range of land-related issues previously scattered across various departments, including land titles, surveys, maps and land valuations. Basic information relating to volume and folio numbers for plots of land is freely available to the public, while more detailed information is provided at a cost. This data is particularly useful to land surveyors, real estate developers, planners, engineers, lawyers and buyers who can make sure of title and land usage all at one place.

Networking for development

In Solomon Islands, which has nine different provinces comprised of many smaller islands scattered across almost 1000 kilometres, information technology is being harnessed for the benefit of remote populations to combat the tyranny of distance. The People First Network, set up in 2001, is a rural email network aimed at facilitating sustainable rural development and peace-building by enabling better information-sharing among and across communities.

Exposing corruption

The Central Vigilance Commission of India is the watchdog set up to investigate corruption in public office. Its website includes instructions on how a citizen can lodge a complaint against corruption without fear of reprisal. In an effort to focus media attention on corruption, the Chief Vigilance Commissioner uses the website to publish the names of officers from the elite administrative and revenue services against whom investigations have been ordered or penalties imposed for corruption. The media has picked up this information and used it to further highlight corruption. Newspaper polls report that 83 percent of respondents believed that publishing the names of charged officers on the website has a deterrent effect.[217]

Connecting with citizens

The City of Johannesburg in South Africa has put all its information on its website, with the exception only of personal information about staff and Councillors. Citizens can now obtain on the website the minutes of all committees, even the Mayoral (Executive) Committee, as well as policies and a range of other documents. The "Joburg Connect" call centre has also been trained to accept, record and process citizen inquiries and requests in terms of South Africa's *Promotion of Access to Information Act*. Officials in the "People's Centres" ('one stop shops' in each of Johannesburg's 10 regions which provide easy access to the municipality) have also been trained on the Act and how to process requests, and they log any such requests made to them through Joburg Connect.[218]

Civil Society Must be the Driving Force

Working towards more open governance – whether at the international level, within government or in the private sector – is an ongoing process. Even in the best of circumstances, removing obstacles is slow and improvements are hard won. The political will to create an open regime is maintained only through consistent push from citizens. If the public does not energetically ask for information, there is unlikely to be any effort by government to provide it. It is this dynamic relationship between citizen and state that ensures that laws serve public needs. In fact, it is the demand for information and transparency from the public that has brought the notion of a guaranteed right to information as far as it has come today. To wear down age-old opposition, civil society must consistently engage where it can and confront where it must.

Chapter 4

People Power: Civil Society Advocacy Experiences

> ***I welcome the growing influence of civil society in the public debate on human rights. Civil society is being called on to participate in new approaches to solving global problems…Clearly the many challenges to human rights will not be fully addressed without mobilising the energies of all parts of society.***
>
> **— Mary Robinson, Former UN High Commissioner for Human Rights, 2002[219]**

From Jamaica to Zambia, Papua New Guinea to Pakistan, the spur for open government has come from civil society. Whether working at the grassroots to support demands for economic justice, exposing scandals that save nations millions of development dollars, helping governments to craft open-door policies and laws, or collaborating across jurisdictions to change the functioning of remote and closed international financial and trade institutions, civil society's successes are sources of inspiration as well as practical ideas for other groups across the Commonwealth.

Advocates are to be found pushing for openness from the high policy levels of the World Trade Organization and the International Monetary Fund, to small, remote and unlettered hamlets where local governance responsiveness is a challenge. Some narrowly confine their focus to prising open single institutions, like the World Bank, which, even as it only gradually cedes ground itself, has sometimes been an unlikely ally in cajoling secretive national governments to open up and consult more with their citizens as part of the terms on which loans are granted. Others strive to mobilise large numbers of people into the critical mass of public opinion needed to force closed governments to function more openly. Innovations, tactics and strategies used in the battle to get a guaranteed right to access information in place are as varied as citizens' targets and the unique contexts in which they find themselves.

Advocacy Experiences

Access campaigners typically come from groups engaged in good governance and human rights. Some campaigners work specifically on recognition of the right to information as an essential goal in itself and a singular means by which overall government functioning can be improved. On the other hand, open media groups, anti-corruption campaigners, environmental action organisations and the like have all joined forces to demand the right as part of their more specific sectoral interests. For example, the Access Initiative promotes access to information in support of its primary objective of openness in *environmental* decision-making.[220] Similarly, Probe International is committed to exposing the environmental, social and economic effects of Canada's aid and trade abroad, but has strongly pushed the right to information agenda in an effort to open up the Canadian agencies in whose activities it is interested.[221]

Working Together...

Campaigners working together have shown that the whole can be greater than the sum of its parts. There is strength in numbers. Solidarity amplifies voice, brings in diversity, harnesses a breadth of expertise and increases audience reach. Efforts have sometimes been organised as formal coalitions and sometimes as loose networks or event and opportunity-specific campaigns. The Campaign for Freedom of Information is a formal coalition of almost ninety members and has become a formidable resource and informed critic regarding the United Kingdom's information laws. Nigeria's Freedom of Information Coalition brings in more than seventy diverse civil society groups, ranging

from the International Press Centre to the Kaduna Chapter of Women in Nigeria.[226] In Ghana, a coalition of NGOs has been formed to push the government to create access laws, even while each NGO is also separately promoting the right to information through their own constituencies. That so many different interest groups join hands so willingly highlights the value placed on the right to access information by all of society.

Networks have not been limited to single countries. As the momentum for access to information laws has gathered across the world, groups working in isolation have evolved to work collaboratively across provincial, national, regional and international levels. For example, ARTICLE 19 and the Commonwealth Human Rights Initiative, both international NGOs, successfully partnered with the nationally-based Consumer Rights Commission of Pakistan and Sri Lanka's Centre for Policy Alternatives to produce a reference report on the state of freedom of information in South Asia. The findings and recommendations were then promoted to governments and civil society at two international conferences in the region.

Networks that include and represent diverse interests – from business to social workers, subsistence farmers to industrialists – are very valuable. Each interest group brings in a special perspective that informs and enriches the interventions they make together. Coalitions accommodate a diverse range of people and can lend support to voices that might otherwise be ignored. This enriches the contributions of the whole group. Thus, while the presence of business representatives in a right to information coalition might highlight the need for commercial confidentiality exemptions, the presence of illiterate villagers groups might highlight the need for provisions that require government to provide essential information to citizens without being first requested. A common voice from so many different sources strengthens the messages being sent to government. In the long term, awareness seeded in varied communities also creates ready-made constituencies of users of access laws.

Donors – Friend or Foe?

Donors are increasingly making transparency a condition of loans and assistance. For example, Ghana's Poverty Reduction Strategy, developed in consultation with the World Bank, requires that a freedom of information law be adopted by 2004.[222] Although sometimes useful allies, aid agencies and multilateral organisations have also been key campaign targets. Their budgets are huge and their interventions often influence domestic political and economic agendas. Their distant decisions impact millions, but cannot be questioned by the populations most affected. Advocates have been alert to ensure that these powerful entities do not slip under the radar simply because they perceive themselves as answerable only to their own mandates and member country governments, rather than citizens. Groups such as the Bank Information Centre[223] and the Bretton Woods Project[224] closely monitor developments at international financial and trade institutions and push for greater transparency, accountability and citizen participation, in particular, through providing greater public access to information. In February 2003, a group of activists from five continents met to further their ability to work together and set up an informal network aimed at overcoming the secrecy surrounding the operations of these international bodies.[225]

Case Study: Networking – Open Democracy Campaign Group, South Africa

In South Africa, a civil society that had recently been deeply engaged in the development of the post-apartheid constitution was already primed to promote access to information legislation. Shortly after the democratic South African government took office in 1994, it set up a Task Group on Open Democracy to draft an access to information law within three years, as required by the new Constitution.

