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Session A**Welcome and Facilitation**

Mr Jody Narandran Kollapen, Chairperson of the SAHRC

My name is Jody Kollapen. I may have met some of you last night but not all of you. I am the chairperson of the South African Human Rights Commission. On behalf of my fellow commissioners of the South African Human Rights Commission, the Chief Executive Officer of the Commission, Ms Lindiwe Mokate, who is sitting alongside me and all the staff of the Human Rights Commission I would like to welcome you all to the Second International Conference of Information Commissioners.

It is appropriated I think that this conference be held in South Africa in this the tenth year of our democracy, but I also think in the beautiful city of Cape Town, because Cape Town is synonymous with so much in our history. It was not far from here that many of the leaders of our liberation struggle were imprisoned. It was here that they were released. But it was also here significantly that we were able to, as a nation, embark on the exciting process of making a new Constitution for our country and that Constitution under-in-part the stewardship of Dr. Leon Wessels was made in their city. And I think for many South Africans we take great pride in that process that today we can proudly say to the world that we have a wonderful Constitution. A Constitution that speaks to the hopes and aspirations of the people of our country. A Constitution that sets the vision for a future of justice, of peace, of democracy and of equality for all.

In the context of that Constitution we sought to move from a society that was closed and secret to a society that took issues of transparency, openness, accountability and citizen participation seriously. And a cursory glance at our Constitution will indicate that those are in a sense key founding features and founding values of our new constitutional order. But it has been difficult operationalising that. We live in a country that faces massive deficits, human rights deficits, deficits in skills, deficits in how our people view this new democracy. But certainly in the South African Human Rights Commission we have been proud to be part of a vibrant culture in our country to make good what is in the Constitution.

But I think at the heart of this conference is information and citizens participation in the processes that shape them. I think any democracy cannot be judged by the adequacy of its legal instruments. If that were the case most of us would pass with flying colours. A democracy ultimately must be judged by the manner in which the ordinary citizens of that state feel part of and are able to participate in the processes that shape their lives in being able to make informed decisions and choices about the things that affect them and that is where information is so important.

In our country like many countries that you come from in we have amazing contrasts. We have some who are able to participate because of their skills their levels of education. They are able to use and access the laws that exist. While at the same time there are many millions who are out of that process. I think that is a challenge just not for information officers in South Africa but I think internationally. How you ensure that you are able to spread the benefit of the law to the citizens who need it most and show that information is just not some concept for the use of elites but a concept that ordinary people can relate to and can use as a tool in how they make choices in how they hold their democratic leaders accountable and essentially how they participate in strengthening the democracy we all want to be vibrant.

The last 50 years were positive for the international human rights movement and I think the democratisation that we see certainly in the whole continent and internationally are all positive trends.

At the same time there are concerns as well. The events after September 11 have seen a world concerned, probably justly so with issues of human security. It is often where you draw the line and where you strike the balance that one grapples with that certainly engages us and sometimes we have to make difficult choices in that regard. I have no doubt that this conference attended as it is here by just not international commissioners but South Africans including Members of Parliament who I see present here, members of state institutions, in government departments, and members of civil society. We all have the same objective. We may look at it from different perspectives but I think our gathering here for the next two days will certainly enable us to explore the difficult issues. To share common experiences with each other, to share good practice and I have no doubt from the little discussions that started last night that people are excited about being here. We share your sense of excitement and enthusiasm as well and I have no doubt it will sustain us in the interesting debates and dialogues that we will have.

Immediately after I am complete, and we will have Prof. Hansjurgen who is the Commissioner for access to information in Germany who will make a brief presentation with regard to the declaration of the first international conference which was held in Berlin last year. Commissioner Leon Wessels will follow him. Well he has become known as the information commissioner of the South African Human Rights Commission and that will be followed by a presentation by the Open Democracy Advice Centre (ODAC). We should then have about half an hour after that for some questions, discussion, and that would take us to tea where after we will go into discussions on a regional basis. We will look at the Americas, we will look at Europe and we would look at panel discussions there.

So once again warm welcome to all of you. It is wonderful to have you here and certainly this is a historic occasion for us. More so that it is happening in the tenth year of our democracy, an event that in a year that certainly we all take great pride in and as South Africans and we are happy that you are able to share it with us in some way and show our beautiful country as well. Prof. Hansjurgen over to you.

Presentation on the Declaration of Co-operation in Berlin, Germany

Prof. Garstka Hansjürgen, Berlin Information Commissioner

Thank you Mr Chairperson. First of all I want to thank you very much for this invitation. We are very proud and glad that our idea which we had in Germany last year can be continued in such an exciting way in your country here and I am sure that our meeting will bring our idea forward because you and your legislation have some ideas which we did not realise in our country. So I am very excited what you will report about the situation here. As you have announced already just to start with; I want to recall what we decided in Berlin in last April by reading the declaration we decided on.

"Declaration of Co-operation. Participation in the knowledge of public entities is a legal right of the information society. Without discrimination any person must be allowed access to the documents of public agencies. The transparent public administration open to citizen participation in its decisions is a prerequisite of a modern democratic society. The information commissioners and ombudsmen who secure freedom of information in their home countries are obliged to preserve and respect these basic principles. In order to foster a broader worldwide public awareness of freedom of information, to further analyse and define its vital elements and to benefit from exchange of experience, the undersigned agree to continuous co-operation in the international conference of information commissioners."

I think on this foundation we should discuss here, we should exchange our opinions to bring forward the idea, and so I give this foundation document to the new president. Thank you again. And have a good year.

Facilitator Chairperson

Thank you very much Prof. Hansjürgen and thank you for taking the lead last year. I think we all lead by our example and I was quite pleasantly surprised last night when discussions were held, informal discussions about where the next conference will be held and the next two years have already been allocated. So clearly there is a growing sense in a world that is thinking by globalisation we have to work with each other towards this objective.

It now gives me great pleasure to call upon my colleague Dr Leon Wessels, a member of the South African Human Rights Commission to make a 30-minute presentation on the South African experience. Thank you.

First Presentation: South African Experience

Dr. Leon Wessels, Commissioner responsible for the right of access to information.