A coalition of civil society organisations formed the Open Democracy Advisory Forum to work with the Task Group. Unfortunately, it foundered. It had tried to involve too large and diverse a range of organisations, without the funding to underwrite the campaign. For many of the organisations, the issues involved were also probably too far removed from their primary agendas to permit them to devote sufficient attention or resources to the issues. Though the Forum vanished, a number of organisations continued their involvement in the access to information law-making process.

In 1996, civil society organisations again rallied when the Parliamentary Information and Monitoring Service of the Institute for Democracy in South Africa (Idasa) brought together almost 30 organisations for a conference on civil society advocacy. Importantly, this meeting specifically recognised the importance of access to information to all future civil society activities and charged three organisations with analysing the – then stalled – Open Democracy Bill and designing a campaign to promote a strong law. This small coalition grew into the Open Democracy Campaign Group (ODCG), which included a diverse range of organisations concerned with social justice.

Over time the ODCG built relationships with the Task Group, parliamentarians (including the opposition) and committees considering the law. The ODCG took pains to provide constructive policy options, not just criticism. It developed a novel and useful technique for individual members' submissions to lawmakers. Termed the 'Twelve Days of Christmas' approach (because it drew upon the form of the Christmas carol which repeats previous lyrics as each new line is added), individual Group members quickly mentioned the chief points of previous submissions before their own detailed submission. This reinforced key points, as well as signalling their collective solidarity.

Differing priorities, varied political perspectives, conflicting views and diverse organisational cultures often resulted in slow progress with internal processes and communication. For example, large organisations such as COSATU, a giant labour federation, required time to endorse policy proposals, where small groups could quickly decide on their position. Fortunately, the slow pace of official deliberations on the draft Bill provided breathing space to meet regularly with a fairly steady group and create mutual understanding. Over time, the ODCG developed a high level of cohesiveness and trust, allowing individual constituents to focus on essential issues and overlook minor differences while working systematically on influencing the development of the law. The ODCG developed good information-sharing relationships that facilitated the convergence of perspectives on key issues. Its varied membership brought in a range of networks and connections and different sets of skills, interests and expertise. It also enabled in-house specialisation, as one or more of the ODCG would adopt one key issue and take the lead in co-ordinating research, policy formulation or lobbying.[227]

International Freedom of Information Advocates Network

Worldwide, many of the challenges that advocates are grappling with are common across jurisdictions. Recognising this, a group of advocates has formed the web-based FOIA Network. The Network is focussed on facilitating the flow of information between organisations and countries, including freedom of information news and developments internationally and nationally, updates on projects, research papers and draft bills. Most recently, the Network was active in celebrating Right to Know Day, 28 September, in countries throughout the world. Information on how to join can be found at www.foiadvocates.net.

A larger group working together brings in more experience and human and financial resources, reduces the duplication of work and enables all to benefit from specialised expertise within the group. However, despite the obvious value of working together, coalitions and networks often falter because of their very variety. Handling diversity can be difficult. Deliberate efforts need to be made to develop trust, create a common means of internal communication and accommodate uneven capabilities and finances, as well as diverse interests, agendas, and timetables. Careful attention to these things has resulted in some spectacular successes.

...To Get The Message Across

The advent of new forms of information and communication technologies has brought with it many opportunities for advocates. Of course, older forms of media, such as radio, television and newspapers also continue to be relevant. Experience shows that radio is an excellent advocacy and awareness-raising tool because it is able to reach even illiterate members of the population. Coverage can extend to even the remotest regions, which has made it particularly popular in areas such as the South Pacific where inter- and intra-island communication infrastructure can be poor. The internet is also an increasingly useful resource. In many countries it is inexpensive to run (although the infrastructure may not be), increasingly accessible both in terms of physical access and training in its use (sometimes even by the poor through development programs specifically aimed at extending its reach) and can be controlled by the advocate, rather than being reliant on sympathetic journalists and media owners.

The media has been a crucial resource for advocates because of its broad reach into the community and its ability to target a range of diverse interests, particularly politicians who dislike adverse press and are often prompted to respond to issues raised by the media that they would otherwise ignore. Experiences from coalitions, such as the United Kingdom's Campaign for Freedom of Information, South Africa's Open Democracy Advisory Centre and Nigeria's Freedom of Information Coalition, demonstrate that

successful media campaigns – where the media was primed to assist and could be used to arouse widespread public interest – usually resulted from careful cultivation of media contacts. Education campaigns have been specifically targeted at raising awareness in the media, and many advocates have drafted press releases and feature stories to make publication easier for journalists who may not be familiar with the issues.

[I]n itself, the issue of access to information does not have a natural constituency. What is required is to connect the issue with peoples' daily pressing concerns, and ensure that people see their right to information in the broader context of their right to development."[231]

While getting the media to *cover* a campaign is useful, the media has also often been a very active partner in national campaigns because the right to access information so directly affects their work. For example, the Zambian Independent Media Association was part of the coalition that proposed an alternate Freedom of Information Bill for the country. Likewise, in Sri Lanka, the Free Media Movement and the Editor's Guild of Sri Lanka were instrumental in developing their Freedom of Information Bill. In the Fiji Islands, groups concerned with proposed government restrictions on the media included a demand for freedom of information legislation as part of their advocacy efforts.[228] Similarly, in Papua New Guinea, journalists' associations, trade unions, NGOs and students rallied together to criticise a media bill introduced by the government which sought to impose restrictions on the media and hamper the right to freedom of expression and information.[229] In Kenya, representatives of several journalists' associations – recognising the need for an access to information regime in Ethiopia, Kenya, Uganda and Tanzania – joined together at a regional conference in Nairobi in November 2000 and reaffirmed their support for the principles outlined in the 1996 International Federation of Journalists Harare Declaration on the right to know; principles which included the demand for a constitutional guarantee of the right to freedom of information without exceptions.[230]

From The Grassroots...

In democracies – even weak and oppressive ones – public opinion matters. The same politicians who need to guarantee the right to access information are the ones who must also rely on public support at election time. In this context, the presence of a large mobilised group of citizens has proved to be an effective tool for pressuring those in power to take action and has acted as a counter-weight to bureaucratic resistance.

Civil society organisations have done much to encourage the public to demand the right to information. Public opinion has mobilised when the lack of the right has been shown to be connected to the difficulties and adversities that people face in dealing with government. India is one of the only places in the Commonwealth where there has been strong grassroots mobilisation specifically around the issue of the right to information. No mobilisation of public opinion is perhaps as poignant or as powerful as that of very poor people fighting for their survival and recognising that access to information is not just an esoteric concept but critical to their very existence.

Case Study: Mass Mobilisation – Mazdoor Kisan Shakti Sanghatan in India

Mazdoor Kisan Shakti Sanghatan (MKSS), a workers and farmers solidarity group, works in Rajasthan, one of India's least developed states. In the course of their efforts to get fair working conditions for daily wage earners and farmers in the region, MKSS workers realised the government was exploiting villagers. Not only were they being denied minimum wages, they were also not receiving benefits from government-funded developmental activities earmarked for the area.

Under the slogan 'Our Money-Our Accounts', MKSS workers and villagers organised themselves to demand that their local administrators provide them with an account of all expenditure made in relation to development work sanctioned for the area. In the absence of a legal right to access the records, local officials, long-used to holding villagers in thrall and never being questioned, dug in their heels and refused to provide the documents. MKSS resorted to peaceful mobilisation to increase the pressure to release copies of official records – they organised sit-ins, demonstrations and hunger strikes. While there was resistance at all levels, gradually, as the pressure continued and the media began to take notice, the administration relented and finally provided the information requested.

MKSS used the information disclosed to organise 'social audits' of the administration's books. They organised public hearings to see if the information in the government's records tallied with the villagers' own knowledge of what was happening on the ground. Not surprisingly, it did not.

At each public hearing, a description of the development project, its timelines, implementation methods, budget and outputs would be read out along with the record of who had been employed, how long they had worked and how much they had been paid. Villagers would then stand up and point out discrepancies – dead people were listed, amounts paid were recorded as being higher than in reality, absent workers were marked present and their pay recorded as given, and thumb impressions that prove receipt of payments were found to be forged. Most tellingly, public works like roads, though never actually constructed, were marked completed in government books.[232]

Though many villagers were illiterate, through face-to-face public hearings they could scrutinise complex and detailed accounts, question their representatives and make them answerable on the basis of hard evidence. Local officials reacted badly. Determined to undermine the people's campaign for accountability, they appealed to class, caste and clan loyalties and even resorted to threats and violence.[233] But the campaign persisted and eventually was successful in getting local officials to admit to corruption. Some officials returned misappropriated public funds and, in one case, an arrest was made for fraud.

Following this success, more and more people mobilised to hold similar hearings and this reached the state capital as a demand for an access to information law. Public pressure grew as the local and national media covered the campaign extensively.

The government eventually issued administrative orders implementing the right to get copies of local records. The main opposition party promised in its manifesto to create a state level law that would guarantee the right to access information. In power, however, they took three years to bring it on the books, and even then in fairly diluted form. Initially, the Government appointed a committee of bureaucrats to draft the bill. However, following much criticism about the lack of citizen involvement, it invited assistance from MKSS and the National Campaign for People's Right to Information. They held a series of public consultations that fed into the process which finally culminated in an Act.

Beyond the issue of sheer survival, the public has mobilised to demand systemic changes to open up government when issues have caught their attention at critical moments. Scandals involving corrupt use of public money or deliberate government fabrications have created public outrage and an outcry for more transparency and accountability, the adoption of laws that will ensure this and repeal of older legislation like the Official Secrets Acts.

The simple presence of the right person at the right time has been known to win the day. In the state of Maharashtra in India, the government had let its access laws lapse and failed to frame its rules. Several government initiatives to reform and review the Act had come and gone, but no progress was being made, despite promises of implementation. Anna Hazare, a well-known and respected campaigner against corruption and abuse of power, decided that enough was enough. He came to Mumbai, Maharashtra's capital, sat down in one place, and declared that he would fast there like his mentor Mahatma Gandhi until the government operationalised the right to information law. His moral credibility struck a chord with the public and whipped up the support of tens of thousands of people. A coalition of NGO supporters kept the issue in the media and liaised with government on his behalf during the fast. Four days into his ordeal, the Deputy Prime Minister of India cleared the draft state Right to Information Bill, which had been sitting idle for almost six months, and on the very same day the Indian President signed it into law. In a country not known for the speed of its bureaucratic processes, by the next day, the State Governor had given his assent and the bill was then immediately published.[234] One person can make a difference!

A Dose Of Their Own Medicine

Canada's access law was passed primarily due to the push during the 1960s and 1970s from backbench members of Parliament via private members' bills and other parliamentary and extra-parliamentary techniques. In 1979, the Liberal government lost power, but was returned to office within months after the Progressive Conservative government lost a no-confidence vote. During their short period in opposition, the Liberals got a first-hand experience of the difference between being 'fully informed' in government and having to rely on the media for information when out of office. Having had a taste of closed government, they finally understood the necessity of providing citizens and opposition politicians with access to information. It was not an easy decision; certainly the central bureaucracy was upset and opposed. But, by July 1980 an Access to Information Bill was introduced in Parliament, and it was finally enacted in 1983.[235]

...To The Policy Level

Successful advocacy has relied on both generating demand at grassroots and creating a willingness to change within political circles and the bureaucracy. Advocates have used a multiplicity of methods whenever and wherever opportunities have arisen. Many successful efforts have concentrated on engaging with law-makers.

'Government' is so habitually remote from people that it is often perceived as a monolith made up of faceless, powerful people banded together to uphold 'the State' against all – especially the individual citizen. In fact, bureaucrats and politicians often have very different agendas and interests, with different hues of opinion and belief, and each individual can be an ally or an adversary. To maximise chances of success, serious energy has been devoted to understanding who in the political spectrum is most likely to support freedom of information and act as a conduit for civil society's views.

Successful campaigners have striven to develop relationships of trust and reliance with as many policy-makers as possible. Where the power imbalance between the ruling elite and the common person is very pronounced this can be hard to do; sometimes it is not within the culture to engage as equals, let alone question the wisdom of rulers. However, except in the most recalcitrant of governments, at least a few members of parliament – particularly those in opposition – may be receptive to suggestions.

Preparing the ground

Election time is particularly fertile for planting seeds of change and getting candidates to think about the value of access legislation. Advocates have worked to get commitments to enacting access to information laws into election manifestos by arguing that voters are likely to favour a politician who is committed to open government, tackling corruption and reining in bureaucrats. Honouring pledges, however, is another matter. In Nigeria, a campaign led by the Media Rights Agenda, Civil Liberties Organisation, Nigeria Union of Journalists and a broad coalition of other NGOs has not yet been able to get President Obasanjo to fulfil his May 1999 promise that "all rules and regulations designed to help honesty and transparency in dealing with government will be restored and enforced"[236] . The President side-stepped his commitment by passing responsibility for access to information to parliament, where the process stalled.[237]

Members of parliament can be targeted via their political parties, the houses of government in which they sit or as individuals. In Nigeria, the Freedom of Information Coalition has written personal letters directly to each of the 469 members of the House of Representatives and the Senate of the National Assembly. They have also held informal meetings with parliamentarians, including the leadership of both legislative chambers and members of relevant committees. Briefing documents have been distributed on a range of relevant issues, and legislators have been invited to formal meetings as well as seminars, conferences and workshops on freedom of information.[238]

Where governments are slow or disinterested, a private members' bill introduced by an individual or small group of parliamentarians can help to create an opportunity for debate. Although these bills do not often succeed in becoming law, if the issue catches the public imagination, government may yet decide to take it forward. Busy parliamentarians welcome receiving drafts by interest groups and appreciate their support throughout the process, for example by providing detailed briefings, drafting their speeches and assisting with persuading other parliamentarians to support the cause. This strategy has been very skilfully used by the Campaign for Freedom of Information in the United Kingdom, which has been instrumental in the successful passage of four bills that served to increase citizen's access to information.[239] The laws were very useful in establishing an overall pro-disclosure environment, which was supportive of subsequent advocacy for an omnibus access to information law.