Thank you very much Chairperson. Thank you very much colleagues for joining us in this event today and thank you so much for travelling so far south. It is good to see many familiar faces and meet with all of you once again. I promise not to repeat the paper I delivered in Berlin last year. But for those who were not challenged to hear about it I will just inform you that one way or the other it is still available. Because what is happening is, we are building on this experience we jointly have in this respect.

The only reason why I am speaking first today is because we are hosting, and it is not because we have the greatest experience in this field in the globe. May I take just a few moments to put all of this in context to you As you can gather I am not presenting a paper in a very technical sense right now.

Fourteen years ago to this day, 2 February 1990 Dr. Nelson Mandela was somewhere in prison. President Thabo Mbeki was in exile. Our CEO was in the United Kingdom. And on that particular day, 2 February 1990 the members of parliament were called upon to take their seats timeously because there was going to be quite a march to protest against the regime.

Now that two people who subsequently turned out to be directors general led the March: First of Nelson Mandela and then subsequently of Thabo Mbeki. I refer to Reverend Frank Chikane and Prof. Jakes Gervel and they were to be accompanied by somebody with the name of Desmond Tutu who was known for his campaign for civil liberties and sanctions and nobody would have predicted that he, Desmond Tutu, would turn out to be the chairperson of the Truth and Reconciliation Commission. And I am sure if you had asked on that day Thabo Mbeki whether he would have imagined 14 years down the line that he would be the head of the campaign for democracy in KwaZulu-Natal and for peace the answer would have been no.

And the reason why I am so personal and almost sentimental about it was because I was sitting in that corner having lunch with a guy called Roelf Meyer and none of the two of us would have predicted when a complete outsider during lunch stood up and proposed to the new South Africa after the speech that was delivered that day that Roelf would be playing a major role in the negotiating process and I would end up being the deputy chair of the Constitutional Assembly. I am saying this, and I am citing this to show how quickly things and how fast we have travelled in 14 years. Dramatic.

As former president FW De Klerk was making that speech the white opposition Conservative Party walked out because they said they had never heard anything as revolutionary as that. And as he was speaking the speech was distributed amongst those organisers of the march, and the organisers told me that as they were reading the speech the march was fizzling out because they knew something dramatic had happened which could lead to a convergence of what was happening inside and outside of Parliament at that particular juncture.

And whilst De Klerk was still on his feet faxes from across Africa were reaching the Department of Foreign Affairs saying well something was happening in your country. Please tell us what it is that is happening.

I cite these dramatic events to say that yes a lot has happened. But in terms of freedom of information, access to information, a lot still has to happen. Because subsequent to those events we drafted an Interim Constitution which took us another four years. That principle embedded in the Constitution provided for access to information *vis-a-vis* the public sector. It took us another two years to draft a final Constitution and expand upon it to make a provision which Prof Hansjürgen reminds us of so often to add an addition to that section to say well, information held by the state is important and it is important that that information be available and accessed by the citizens. But what about the information held in the hands of private bodies. Because it was so controversial at that juncture in 1996 it took another four years to put that principle into legislation so that journey from the march through the entrenchment and the legislation took ten years.

So here we stand four years after that particular journey and we experience a variety of battles playing itself out within the context of this legislative framework. I do not want to dwell too much on that but there have been three very, very interesting legal battles in our country in terms of access to information and the availability of that information provided for by the state in all three cases, and I will dwell a little bit on that. But to mention that some of our colleagues in the Non-Governmental Organisation (NGO) family, the South African History Archive (SAHA) and others, I am told, are in court today doing battle against the Department of Justice to release some important files, documents held by the state which were in the possession of the Truth and Reconciliation Commission (TRC) over which Archbishop Desmond Tutu presided. Our friends from ODAC, (the Open Democracy Advice Centre), Richard Calland and others are in the process of creating a so called paper trail to do battle in court requesting from political parties to disclose their funding resources. We most recently had an inquiry presided over by Judge Hefer, a former judge from the Supreme Court of Appeal presiding over a commission trying to establish whether our Director of Public Prosecutions was a spy in the apartheid era; yes or no. And a contestation in front of that commission whether the Promotion of Access to Information Act in South Africa overrides other secretive laws which govern secrecy of intelligence agencies, *et cetera*.

And finally you have the South African Human Rights Commission and you beg the question where do the South African Human Rights Commission and John and Jane citizen come into play in all of this?

Now with that smaller and bigger outline of what I have on my heart but not what I am going to tell you all I add this side comment or this footnote comment. The one thing that I do know for sure and that is that the past is never over. And at a particular moment you have to turn around and you have to face the past. And that goes for the big political battles that play themselves out in a country such as the battles that we have fought in this country. I am referring to the TRC files, but it also plays itself out in a very small scale about a document created by a public official, which is important, which is history and what is important for that citizen of the land who would like to know.

In your folders you have an enormous document. It is enormous because it is 168 pages long and I am not going to read this document to you. But to say whatever I will be talking about is contained in that document and it is a living proof of how we as South Africans engage currently with the information regime in our society.

We had the opportunity to present to Parliament our first report. We being the South African Human Rights Commission over and above the normal annual reporting to Parliament we have an obligation to also report on the status of access to information, and that report was tabled in Parliament and covered the period up to March last year. It was a very technical report, which I deal with and would like to deal with briefly.

It was technical in the sense that we were lamenting to Parliament and saying that society at large, be that from the public and/or the private sector, are not really participating in this information regime. In terms of the Act, people are obliged to prepare manuals. Manuals is a technical word for just saying that what they are supposed to do is to have a document available which J and J could access to ensure that they know which are the documents held in the possession of that body. Be that public and/or private to assist them, and public bodies are also required to nominate access to information officials who are obliged to assist the citizen who requests the information.

Now the battlefield had been long and had been drawn out and had been of a technical nature. Because people claimed they did not know; when they acknowledged that they knew, they said it would be too costly to prepare these manuals because in addition to preparing the manuals they had to submit it to the Government Printers and make it accessible to the citizens. In folklore and behold there is a sad story or stories which have something of a nightmare contained and it is not always bad.