Case Study: Targeting Policy-Makers – Campaign for Freedom of Information, United Kingdom

The Campaign for Freedom of Information has worked tirelessly since 1984 to get access to information on to the legislative agenda. In 1997, the Campaign's hard work seemed to have paid off in the form of a commitment by the newly elected Labour Party to design and implement an open government regime.

Unfortunately however, good things rarely come easily – and the United Kingdom access to information law was no exception. It took four more years for a law to finally materialise. In that time, the Campaign was vigilant about remaining engaged in the legislative process and ensuring that their inputs were taken into account at every possible opportunity. Importantly, although the United Kingdom's access law was finally enacted in 2000, the Campaign continues to work to improve the law and encourage its proper and timely implementation.

The Campaign used a wide variety of advocacy techniques to maximise the impact of their contribution to the legislative process. Throughout, the Campaign was prolific in the material it produced and distributed. It pursued its agenda on all fronts, targeting the media, law-makers and the public. Recognising the importance of the media to successful advocacy, the Campaign specifically targeted the media, developing specific briefings for the media to develop their understanding of the issues. They also produced a constant stream of leaflets and booklets and drafted articles which were often published by The Guardian and The Independent newspapers.[240] A Campaign website was maintained and has been a key resource for the public and other right to information advocates.

The Campaign specifically and regularly targeted officials and legislators, deliberately attempting to inform and influence law-makers directly. It encouraged the public to write letters to their Members of Parliament – a canny strategy which put pressure on politicians while at the same time raising awareness within the community. The Campaign itself also wrote personal letters to parliamentarians; it even sent one, signed by 40 of its members, directly to the Prime Minister – and actually received a response.[241]

Briefing papers were regularly provided to MPs in both Houses of Parliament. They mostly dealt with specific amendments to the proposed Freedom of Information Bill, including detailed clause-by-clause analysis with suggested changes. The briefings also provided substantial comparative legal information from countries with proven and working FOI regimes. Briefing papers were distributed at the time of committee level debates in both the Houses of the Parliament, when the chances of amendments were greatest.[242]

The Campaign responded in writing to draft bills and Government and Committee reports, even going so far as to draft a Freedom of Information Bill, which was tabled as a private members' bill in 1998. Submissions were detailed and provided constructive suggestions for improvement as well as critical analysis supported by examples. The Campaign was recognised by law-makers as a leading authority on right to information. The Campaign continues to provide the same level of input at the implementation stage, keeping a close watch on progress.

Apart from parliament, the courts also provide a good venue for pushing the right to information. Civil society groups in various jurisdictions have approached the courts in a bid to effectuate the right to information via case law. In India, the Supreme Court recognised a right to information through its interpretation of the constitutional right to freedom of speech and expression almost two decades before the federal right to information law was passed.[243] In Sri Lanka, despite the lack of a law, the Supreme Court has recognised the right to information as part of the constitutionally protected right to freedom of thought – "information is the staple food of thought"[244] . In Uganda, a recent case recognised that Article 41 of the Constitution, which guarantees the right to information, allowed a civil society group to litigate for the disclosure of certain government documents even though there is no specific law yet in place.[245]

Developing a law

Even when governments commit to enacting a law, they often need to be reminded that the process of entrenching the right to information is as important as the outcome. Involving a broad cross-section of people in the law-making process helps ground the law in reality. It helps people own the law, use it judiciously and protect and promote its best practice. Yet, ironically, one of the threshold obstacles that advocates of open government often face is piercing the existing veil of secrecy in which law-making is cocooned. Ugandan advocates report real difficulty in finding out whether a law is even being developed.[246] In Zimbabwe, the government drafted their law with minimal public consultation. The result was a poorly drafted, weak Act that clearly shows the heavy hand of the bureaucracy hedging about every disclosure clause and ensuring that the final law has barely any use.

There are a multitude of government bodies and officials responsible for law-making which should be seeking the public's input into the legislative process. However, it is civil society groups that have led the clamour for greater participation by the public, while governments have – except in a few cases – studiously avoided consultation. In Ghana, where the discussions around law-making were almost exclusively between government and a few elite urban groups, the Commonwealth Human Rights Initiative explained the implications of access to information law to people in the provinces and sought inputs to feed back into the discourse. Discussion with a diverse range of people identified public needs, the gaps in information and the obstacles faced by the public in getting information. This has nuanced and enriched the debate surrounding the issue.

There are a multitude of government bodies and officials responsible for law-making which should be seeking the public's input into the legislative process. However, it is civil society groups that have led the clamour for greater participation by the public, while governments have, except in a few cases, studiously avoided consultation.

Unfortunately, invitations from government to participate in the drafting process have been more the exception than the norm in the Commonwealth, as many governments have either wanted to continue to control the outcome, or have just not appeared to appreciate the value of civil society's contribution. In any case, winning a place at the table provides no guarantee of being heeded –

consultations have not always translated into getting important clauses included in the law. The government in the United Kingdom, for instance, has been heavily criticised for going back on promises that it made when in opposition after long consultations with campaigners. Civil society concerns were reflected in the Government's initial papers on access to information,[247] but the final legislation and implementation timetable fell far short of expectations.[248]

In Zambia, a coalition of civil society organisations reviewed and redrafted a government bill to reflect international access standards. Advocacy was initiated around the bill and, following a stakeholders' workshop, a task force emerged to progress advocacy on the issue. However, in 2002 the government decided to introduce their own version and political considerations have since stalled the process.[249] In 2001, following two years of consultations with the public, the Consumer Rights Commission of Pakistan, in collaboration with the Liberal Forum, fashioned a Freedom of Information Bill and presented it to the Ministry of Law. It still awaits enactment,[250] and instead, the government has promulgated a very feeble Ordinance. Civil society is now attempting to improve the operation of the Ordinance by drafting supplementary business rules, but they have their work cut out for them to get the rules passed.

Despite these difficulties, it is positive that many governments are increasingly using parliamentary committees, taskforces, law commissions, and on occasion even constitutional review processes to open up public discussion around the right. These bodies provide valuable entry-points early in the process to present balanced arguments, make constructive suggestions, clarify misconceptions and address genuine problems

Implementation Audits: CSOs Staying Engaged Throughout

Implementation audits help monitor willingness and preparedness to comply with access laws. Soon after the state of Karnataka in India passed its freedom of information law, the Commonwealth Human Rights Initiative and the Bangalore Public Affairs Centre undertook an implementation audit. Citizens who agreed to participate in the audit were trained to use the law and then filed 100 applications across 20 government departments. These applications were tracked from the time of filing to see if the departments complied with the law.

The survey provided detailed information on the status of implementation, as well as the level of awareness of the parameters and application of the law amongst public officials. The audit revealed that over 80% of the applications were not responded to and in cases where information was provided it was only after repeated follow up by citizens and after the expiration of the 30 day time limit stipulated by the law. The experiences of the citizens and the data collected were presented in a public meeting to the heads of departments. The audit exposed the lack of awareness among officials about the law, as well as the lack of systems to deal with requests from citizens. The implementation audit was an effective mechanism for citizens to monitor the working of the right to information law in Bangalore and provide feedback to public authorities.

and misgivings surrounding the crafting of the law. Dialogue with government at a moment of concentrated attentiveness offers a chance to discuss the enactment of further supporting laws, training to change the mindset of government officials, timelines for overhauling records management and other issues for better future implementation.