Then a newspaper wrote a report saying that those private bodies that are not participating in the process of preparing and submitting manuals will be fined millions of Rands. And that was the moment when the South African Human Rights Commission were inundated with millions, I am not a fisherman so I have to cut down to thousands, of telephone calls and e-mails and saying Is this true? And through that inaccurate reporting something positive happened and the awareness levels were raised to a great extent in that respect. The negative spin-off then resulted in the Government Printers saying, "I cannot print all these manuals. I do not know how to deal with it. On the one hand people were complaining it was too expensive and yet at the same time the Government Printers was saying I cannot print all these documents". That has resulted in a round of discussions with the Minister of Justice and other important figures.

But we also lamented about the fact that public bodies, government bodies are not participating in the information regime to the satisfaction or the expectation of the Act and of the Constitution. Colleagues will share more information about that but our report to Parliament does reflect on that.

There is an additional requirement of public bodies. Public bodies have to report to the Commission; informing us how many requests they had received to disclose information under their control. That did not happen with a lot of excitement. Because I say this tongue in cheek and I say this as a loyal and proud South African but I have to be critical about it as well. That in our road shows where we were explaining this dispensation we would meet with government officials who would say to us but why do you want this information of us? Because we are doing our level best to share the information which the public see, and they would explain to us that the premiers of the provinces would have spokespersons.

They would be participating in radio talk shows. People could call in and get the answers of their requests. Now clearly that is a noble act from their side but that is not what the information dispensation begs of them. We want to know how they had handled the requests, which they had received. Had they disposed of the matters or had they wiped it under the carpet in order for us to report to Parliament and say the regime is alive and well? People know of this Access to Information Act. They are participating, *et cetera, et cetera*.

Now at a critical moment in March 2003, only 40 public bodies had reported at that stage on requests and most of those reports were pretty poor. In other words it would be a report of this nature saying no: "we did not receive any requests. Yes we have received requests and we had handled them efficiently". I am citing this just to create the whole picture and to paint the whole picture to you that this is how we are building but running into obstacles but not giving up.

After this report, which we had tabled to Parliament, we realised there were a number of things which are of a structural nature and which go to the heart and the core of some of the problems, which we experienced. And we in the spirit, if you will allow me to stay close to the magic of the early 90's. At the heart of it all is that South Africa worked well when we worked together. We would do battle with one another but we all realised we had to work together. We had to pull together. And in that spirit the South African Human Rights Commission called for Indaba, which means a deliberation, a workshop, a think tank. That is what the word indaba means. A getting together of people discussing and talking, and we went beyond the normal group of people that we engaged with. In other words we invited people from the NGO family who work closely in this field to participate in this process, share the information, do research in this field and come up with responses and demands.

Now this document has been captured in the sense that the papers as they were presented plus the dialogue is captured in the report. Something happened and I salute my parliamentary friends who are here. On that occasion the Human Rights Commission did not go to Parliament. Parliament came to the Human Rights Commission as a delegation to observe what was happening here. Now clearly not all 400 members of the National Assembly participated in this process. It was a delegation from the Justice Portfolio Committee, but we thought that we would capture the whole proceedings. And table the document as such when we report to parliament again and we are tabling this document to you also as our friends who are visiting us and we will share this document with other colleagues just to have a sense of where we are coming and where we are going. But there are a number of recommendations, which we make in this respect.

First of all we join issue with the nature of the duties of the South African Human Rights Commission. We are responsible second to the duties, which the Department of Justice holds to ensure that this dispensation works, but we do not have functions in terms of mediating and resolving conflicts. We do not have special powers in that respect. We have to prepare a Guide, which will be a document that assists people on how to use the Act and who to contact when they want to make use of the Act to obtain information.

Now clearly that document cannot be prepared if there is not proper participation in the field of the manuals. So there is a major gap in that field which prohibits us from performing what we would like to. That is a matter, which we have to address. Now the one issue in South Africa, you have to be in this country and you have to love this country to really understand the content of my argument. The content of my argument is that, and I say this with a lot of respect to our colleagues from the NGO family who are in court right now. But South Africans cannot afford to do battle when they seek access to information. You cannot even expect them to pay if they should fill in a form and see the information. So we do battle in that sense and say that if people are unemployed but they need the information how can you expect them to pay given the high levels of poverty, the high levels of unemployment in our land. So that matter has to be addressed.

There is an additional element in all of this. What has happened since the year 2000 is whenever we run into difficulties because the private sector and public sector are not participating in the regime by making the manuals available. We the Human Rights Commission run to the Minister of Justice and those who participate in the public debate run on their own steam to the Minister one way or the other. But I would like to believe the minister takes the Human Rights Commission seriously, which he has, and we say to him we are in dire straits. We have a problem. Manuals have not been submitted and it leaves us out on the limb, please give them exemption. Give them three months or six months as we had done in the past just to do another round of raising awareness and allowing them to submit their documents.

Now clearly that strictly and tightly interpreted is an erosion of the legislative objective. Because it means that by executive decree we are now undermining what the legislation says. The legislation says public should submit manuals. And because we have continuously giving them exemptions we are not meeting the core objective of the legislature. So on our last round we said let us give South Africans two years time to finally prepare. Exempt them for two years to allow the Legislature and the Minister to revisit this topic and consider how we would like to deal with it.

Do we really want the public as we do in South Africa the taxi driver, the person who owns the small spaza shop on the corner to submit a manual? Because that is what the Act requires and that clearly could not have been the intention to put those bureaucratic burdens on the small individuals. So for the time being public bodies are the only ones obliged to prepare the manuals.

Now as you heard in my opening remarks and the Chairperson's opening comments, South Africa is in a very special mode at the moment. It is ten years' celebrations, it is elections, it is time for reflections. And I have to tell you with all the sincerity I can place in front of you that this reflection is not spin doctoring what has happened the previous ten years. It is pretty serious. It is pretty serious in the sense that we are all critical the way we look at ourselves. The way we look at our performance. And at times it is quite painful because ten years ago we thought we had all the answers, and now ten years down the line with ten years' experience we have to acknowledge we did not have all the answers.