In South Africa, the government specifically requested civil society involvement in their taskforce on the right to information.[251] As well as critiquing government proposals, the South African Open Democracy Advisory Centre also tried to offer constructive, timely submissions. Prompt responses were vitally important; if inaccurate or negative opinions were not addressed immediately, they quickly began to be treated as fact and were then much more difficult to challenge.[252]

In Jamaica, Jamaicans for Justice, Transparency International Jamaica and the Farquharson Institute for Public Affairs also made an influential submission to the Joint Select Committee of Parliament on the Access to Information Act.[253] The International Commission of Jurists (Kenya) and other key civil society stakeholders have also drafted a freedom of information bill for consideration by parliament and their submissions on access to information to the Constitution of Kenya Review Commission actually resulted in the inclusion of an explicit section on freedom of information in the draft constitutional document.

Assisting with implementation

The existence of a law, without a change in mindsets and practical means for implementation, is like a seed cast upon stony ground. But once the inevitability of the law is accepted, governments are more willing to have civil society groups assist with training public servants. Advocates for open governance are often experts in the field and, in this era of out-sourcing, they provide a resource that governments can tap both when developing laws and when implementing them. Years of dedicated comparative research, knowledge of ground realities and useful international contacts position them well to bid commercially for government work because many are more knowledgeable of the intricacies of access to information law than public officials. South Africa's non-governmental Open Democracy Advice Centre provides specialised training on access to information to government departments and private bodies and assists with the development of in-house access manuals and whistleblower policies. Similarly, in the United Kingdom, the Campaign for Freedom of Information runs training courses for public authorities and private users. The International Records Management Trust, as its name suggests, regularly assists governments to put in place effective systems for the management of official records.[254]

Testing the boundaries of new laws through litigation is also one of the ways that civil society has worked to support implementation – developing best practice by establishing precedents for disclosure, clarifying ambiguities, identifying areas requiring amendment

and, quite simply, 'kickstarting' the use of the new law. The South African History Archive is expressly committed to testing the boundaries of the South African *Promotion of Access to Information Act*. Since the law came into force in 2001, it has submitted over 100 requests, ensuring a growing expertise in the use of the Act; undertaken the first successful High Court action to force the release of state documents; and has already generated a substantial archive of released materials, mainly Apartheid-era security records.[255]

An Affirmation of Democracy

Citizens and civil society groups have a vital role to play in creating genuinely responsive access to information regimes. Civil society organisations are effective at raising public awareness, embedding the value of the right in the public psyche and breaking down resistance within government. In many Commonwealth countries, civil society has actually been responsible for putting access to information on the agenda of governments. Unfortunately, though the Commonwealth has time and again acknowledged the role of civil society, in many countries public involvement in policy development is still not valued. Involving people in the law-making process not only generates legislation and systems that are in tune with people's needs, it also enhances the general level of awareness among citizens and helps create an environment of openness which gives real meaning to participatory democracy. Advocates for the right to information should not need to battle for space. Rather, their presence should be welcomed by governments.

Useful Links

This list of links is not exhaustive. For more links, please visit CHRI's website.

International

- Special Rapporteur on Freedom of Expression and Opinion
  www.unhchr.ch/html/menu2/7/b/mfro.htm
- Commonwealth Human Rights Initiative
  www.humanrightsinitiative.org
- Article 19
  www.article19.org
- Bank Information Centre
  www.bicusa.org
- Bretton Woods Project
  www.brettonwoodsproject.org
- FreedomInfo.org
  www.freedominfo.org
- Freedom of Information Network
  www.foiadvocates.net
- Transparency International
  www.transparency.org
- International Records Management Trust
  www.irmt.org

National

- FOI Home Page (Australia)
  www.law.utas.edu.au/foi/index.html
- Information Commissioner of Canada (Canada)
  www.infocom.gc.ca
- Jamaicans for Justice (Jamaica)
  www.jamaicansforjustice.org
- Office of the Privacy Commissioner (New Zealand)
  www.privacy.org.nz
- Consumer Rights Commission of Pakistan (Pakistan)
  www.crcp.sdnpk.org
- Open Democracy Advice Centre (South Africa)
  www.opendemocracy.org.za
- Media Institute of Southern Africa
  www.misa.org
- Freedom of Information Website (Trinidad & Tobago)
  www.foia.gov.tt
- Campaign for Freedom of Information (United Kingdom)
  www.cfoi.org.uk

Concluding Recommendations

Four common problems impede development and democracy in the Commonwealth: the inequality of power between government and citizen; the consequent lack of accountability and near impunity of politicians and public officials; corruption; and exclusion of the public from participating in decisions that affect their lives. Open governance and assured access to information offer the key to address these complex issues.

In this interconnected, speeding information age, the combination of technology and easy availability of know-how, coupled with guaranteed access to information, offers unprecedented opportunities for the radical overhaul of governance. Information must be harnessed to create short cuts to development and democracy. It must be shared equitably and managed to the best advantage of all members of society. The means are available, but sadly the will is often not. It is an indictment on the performance of the Commonwealth that so many member states continue to fail to live up to the democratic ideals that are reflected in the commitment to the right to information.

Good governance and democracy are the cornerstones of national and international politics. Autocrats that operate government like a closed shop will not long remain unchallenged. Zimbabwe and Pakistan are examples of the international community's unwillingness to tolerate governments that are not open to their people. Commitments to open government must be taken seriously by members of the Commonwealth if they want to be taken seriously themselves. Putting in place people-friendly access regimes sends a strong message of commitment to democracy and development to the global community. It is long overdue for all Commonwealth countries to dispense with secrecy and information-hoarding and reap the benefits of openness. Doing so might dismay autocrats, but it will be welcomed by democrats committed to building a more dynamic and prosperous society.

CHRI recommends

The Commonwealth must:

- **Call on member countries to introduce liberal access to information legislation.** CHOGM 2003 should declare that the right to access information is *central* to democracy and development and should obligate themselves to adopting laws that are in conformity with international best practice by the next CHOGM at the latest. The minimum standards for such laws are listed on page 77.

- **Assist member countries to put in place effective access to information regimes.** Containing vibrant civil society organisations and some states with exemplary laws, the Commonwealth is well placed to assist members to design and implement effective regimes. For example, the Commonwealth Secretariat can facilitate cooperation with other member states and provide financial and intellectual resources to support the development of access regimes; its Human Rights Unit can provide training to government officials; and the Commonwealth Foundation can encourage public participation in the law-making process and build civil society capacity.

- **Be a role model of open governance.** Each of the agencies of the Official Commonwealth must put in place a clear policy on disclosure, have mechanisms that facilitate openness and must proactively disseminate information about their governance structure, norms and functioning. To implement previous commitments to partnerships between the official and unofficial Commonwealth, the Commonwealth must open up its ministerial meetings and CHOGMs, which currently remain so stubbornly inaccessible.

- **Introduce a reporting mechanism to monitor Commonwealth commitments.** Declarations of support and intent are not enough and a clear procedure for systematically monitoring the implementation of pledges is essential for accountability. The Commonwealth should require its member countries to report to each CHOGM on their implementation of Commonwealth commitments, including those on access to information regimes.

Member countries must:

- **Introduce liberal access to information laws by no later than CHOGM 2005.** These must include the minimum requirements listed below. As with all legislation, the law-making process must be open and individuals and civil society groups must be encouraged to participate to the fullest.

- **Ensure that access to information is effectively implemented.** This requires recognition of the fact that structural and attitudinal obstacles exist, and the will to overcome them.

- **Report to each CHOGM on implementation of past Commonwealth commitments.** This includes reporting on progress towards realising the right to access information, as well as other key commitments.

- **Cooperate with the Commonwealth's efforts to assist members to operationalise open governance.**

- **Demonstrate their commitment to open governance by disseminating information about the structure, norms and functioning of public bodies.** This requires proactive publication of information about, for example, the basic activities of government departments, their rules of operation and procedure, their decision-making criteria, performance indicators, points of public access and financial information including expenditure.

Civil society must:

- **Create public awareness of the value of a guaranteed right to information; act as a bridge between marginalised people and governments to ensure people's information needs are known; and engage with government towards creating the legal regime that best serves the people's interests.**

- **Monitor the use and implementation of access to information laws.** This includes testing and extending the limits of accessibility; reporting upon the extent of secrecy, the availability of information and the need for further reform; and reminding governments of their obligation to ensure access to information.

Minimum Standard for Maximum Disclosure

Access to information legislation must:

- Begin with a clear statement that establishes the rule of maximum disclosure and a strong presumption in favour of access;
- Contain definitions of information and bodies covered that are wide and inclusive, and include private corporations and non-government organisations where their activities affect people's rights;
- Strictly limit and narrowly define any restrictions on access to information. Any body denying access must provide reasons and prove that disclosure would cause serious harm and that denial is in the overall public interest;
- Override inconsistent and restrictive provisions in existing laws;
- Require governments to create and maintain records management systems that meet public needs;
- Include clear and uncomplicated procedures that ensure quick responses at affordable fees;
- Create powerful independent bodies that are mandated to review any refusal to disclose information, compel release, and monitor and promote implementation;
- Impose penalties and sanctions on those who wilfully obstruct access to information;
- Provide protection for individuals who, in good faith, provide information that reveals wrongdoing or mismanagement;
- Contain an obligation to routinely and proactively disseminate updates about structure, norms and functioning of public bodies including the documents they hold, their finances, activities and any opportunities for consultation;
- Contain provisions obligating the government to actively undertake training for government officials and public education about the right to access information.

Country Chart:
Legal Provisions Protecting the Right to Information

Links to the Constitution and legislation listed in the Country Chart can be found on CHRI's website at www.humanrightsinitiative.org

Country	Constitution	Access to Information Laws
Antigua and Barbuda	Article 12 includes the freedom to receive information and disseminate the information within the ambit of freedom of expression.	
Australia	There is no constitutional provision guaranteeing the right to information.	Australia has a federal *Freedom of Information Act* 1983, as well as separate freedom of informational legislation in most states and territories
Bahamas	Article 23(1) includes the right to receive and impart ideas and information without interference within the right to freedom of expression.	
Bangladesh	Article 39 guarantees freedom of thought, conscience and speech, but there is no reference in the Constitution to the right to information.	
Barbados	Section 20(1) includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Belize	Section 12(1) includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	The *Freedom of Information Act* 1994 implements the constitutional right to information.
Botswana	Section 12 includes the freedom to receive ideas and information without interference as part of the right to freedom of expression.	
Brunei Darussalam	Bruneii Darussalam is a monarchical state with no Constitution. There is therefore no constitutional guarantee of the right to information.	
Cameroon	The Constitution endorses the provisions of the Universal Declaration of Human Rights, the UN Charter and the African Charter on Human and People's Rights. As such, Article 19 of the UDHR which recognises the right to receive and impart information as part of the right to freedom of expression applies.	
Canada	There is no constitutional provision guaranteeing the right to information.	Canada has a federal *Access to Information Act* 1983, as well as separate freedom of informational legislation in most states and territories.

Country	Constitution	Access to Information Laws
Cyprus	Article 19(2) includes the freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers, as part of the right to freedom of speech and expression.	
Dominica	Section 10 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Fiji Islands	Article 30(1) includes the freedom to seek, receive and impart information and ideas as part of the right to freedom of expression. Article 174 explicitly requires that Parliament should enact a law to give members of the public access to official documents of the Government and its agencies, as soon as practicable after commencement of the Constitution.	
The Gambia	Article 25 guarantees a list of rights and freedoms, but there is no reference to the right to information.	
Ghana	Article 21(1)(f) explicitly recognises that all persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.	
Grenada	Article 10 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Guyana	Article 146 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
India	Article 19 which upholds the right to freedom of speech and expression, has been interpreted by the Supreme Court of India to implicitly include the right to receive and impart information.	India has a national *Freedom of Information Act* 2002 which was passed in December 2002 but has yet to come into force. To date, eight states also have separate legislation.
Jamaica	Article 22 includes the freedom to receive and impart ideas and information without interference as part of the freedom of expression.	Jamaica has an *Access to Information Act* 2002 which implements the constitutionally guaranteed right to information. It was passed in June 2002 but has yet to come into force.
Kenya	Article 79 includes the freedom to receive and communicate ideas and information as part of the right to freedom of expression.	
Kiribati	Article 12 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	

Country	Constitution	Access to Information Laws
Lesotho	Article 14 includes the right to receive and communicate information and ideas and information without interference as part of the right to freedom of expression.	
Malawi	Article 37 explicitly guarantees the right to access all information held by the state or any of its organs at any level of government in so far as it is required for the exercise of a person's rights.	
Malaysia	Article 10 recognises the right to freedom of speech and expression, but there is no reference in the Constitution to the right to information.	
Maldives	Article 25 recognises the right to freedom of expression, conscience and thought, but there is no reference in the Constitution to the right to information.	
Malta	Section 41 includes the right to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Mauritius	Article 12 includes the right to receive and impart ideas and information without interference as part of the right to freedom of expression.	
Mozambique	Article 74(1) explicitly recognises the right to information. Every citizen has the right to inform him/herself and be informed about revelant facts and opinions, as well as to disseminate information, opinions and ideas through the press.	
Namibia	Article 21 recognises the right to freedom of expression, but there is no reference in the Constitution to the right to information.	
Nauru	Article 12 recognises the right to freedom of expression, but there is no reference in the Constitution to the right to information.	
New Zealand	New Zealand's Constitution does not guarantee the right to information.	The *Official Information Act* 1982 legislates for the right to access information.
Nigeria	Article 39(1) includes the right to receive and impart ideas and information without interference as part of the right to freedom of expression.	
Pakistan*	Article 19 recognises the right to freedom of speech and expression and freedom of the press, but there is no constitutional guarantee of the right to information.	The *Freedom of Information Ordinance* 2002 was promulgated in October 2002 and is protected under the Provisional Constitutional Order.
Papua New Guinea	Article 51 explicitly recognises the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society.	