And one of the issues at stake at the moment which has been announced in public first of all by the Speaker of Parliament on an occasion last week and we also had picked it up from a minister that what will have to happen is that we will have to look at the bodies which we have which are constitutionally mandated to promote democracy. The Human Rights Commission, the Public Protector, the Gender Commission and a variety of other bodies. How effective we all are. So we are through with this document and also through with this deliberation and a variety of other initiatives trying to prepare ourselves adequately for that discussion. Because to repeat what I had said the main objective must be to make dispute resolution in the field of access to information accessible and affordable. If it is not accessible and affordable it gets out of reach.

Finally I would just like to conclude by saying that we are ready to move and to ensure that the prejudices against responsive and open government is clearly not defined to a small band of officials from the previous regime. I guess that is the nature of governments and it is the nature of private bodies. Private bodies have said to us “well if we are as open as the act demands and as you demand it will show that we took some poor decisions and we do not want that to be out in the domain in the hands of our competitors”. We say well the act does allow you to decline disclosing information. But unfortunately poor decision-making is not a ground not to disclose the information, which you hold, and that goes for public and private bodies.

Furthermore I do believe that when one looks in the South African context at access to information and you go back to that day in 1990 that I just referred to. I guess as the people were marching on that day they were thinking of access to information in terms of the political struggle at the moment. And as former President Mandela four years later was sworn in as head of state, I say this with a lot of respect to President Mandela as well. I do not think he at that moment in May 1994 was thinking far beyond the traditional lines, which he had been subjected to and exposed to.

Suddenly in the year 2004 we say to one another we have moved away from political and civil rights contestation. We are now moving in the domain of the realisation of socio-economic rights. What about that community whose fishing rights are being impaired or threatened by a public body that has built a dam. What about that community who wants to access information regarding the safety and security matters? So the whole debate has year 2000 and I would venture to say that it has moved beyond the debate of information held by the private sector. That debate is settled as far as I am concerned. It is settled. South Africans do know that private bodies hold information which is important for the public debate and which is important to secure rights of citizens and communities. There are a variety of examples I could cite, but access to information has become crucial in the realisation of socio-economic rights. The right to water, the right to health, the right to a clean environment, *et cetera* the mechanism issue I have dealt with.

In conclusion I would like to say that the South African Human Rights Commission clearly is not the sole player. We are an important player because that is what the act requires of us in terms of access to information. We are not the sole player. Government departments and NGOs have moved and in harmony with one another, sharing experiences and advancing our understanding and development of this right.

And therefore, that is the reason why we saw it fit and proper that this meeting is a gathering of freedom of information commissioners to also seek the support and the participation of our colleagues from the Open Democracy Advice Centre. Thank you also for their participation. Thank you very much Jody.

Mr Jody Kollapen (Facilitator) thank you very much Leon. I think that presentation reflects I suppose much of the debates currently happening in our own country. Just the other day the Speaker of Parliament said that in the last ten years parliament has passed something like 789 pieces of legislation. Is that about right Mike or somewhere there but it is an impressive figure. Yet South Africans were mindful of the gap between law making and implementation and we often take it for granted that, as Parliament will pass legislation we have a civil service that is able to actually implement the legislation. That is not really the case. Sometimes we take for granted this notion of the cost of rights. Do we ever properly quantify just not the financial costs but the human costs, the capacity costs and certainly that is a challenge we are facing here?

The second issue that you raised Leon is the issue around enforcement and I am sure there will be a discussion on that. Why is it necessary that we should be spending considerable amounts of money in litigating in high courts? Is there another model that will enable those who request information to get that information and the structure that can make a binding order? I am sure that is going to come up for discussions and that is a difficult one as well. Do we go for soft enforcement options or do we give teeth to the structures that have responsibility for the custodians of these pieces of legislation?

Finally the issue of the private sector and without doubt just not in South Africa but internationally there is a growing sense, a growing movement that private corporations very often will hold and command resources in some instances that exceed the resources of the state. Certainly in the context of our own continent, the multi-national corporations who have at their disposal resources that far exceed that of governments. And we have seen at the international level developments in this regard. The global compact that NGOs have pushed.

In April you know the United Nations Commission on Human Rights will consider a report on certain human rights guidelines for example that impact on private players. So the climate is certainly right internationally for us to say if governments are held to exacting human rights standards then should there be a good reason why we exempt private corporations from accountability at some level. So again the answers are not clear but Leon thank you very much for that.

It is now 10:00 and it gives me great pleasure then to invite the representatives from the Open Democracy Advice Centre probably the foremost civil society organisation in South Africa that is dealing with access to information. Certainly those of us within the Human Rights Commission have benefited from working with you guys closely. It is I think an indication of how different actors state, non-state I am not sure where we fall into that. We have an identity crisis because we are not quite government and we are not quite civil society. We are somewhere there in-between are able to work together. Mr Richard Calland and Ms Teboho Makhalemele will make the presentation. You have half an hour but I am not sure what your technical requirements are Richard. And then if you are okay, given that we had a late start. After this presentation we should try and allocate about 15 minutes just for some questions and answers if there are any and we will probably try and take tea at 10:15 and make it a bit short because we did start a bit late. Okay, thanks.

Third Presentation: Research Report from Open Democracy Advice Centre (ODAC)
Mr. Richard Calland,

Thank you Jody for the introduction. I've got three introductory remarks. The first is geographical but I hope a philosophical one. 48 hours ago I was in rural Pakistani and I mention this not to impress you with the excellence of my conversion from the dusty bedraggled civil society activist that I was 48 hours ago. But really to draw your attention to what I think is a very important philosophical point about enforcement and implementation. Many of you in this room will know of the work of MKSS which is a Pakistani based civil society movement which has been working for 17 years to convert the right to know, the right to information into a meaningful practical right for the poorest people in Pakistan. Indeed their work is something of a mythology of the global civil society community that has become increasingly evident and increasingly active on the subject in recent years. I am not sure how much of their work has permeated the institutional side of the global development and I will be interested to hear from

information commissioners to what extent you are aware of their work. But we were in Pakistan in order to observe what they call *gen san wise*, which are public hearings in English. So on Friday afternoon I had the privilege of watching in a small village in rural Pakistan MKSS convene a meeting of the villagers of the surrounding area to talk about the subject of food security.

Pakistan has a system whereby the Public Exchequer subsidises food rations. Individual entrepreneurs who are ration dealers deliver those rations. People have to present their cards to the ration dealers in order to get their rations. What MKSS do is to use the Pakistani access to information law to get public records of the delivery of rations both from the state department of the province and from the individual ration dealers themselves? They then call a public meeting at which the individual citizens give evidence to the community about whether or not they have been getting their rations and to the extent to which their record which is the truth compares with the official record which is the record on the documents provided by the ration dealers and by the state administration.

In this formal like crucible of truth telling and truth finding one watched the community, 300 or 400 people come forward to a microphone like this and give straightforward evidence about the documents that had been put before them. And of course the simple truth that emerged was that over a long period of time systematically the ration dealers had been fleecing the individual members of this community by short changing them, by overcharging them and on a large number of occasions recording an entry for having given rations when in fact nothing was given.

So what one had as government officials sat and watched this and as the ration dealers tore away the electricity cable that supplied the microphone with electricity and a very dramatic skirmish developed one had really a microcosm of social struggle. One had the private sector, one had the government public representatives and one had the citizens. And really it occurred to me as Jody just remarked that this is accountability in action, and this brings to life the concept of the right to know being the right to life, which is the argument that we presented as an organisation in our book two years ago. I mention this because there is a CD film of the Pakistan experience inside. Not obviously from Friday but from two years ago and I would like to make this book available to the information commissioners that attended this meeting.

The second introductory remark is to thank the Human Rights Commission for having invited us to make this presentation. But not merely to do so but to also record the fact for the public record that it is a partnership that we value and we very much respect and admire the fact that the Commission has seen it fit to develop strategic partnerships with us and with other NGOs. The very fact that both Jody Kollapen and Commissioner Wessels speak of the right to know family shows the sort of relationship that we have. And Jody you say you are not quite sure what your identity is all I can say is that from our perspective we know that you are friends and certainly not foes and that we are very committed to working with you in this area of human rights.

The third and last point is to say that the purpose of our presentation today is to present the findings of an international study to assess the implementation of access to information laws around the country. I am talking to you about the methodology and my colleague Teboho Makhalemele is going to talk to you about the specific South Africa findings.

I have to ask you one thing though and that is respect the embargo that exists over these results. We have been given permission by the Open Society Institute with whom we are working on this to release the findings of the South Africa study ahead of time. The full results of the five country study will only be released I think at the end of February 2004. So I would be grateful for those of you that are in the business here such as Mr Banisar if you would be grateful to apply rather contradictorily and perversely some level of confidentiality even secrecy. Then also I would be grateful if you would obviously respect the Open Society's Justice Initiative's desire to present the findings of the whole study at one time to the media and to the public. Having said that let me say what the methodology was. Five countries were involved. The five countries that you see on the power point presentation, I think it is important to note that all of these countries are countries that have passed laws very recently and it is David Banisar's work on his website that has shown there has been this explosion that we know about of access to information laws around the world. In 1990, there were just six or seven countries; as of now 50 or more countries.

What is important about that development beyond the fact that it has happened itself is that one now has a greater range of experience upon which to draw. Many of these countries are countries in transition. Many are countries with very low socio-economic human development indicators. So the whole concept of access to information is being tested as the Pakistan experience shows in the most demanding socio-economic environments. So this is the first international attempt to test the efficacy of implementation of such laws in that new context and terrain of access to information law passage.

Armenia and Macedonia at the time of the study last year did not actually have laws. The Armenians had passed a law but it was not yet in effect. Macedonia had no law. Bulgaria had a law that came into effect in the year 2000. South Africa came into effect a year later on 9 March 2001 and Peru a year later still in the year 2002. Coming into effect a year later in 2003. So all of these five countries have new laws or no laws. I think that is important to note.

The requesting process was that 18 public bodies were selected as subjects of the study. They included the Presidency or the Head of Government in the five countries. Six national departments. The supreme court of appeal and the high court, three state premiers in the South African context, three mayors and three parastatals or in our case we took privatised entities. Because we wanted to test the fact that the South African law as has been already noted this morning covers the private sector. So in so far as the differences between the institutional set-ups of the five countries allowed, we tried to pick the same 18 bodies.

As for the requesters in each country there were ten requesters, three NGOs and two media organisations. The methodology that was to be applied across the world was that there was to be one anti-government media organization and one pro-government media organisation. That black and white divide does not hope and I think apply in South Africa. We took one newspaper which has a reputation for very critical journalism the *Mail & Guardian* newspaper, a weekly newspaper here and we took a business *paper*, *Business Day* which is a newspaper that cannot be described as necessarily being pro-government

but is certainly an established newspaper that tries to provide a record, a national record of news on a daily basis.

The two excluded people, I should explain that. The idea here was to test access to information law in the context of individuals who for some reason or other were socially or economically excluded from mainstream society. i.e. through disability and or through illiteracy. I think Teboho at her presentation will talk about the specifics of the South African requestors who were categorised as excluded people.

And then we took three unidentified people. That is slightly a clumsy way of describing what we in-house describe as ordinary Joes. People who could not be described as socially or economically excluded but who were not members of organisations and certainly were not journalists. They were ordinary individuals. We used students from the University of Cape Town and they made requests in their own name.

There was a three-stage process in this methodology. The first was to make requests. A mixture of written and oral requests, and indeed one of the most interesting aspects of the methodology and its outcomes was the contrast in written and oral requests.

Now the South African law does not really deal adequately with the question of responsiveness to oral requestors. There is a great emphasis on form filling. And one of the findings that Teboho is going to allude to is how a system in which the letter of the law tends to often take precedence over the spirit of the law can have unintended consequences in a context such as this.

Then in countries where there was a law that facilitated an appeal there was an appeal process. So those like South Africa were encouraged to appeal cases where there had been a denial or a deemed refusal.