Country	Constitution	Access to Information Laws
Samoa	Article 13(1) recognises the right to freedom of speech and expression, but there is no reference in the Constitution to the right to information.	
Seychelles	Article 22(1) includes freedom to seek, receive and impart ideas and information without interference as part of the right to freedom of speech and expression.	
Sierra Leone	Article 25 includes the freedom to receive and impart ideas and information without interference as part of the right to freedom of speech and expression.	
Singapore	Article 14(1) recognises the right to freedom of speech and expression, but there is no reference in the Constitution to the right to information.	
Solomon Islands	Article 12 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
South Africa	Section 32 explicitly guarantees the right of access to information held by the state or held by another person if it is required for the exercise or protection of any rights. The section requires the National Legislature to enact legislation to make the right effective. Section 16 also includes the freedom to receive and impart information as part of the right to freedom of expression.	The *Promotion of Access to Information Act* 2000 operationalises the constitutional right to access information.
Sri Lanka	Article 14(1) recognises the right to freedom of speech and expression, but there is no reference in the Constitution to the right to information.	
St Kitts and Nevis	Article 12 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
St Lucia	Article 10 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
St Vincent and the Grenadines	Article 10 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Swaziland	Swaziland has no Constitution, although a draft constitution was presented to King Mswati in May 2003. Article 25 of the Draft Constitution includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression and opinion.	
Tonga	Article 7 guarantees the right to freedom of speech, expression and of the press, but there is no reference in the Constitution to the right to information.	

Country	Constitution	Access to Information Laws
Trinidad and Tobago	Section 4 guarantees a list of rights and freedoms, but there is no reference to the right to information.	The *Freedom of Information Act* 1999 legislates for the right to access information. The Act came into effect on 20 February, 2001.
Tuvalu	Article 24 includes the freedom to receive and communicate ideas and information without interference as part of the right to freedom of expression.	
Uganda	Article 41 explicitly guarantees the right to access information in possession of state or any other agency of the state. Article 41 expressly requires parliament to make a law to prescribe the procedure for providing access to information.	
United Kingdom	The United Kingdom has no Constitution.	The *Freedom of Information Act* 2000 legislates for the right to access information, but will only be fully operational in January 2005.
United Republic of Tanzania	Article 18(1) includes the right to seek, receive and impart information as part of the right to freedom of opinion and expression. Article 18(2) guarantees every citizen the right to be informed at all times.	
Vanuatu	Article 5 guarantees a list of rights and freedoms, but there is no reference to the right to information. www.vanuatugovernment.gov.vu/government/library/constitution.html	
Zambia	Article 20 includes the freedom to receive, impart and communicate ideas and information without interference as part of the right to freedom of expression.	
Zimbabwe*	Article 20 includes the right to receive and impart ideas and information without interference as part of the right to freedom of expression.	The *Access to Information and Protection to Privacy Act* 2002 purportedly legislates to provide access to information. However, in reality the Act provides only very limited provisions on access and privacy. The main thrust of the Act is to give the government more powers for media censorship and control.

* At the time of writing, these countries are suspended from the councils of the Commonwealth.

Endnotes

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91. Section 3.
92. Section 3(2).
93. Section 2(1).
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95. Section 2. The *Freedom of Information Act* 1999 (Trinidad & Tobago) contains similar provision (s.4).
96. Sections 1 and 12. The *Official Information Act* 1982 (NZ) specifically excludes a court and a tribunal in relation to judicial functions, as well as a royal commission and a commission of inquiry (s.2(6)).
97. Section 50.
98. Section 4. See also *Official Information Act* 1982 (NZ), s.2(5).
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100. *Access to Information Act* 2002 (Jamaica), s. 5(3)
101. For example, *Freedom of Information Act* 2000 (UK), s.1.
102. For example, *Freedom of Information Act* 2000 (India), s.3.
103. For example, *Access to Information Act* 1983 (Canada), s.4(1)(b). The Act also gives the Governor-General the discretion to extend the right of access to persons other than citizens and permanent residents (s.4(1), (2)).
104. For example, *Freedom of Information Act* 1982 (Aust), s.15(1)(c).
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107. For example, the rules attached to the Karnataka *Right to Information Act* 2000 and Delhi *Right to Information Act* 2000.

108. *Freedom of Information Act* 1982 (Aust), s.4(1); *Access to Information Act* 2002 (Jamaica), s.6; *Promotion of Access to Information Act* 2000 (South Africa) Act, s. 3. In the South African Act, "record" has been defined very widely to include any information regardless of the form or medium in which it is presented, regardless of whether it was created by a public or private body, and regardless of when it was created.
109. Section 2(d).
110. Section 1.
111. *Freedom of Information Act* 1994 (Belize), s.6; *Freedom of Information Act* 2002 (India), s.4(b); *Promotion of Access to Information Act* 2000 (South Africa), s.14.
112. *Promotion of Access to Information Act* 2000 (South Africa), s.16.
113. Section 6. See also *Freedom of Information Act* 1982 (Aust), s.10.
114. Section 4(c) and (e)
115. Above, n.24.
116. Based on: Above, n.8.
117. For example, section 16 of the *Freedom of Information Act* 2002 (India) provides a blanket exemption to "intelligence and security organisations" which are specified in a schedule to the Act. This schedule includes such bodies as the Narcotics Control Bureau and the Aviation Research Centre. Section 7 of the *Freedom of Information Act* 1982 (Aust) adopts a two-tiered to exemptions, listing: (i) agencies which are fully exempt from its purview (eg. the Auditor-General, the Australian Security Intelligence Organisation, the Australian Shipping Commission); and (ii) agencies which are exempt in respect of particular documents (eg. Reserve Bank of Australia, in relation to its banking operations and exchange control matters).
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119. *Australian Grand Prix Act* 1994 (Vic), s.49
120. *Freedom of Information Act* 2000 (UK), ss. 24, 26, 27.
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135. For example, *Freedom of Information Act* 2002 (India), s. 5(2); *Promotion of Access to Information Act* 2000 (South Africa), ss.19, 20; *Freedom of Information Act* 1994 (Belize), ss.12(5), 13; *Freedom of Information Act* 1999 (Trinidad & Tobago), s.14; *Freedom of Information Act* 1982 (Aust), s.15; *Access to Information Act* 2002 (Jamaica), s.8.
136. For example, the *Official Information Act* 1982 (NZ) s.12(2) requires the requester to specify the information sought "with due particularity". Section 6 of the *Access to Information Act* 1983 (Canada) requires requesters to "provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record." Similar phraseology is used in the *Freedom of Information Act* 1982 (Aust) (s.15(2)(b)) and *Freedom of Information Act* 1999 (Trinidad & Tobago) (s.13(2)).

137. For example, *Freedom of Information Act* 1982 (Aust), s.16; *Official Information Act* 1982 (NZ), s.18; *Freedom of Information Act* 1999 (Trinidad & Tobago), s.4.
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Status of Ratifications of Principal Human Rights Treaties*