Lastly and I think very importantly for the analytical dimensions of this study there was an interview process and my colleague Teboho along with other colleagues from ODAC conducted interviews with all the key players in the 18 agencies to try and ask them why things had happened. And indeed as Teboho will explain those interviews were encouragingly frank and forthright and we learned a lot about what is going on inside these institutions which may have given rise to some of the problems that you will hear about.

Lastly in terms of the request what this amounted to therefore were approximately 100 requests in each of the five countries. 34 Separate requests for information but made in most cases by three different categories of requestors. The reason being that one wanted to test the different responses that might come from different bodies depending on whom actually was making a request. Last point methodology. There were 14 standardised requests. That is to say precisely the same request made across all five countries. This was in order to try and get some precision in the comparability of a study. The other requests were country specific to give each country some space in formulating requests that would be most useful and testing the implementation in that particular country.

We also tried to test the system with different levels of sensitivity of requests. I have to say was the hardest thing to find consistency with. These categories are to a very large extent both subjective and contextual. But we tried to ask for routine requests. By routine we meant pieces of information that should in fact be automatically available which required no decision making process within government and indeed which one would hope in an ideal system would already be in the public domain.

Secondly a request that we described as difficult those which in fact would require the institution to apply its mind but which we in our view felt without doubt should fall within the domain of openness. In other words although a decision making process should take place we were imagining that these requests for information would not clearly and clearly would not fall within any exemption. So the outcome should have been openness but we recognised these decisions had to be taken.

Lastly we tried to pick a category of requests that were sensitive. That is to say not necessarily politically sensitive but which would be fully provoking for the institution involved in which there would be some delicacy politically or other in relation to the information and which might be described as borderline in terms of whether an exemption applied or not. We deliberately did not want to ask for information that we felt would fall clearly within an exemption. The format of the study was straightforward. The system for requests would be used in whichever country was being used written or oral and they would all be sent within two weeks of each other. The object therefore was to compare how different requesters are treated, to test how requesters respond to requests bearing levels of sensitivity and in the South African context to assess the extent of the effect of implementation of the South African law. I am going to hand over now to Teboho who is going to talk about the specific results from South Africa and then I am going to conclude with some thoughts of recommendations. Thank you.

Fourth Presentation: Research Report from ODAC

Ms Teboho Makhalemele, ODAC

Thank you. As you can see from the country specific results from the 100 requests that were formulated that were sent out the disclosure, those that were released resulted and there was 24% of disclosure. The written or oral refusal which means that somebody actually said No, we cannot give you information for this reason was 20% and 52% of the requests were mute refusals. Mute refusals are deemed refusals where you do not have a response within the 30-day-period in which you are supposed to get a response and 4% of those, we put aside as unable to submit. This particularly related to the excluded people. We had two excluded people, we called so called excluded people. One was a blind man and another was an old black and illiterate woman. So she was excluded on the basis really of discrimination and her problem was that she could not write. Therefore she could not make a written request. She therefore had to go to the department and make an oral request. She never got any responses. She was therefore unable to submit any of her requests and that was a real problem. As you can see the major symptom is a mute refusal.

You can see from these results, even from an earlier ODAC study that we conducted in 2003, that many of the public bodies just do not respond to requests. 52% is a really high turnover. I mean many requests are just left unanswered which is a problem. For instance ODAC requested information from the Department of Justice in their earlier survey in March 2003 and the response was only received in November 2003. This is eight months late or overdue from the Department responsible for this piece of legislation. From the type of requestors there was a bit of a glitching on that one. There was a 30% request from the NGO sector, which was the highest, which shows you that NGOs get more positive response as the other groups. The media on the other hand only received 15%. Only 15% of their requests were disclosed, which is a bit of a problem from the people whose business it is to receive and impart information. That only out of the 20 requests that they made in total only three of those was disclosed.

The excluded group as I said they were responsible for 20 requests and three of the requests resulted in disclosure. This was from the blind excluded person. The old black illiterate woman: none of hers were disclosed. The three Joes they made 26 requests in total and only three of them resulted in disclosure. Thus 11% was disclosed. So from this analysis we can see that the NGOs performed best in this category. The journalists sadly performed rather badly. So I do not know if you can just infer from this on the various departments' response to the media what inference you can make from this. The journalists in fact performed as badly as the excluded group. The level of sensitivity there were two requests as Richard explained. This is where the information is supposed to be already available. Only 40% of the requests resulted in disclosure and information resulted in 16%, which basically just shows that the distinction between difficult and sensitive was not probably that widely defined.

In terms of South African law, all requests must be made in writing in the prescribed form and only people who cannot otherwise submit a written form can make an oral request, and in this instance it has to be somebody who is either blind as in our instance and who is illiterate. So therefore we made oral request to keep the comparability from the different countries, but as you can see the difference that 23% of the requests were not disclosed and 12% of the requests were disclosed. We can therefore conclude that it was twice as effective to make written requests.

As I said, the major presenting symptom in this study was mute refusals, and this we deducted after the requesting phase we had an interview with the different bodies. We interviewed 15 of the 18 bodies that were subject to this study. So therefore the follow-up interviews we conducted 75% of the requests made. And from the interviews that were conducted, we deducted that this is the problem that these departments are also faced with. There were mute refusals of course, which is the major stumbling block really. The failure to develop systems and this is basically from the information we requested and the ODAC has a snap survey earlier on that I had spoken about in March 2003, but many public bodies have not in fact come to grips with the provisions of the Act. In terms of the Act, holders of information are required to compile manuals as an index, which Leon spoke about earlier for records held by public bodies, and as a guide for requestors.

In the earlier studies that ODAC conducted, we just call it the snap survey; only 61% of the bodies we surveyed have compiled the manuals, despite two previous six months extensions granted by the Department of Justice to all holders of information. 31% of the bodies have still not even produced internal policy guidelines on how to deal with requests coming into being requested from the department. Section 32 of the Act also requires public bodies to compile a report and submit it to the South African Rights Commission

on the number of requests they have received. There is still a huge problem with bodies giving section 32 reports to the Human Rights Commission.

Another problem that we came across is the lack of education and awareness. There has been minimal training under provisions of the act. Hence a lack of awareness of its existence, in 2002 ODAC conducted a survey on the awareness of the act and found that 54% of the public's respondents were not aware of the legislation. 30% of them said they were implementing the legislation but some were not taking proactive measures such as appointing deputy information officers or setting up systems and procedures for handling requests. Half of the 30% of the respondents indicated that the chief information officer was the deputy information officer and only 9% of the respondents knew which had to decide appeals.

Respondents did not differentiate between ordinary requests for information and requests in terms of the act and did not seem to be preparing for reporting as I said to the South African Human Rights Commission. More than three quarters of those respondents who had received training said this training was not sufficient. Lack of capacity, many of the holders of information interviewed indicated a lack of capacity to deal with the requests. They argued that they were under staffed, could not designate one staff member to deal with PAIA alone, not enough resources. Clearly this is a major problem if they feel that there are not enough resources and staff allocated for the process. The last point is lack of political will. I think that we can only deduce from this inadequacy in implementation that there is not enough political will. PAIA is not a priority for the holders of information. I think that many public bodies are overburdened certainly with new compliance procedures, responsibilities and access to information is not however high on their priority list. This is probably the reason of the lack of interest in ensuring that PAIA is implemented within their various departments. I think Richard will just come up again for concluding remarks.

Mr Calland: Thank you Teboho. We will make the slide show available to you in printout form so that you can digest it more easily and make that correction between the two figures for the NGOs and media. I should say that one of the staggering results was that one of the newspapers, *the Mail & Guardian* newspaper, was completely ignored. They had 100% mute refusals. When they discovered this, they were profoundly hurt by this discovery. Felt particularly frowned upon. This was pointed out to the agencies that had been involved in those requests and since then they have in fact received responses.

I want to say that although the South African response of 52% of ignoring requests was the worst of the five countries, it was partly because we applied the criteria very strictly that as soon as the 30 days was up that was it. Where some of the other countries in the survey included in their success figures when it was a week late or two weeks late, and indeed for the next study we are going to introduce a new category is successful but late request and I think that is important.

I will end by saying that this is the first attempt to study in the new countries the effectiveness of these laws. This year we are going to extend it to 16 countries around the world from the five from the pilot and I hope the findings in a year's time will be even more compelling in the story they tell.

The chief lesson for us in South Africa is really the need for an effective enforcement mechanism. Our law has been described by Tom Blanton, one of the leading experts in the world, as the best law in the world and indeed in its detail and coverage of the issue it is a fine piece of drafting. I am not just saying that because some of the drafters have just arrived. But its major defect is that in order to appeal a denial or a deemed denial you have to go to the high court and that simply is not good enough in a country such as South Africa. We need an accessible, speedy, inexpensive specialist place to go to challenge this sort of bureaucratic inertia. And unless we get that then I have reached the conclusion that this law in the longer term will simply fail.

Having said that, institutional remedies and solutions and reforms are just one part of the whole story. What Pakistan proved to me once again is that it is through social mobilisation, through people using the law, pressing for its use and actually using it that the real public awareness and commitment from both civil society and government will come. In the case I mentioned earlier the ration dealers knew that in the end they had to give up their records.

Because if they did not there would be such huge public pressure on that state and in that locality that they would in fact end up losing their jobs. So through the public pressure of organisations like MKSS, and I hope in our small way ODAC in South Africa, this law will acquire the deep roots that it requires to turn the right to know into a meaningful human right. Thank you very much for the opportunity to make this presentation. I look forward to having discussions with you during the next two days. Thank you.

Chairperson: Thank you very much Richard and Teboho for I think that was a very fascinating presentation and certainly an eye-opener. We have a couple of minutes for questions that arise out of both the ODAC presentation as well as Leon Wessels' presentation this morning. I suspect we can take no more than four questions.

Delegate from the Department of Environmental Affairs. Not a question, just a remark to the presentation of this very interesting survey, and it is about the way you created different kinds of requestors in different ways. That problem we have tried to solve in our jurisdiction by giving the requestors according to the Constitution the right to stay anonymous, so that the representative of the alliance of authority does not have the right to ask for the identity of the person who asks for information. I think that might be something to consider.

Chairperson: Dr Reid up there, and our colleague from the Gender Commission at the back there and our colleague from France.

Dr Reid: I note that your mode of appeal as to the courts: is that used very often and if so by whom and how expensive is it to go to the courts.

Chairperson: Thank you. Right at the back there please?

Ms Mashao Thank you very much. Mine is just a comment. I want to share with you what we encountered as Commission on Gender Equality (CGE). In the process of monitoring, asking information from local government, some of the municipalities responded by saying we can get the information using PAIA. In a sense it says people have learned that they can tell people to use PAIA, but at the same time they are confusing our requests for information as the monitoring body and also confusing that with a request for PAIA. I

know that it is our responsibility to teach people that we are a monitoring body, but at the same time is there anything that can be done so that people should not use PAIA where it is not necessary. Thanks.

Justice Emile Short: Thank you. I just wanted to find out whether in drafting the legislation consideration was given to making the ombudsman or the public protector in your case the enforcement mechanism in view of the costs involved of going to court and then maybe from the ombudsman going to the court as a reviewing mechanism of the decision of the ombudsman. Thank you.

Mr Musutha: Thank you for the opportunity. I am a Member of Parliament Justice Portfolio Committee. I just wanted and maybe by way of illustration to raise an issue and maybe ask a question out of it. My constituency is the inner city of Johannesburg and I am dealing with a matter which involves a developer who as a practice would have beneficiaries of subsidy schemes signed sale agreements for the purchase of cheap flats using the subsidies but never provide them with copies of the actual agreements. It turned out that the value of some of the apartments are actually far less than the actual amount of the subsidy that is intended to cover that and that seems to be a practice which I am currently investigating. The point I really want to come to or the question I want to ask is in the course of your work as the South African Human Rights Commission in implementing this legislation, to what extent has the legislation inculcated a culture of transparency and openness on the part of the commercial or the private sector. It does seem to me that if there is one sector that especially needs to benefit from access to information it is the poor in this country who on a daily basis get short-changed in circumstances such as the one that I have given by way of example which is similar to the Pakistani experience which the colleague there alluded to.