COUNTRY	ICESCR	ICCPR	ICCPR -OP1	ICCPR -OP2	CERD	CEDAW -OP	CEDAW	CRC	CRC -OP1	CRC -OP2	CAT
Antigua and Barbuda	✠	✠	✠	✠	✓	✓	✠	✓	✠	✠	✓
Australia	✓	✓	✓	✓	✓	✓	✠	✓	✠	✓	✓
Bahamas	✠	✠	✠	✠	✓	✓	✠	✓	✠	✠	✠
Bangladesh	✓	✓	✠	✠	✓	✓	✓	✓	✓	✓	✓
Barbados	✓	✓	✓	✠	✓	✓	✠	✓	✠	✠	✠
Belize	♦	✓	✠	✠	✓	✓	✠	✓	♦	♦	✓
Botswana	✠	✓	✠	✠	✓	✓	✠	✓	✠	✠	✓
Brunei Darussalam	✠	✠	✠	✠	✠	✠	✠	✓	✠	✠	✠
Cameroon	✓	✓	✓	✠	✓	✓	✠	✓	♦	♦	✓
Canada	✓	✓	✓	✠	✓	✓	✠	✓	✓	♦	✓
Cyprus	✓	✓	✓	✓	✓	✓	✓	✓	✠	♦	✓
Dominica	✓	✓	✠	✠	✠	✓	✠	✓	✠	✠	✠
Fiji Islands	✠	✠	✠	✠	✓	✓	✠	✓	✠	✠	✠
The Gambia	✓	✓	✓	✠	✓	✓	✠	✓	♦	♦	♦
Ghana	✓	✓	✓	✠	✓	✓	♦	✓	✠	✠	✓
Grenada	✓	✓	✠	✠	♦	✓	✠	✓	✠	✠	✠
Guyana	✓	✓	✓	✠	✓	✓	✠	✓	✠	✠	✓
India	✓	✓	✠	✠	✓	✓	✠	✓	✠	✠	♦
Jamaica	✓	✓	✠	✠	✓	✓	✠	✓	✓	♦	✠
Kenya	✓	✓	✠	✠	✓	✓	✠	✓	✓	♦	✓
Kiribati	✠	✠	✠	✠	✠	✠	✠	✓	✠	✠	✠
Lesotho	✓	✓	✓	✠	✓	✓	♦	✓	♦	♦	✓
Malawi	✓	✓	✓	✠	✓	✓	♦	✓	♦	♦	✓
Malaysia	✠	✠	✠	✠	✠	✓	✠	✓	✠	✠	✠
Maldives	✠	✠	✠	✠	✓	✓	✠	✓	✠	✓	✠
Malta	✓	✓	✓	✓	✓	✓	✠	✓	✓	✓	✠
Mauritius	✓	✓	✓	✠	✓	✓	♦	✓	♦	♦	✓
Mozambique	✠	✓	✠	✓	✓	✓	✠	✓	✠	✠	✓
Namibia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Nauru	✠	♦	♦	✠	♦	✠	✠	✓	♦	♦	♦
New Zealand	✓	✓	✓	✓	✓	✓	✓	✓	✓	♦	✓

COUNTRY	ICESCR	ICCPR	ICCPR -OP1	ICCPR -OP2	CERD	CEDAW -OP	CEDAW	CRC	CRC -OP1	CRC -OP2	CAT
Nigeria	✓	✓	✠	✠	✓	✓	♦	✓	♦	♦	✓
Pakistan	✠	✠	✠	✠	✓	✓	✠	✓	♦	♦	✓
Papua New Guinea	✠	✠	✠	✠	✓	✓	✠	✓	✠	✠	✠
Samoa	✠	✠	✠	✠	✠	✓	✠	✓	✠	✠	✠
Seychelles	✓	✓	✓	✓	✓	✓	✠	✓	♦	♦	✓
Sierra Leone	✓	✓	✓	✠	✓	✓	♦	✓	✓	✓	✓
Singapore	✠	✠	✠	✠	✠	✓	✠	✓	♦	✠	✠
Solomon Islands	✓	✠	✠	✠	✓	✓	✓	✓	✠	✠	✠
South Africa	♦	✓	✠	✠	✓	✓	✠	✓	♦	✠	✓
Sri Lanka	✓	✓	✓	✠	✓	✓	✠	✓	✓	✠	✓
St Kitts and St Nevis	✠	✠	✠	✠	✠	✓	✠	✓	✠	✠	✠
St Lucia	✠	✠	✠	✠	✓	✓	✠	✓	✠	✠	✠
St Vincent and the Grenadines	✓	✓	✓	✠	✓	✓	✠	✓	✠	✠	✓
Swaziland	✠	✠	✠	✠	✓	✠	✠	✓	✠	✠	✠
Tonga	✠	✠	✠	✠	✓	✠	✠	✓	✠	✠	✠
Trinidad and Tobago	✓	✓	✠	✠	✓	✓	✠	✓	✠	✠	✠
Tuvalu	✠	✠	✠	✠	✠	✓	✠	✓	✠	✠	✠
Uganda	✓	✓	✓	✠	✓	✓	✠	✓	✓	✓	✓
United Kingdom	✓	✓	✠	✓	✓	✓	✠	✓	♦	♦	✓
United Republic of Tanzania	✓	✓	✠	✠	✓	✓	✠	✓	✠	✠	✠
Vanuatu	✠	✠	✠	✠	✠	✓	✠	✓	✠	✠	✠
Zambia	✓	✓	✓	✠	✓	✓	✠	✓	✠	✠	✓
Zimbabwe	✓	✓	✠	✠	✓	✓	✠	✓	✠	✠	✠

Key: ✠ Not a signatory ♦ Signed ✓ Ratified

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	First Optional Protocol to the ICCPR on the right of individual petition
ICCPR-OP2	Second Optional Protocal to the ICCPR on the abolition of death penalty
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	International Convention on the Elimination of All Forms of Racism Against Women
CEDAW-OP	Optional Protocol to CEDAW on the right of individual petition
CRC	Convention on the Rights of the Child
CRC-OP1	Optional Protocol to CRC on the involvement of children in armed conflict
CRC-OP2	Protocol to CRC on the sale of children, child prostitution and child pornography
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

* The information provided is from the Office of the United Nations High Commissioner for Human Rights as on 7 July 2003. See http://www.unhchr.ch/pdf/report/pdf for current status.

CHRI's Previous Reports to CHOGM

Human Rights and Poverty Eradication: A Talisman for the Commonwealth (2001)

The *Talisman* report shows how poverty is an abuse of human rights. It advocates the adoption of a rights-based approach to eradicating the large-scale poverty that continues to exist in the Commonwealth. It points to the gap between the rhetoric the Commonwealth espouses and the reality of people's lives. The report urges member governments to cooperate to fulfil the many solemn commitments made at successive CHOGMs or risk the Commonwealth losing its relevance.

Over a Barrel – Light Weapons and Human Rights in the Commonwealth (1999)

Over a Barrel exposed a tragic contradiction in the modern Commonwealth in that although human rights are recognised as central to the Commonwealth, millions of light weapons flow freely, jeopardising development and democracy. The report outlines urgent recommendations for curbing the reach of light weapons across the Commonwealth.

The Right to a Culture of Tolerance (1997)

The *Right to a Culture of Tolerance Report* focused on two themes. Firstly on ethnic and religious intolerance as an urgent problem throughout the Commonwealth and secondly it explored the freedom of expression/information as a crucial element of a democracy. The report noted that the norms and political values of the Commonwealth compel the organisation to act to promote tolerance in member countries and the report made recommendations for achieving this goal.

Rights Do Matter (1995)

Rights Do Matter, explored two themes: freedom of expression and the need for major reform in prisons. The report placed this discussion in the context of the transition from authoritarian to democratic political orders and second, the economic transition from planned to market economies.

Act Right Now (1993)

Act Right Now was an assessment of the progress of human rights in Commonwealth countries since the Harare Declaration and was made with reference to the United Nations World Conference on Human Rights in Vienna in June 1993. It called for the Commonwealth to play a lead role in supporting the long, complex process of moving towards real democracy in transitional countries.

Put Our World to Rights (1991)

Put Our World to Rights was the first independent overview of the status of human rights in the Commonwealth. It provides practical guidance on how to use international machinery for redress.