Mr. Calland: If I can focus on the question about the consequences of what we call the failing within the South African law. It is that the high court is expensive. I suppose one could appear as a litigant in person, one would have all the disadvantages that litigants in person have when confronting legal teams on the other side. In the one case that has reached the high court in which there was a full decision and a reported case in the arms deal the Auditor-General defended that case and he told me that he spent R300 000 on lawyers fees and that was not allowing for the fact that he has in house attorneys so it did not allow for that. So it is at least, probably, I think one could say R500 000.

So Teboho is our house attorney and she is very good value, but we have to use counsel when we take matters to court. Luckily there are counsels in Cape Town who are willing to do it not on a *pro bono* basis but on a reduced or fixed fee basis and so we have been working with particular two counsels who have been prepared to take cases. We always have to raise funds for litigation. It is a problem. The main problem speaking as a lawyer is that the jurisprudence is not coming. A number of the cases we have taken have settled as of course they always do. So to find the perfect test cases that produce the good jurisprudence needs lots of requests being challenged in some quick inexpensive appeal mechanism and we are just not getting that. So I think that is a serious problem.

Related to that the question from Ghana where would the reform come institutionally speaking. That is I think going to be a topic for discussion in this conference and again on Wednesday when the South African family meets to deliberate, and we have argued that either the Human Rights Commission or a new body should be established in order to make what we would say should be order power decisions.

We think in the South African context, the sort of authority that Mr Reid has in Canada could not be sufficient; that the body should have the power to make orders.

Lastly on Adv. Masutha's observations, and thanks to you and your colleagues on the On the Portfolio Committee on Justice you took the trouble to flesh out the horizontal right to private information. It is possible to challenge the transparency and accountability of the private entities to which you refer. In the Pakistan example of rural accountability they discovered that it cannot be easily transposed into Dheli but you have to adapt the model and I can talk to you perhaps later about the way in which the civil society organisations have in Dheli tried to use the law and with some considerable success.

Lastly our greatest success so far on a private sector case was to take Ned Bank, one of the biggest South African banks, to court in order to try and establish how they make decisions around credit and what the Americans call red lining. Interestingly we found ourselves representing a retired officer, white Afrikaaner officer from the South African Defence Force, I say interestingly. I am not sure we had that type of person in mind as we set up as a law centre. But as we all know when setting cases and precedent in a way the applicant does not matter provided the right sort of jurisprudence. And indeed the bank relented and provided him with all the documentation, which was good for that case, but we would in a way have preferred it to have gone to court in order to get the decision in relation to that.

The case regarding political parties that Commissioner Wessels mentioned in his remarks earlier will probably test the extent to which the private sector right applies. And whilst we take no pleasure in the fact that we are suing the ANC and the other three main political parties from a jurisprudential point of view it will raise some very important points about how this law works in practice. I will confine my answers to those if I may Jody.

Chairperson: On the issue of whether there is a chance of a study being done in respect of countries?

Next year or this year in fact it will be extended to 16 countries as I mentioned. I got the list here. I would not read it out but that does include countries with established access to information laws namely the Netherlands, Spain and I think Hungary has had a law since 1990 there about. So we will be dealing with at least three countries that have had laws for at least ten years and which certainly are developed countries according the United Nations Development Programme. Thank you.

Ms Makhalemele: I just wanted to focus my attention to the question on confusing requests from the Gender Commission about how as a monitoring body we are making requests and somebody would refer you to PAIA. Some of the interviews that we conducted with the information officers did say that there were a lot of problems with bureaucrats, which we call a technical hurdle. Where a bureaucrat in their mind they say okay, this is how it is. You are told that access to information requests will only be allowed if you submit a request in a written form or if you are asking for information they will say No, you had to go through PAIA.

Whereas previously, before the information officer was established people could just go in and just request information and you would be given. But now because of the issues that there is PAIA, there is a prescribed form in which you have to submit, there is a problem in that bureaucrats, people who would not think creatively otherwise would say No, you have to submit a request in terms of this prescribed form, you have to pay the R35 prescribed fee and that is a bit of a problem and it is a technical hurdle for people who are not in the habit of thinking creatively about such solution. So it is a problem that should be addressed.

Dr Wessels: Thank you very much Chairperson. When Parliament recommended that I serve on the South African Human Rights Commission and the president appointed me. I was expected to discharge my responsibilities without fear or favour. So I have no intention to be popular with what I am about to say.

We labour under this dictum of *Batho Pele (People First)*, which means that public servants must honour the citizens and they must know that the interests of the citizens come first. Now some of my colleagues have taught me a new approach toward *Batho Pele*, which is *Rona Pele* that means not the people first but we first. Me first. My interests first, that is something that we will have to attack in this country. The question from the Commission on Gender Equality as answered by Teboho is totally unnecessary. Public servants do not appreciate that they should share the information which is under their control and they should make it available, and the right to information is the right which is entrenched it is not the right to secrecy which is entrenched. In other words you have to give the information and only if you want to withhold it then you have to play along the Act. Therefore I endorse all the sentiments expressed in that regard.

The appeal system John Reid is not working to put it bluntly in a response to your question and Emile's question. Why is it not working? Because the internal appeal lies within the government department itself the appeal would go from officialdom to the executive. We all know and expect that a debate will happen in the months and weeks to follow.

Now if I may don that impolite hat again in response to Mike's question. The answer is yes. The commercial part of our society has a tremendous role to play as far as assisting the poor indigenous part of our community is concerned. I am impolite but what kind of a response do you think or inspiration the public sector draws when they read this kind of comment which Teboho made that the Department of Justice is eight months trailing in a request, when I made the comment which we have documented that the public bodies are not performing in terms of submitting their manuals. So I guess that the secrecy as I mentioned in my speech the transformation from a secretive society to an open transparent one as far as public and private bodies are concerned would demand of all of us a greater effort as far as promotion is concerned and we should hold them all accountable whether they be from public or private.

Anonymous request: I would almost like to say noted. Suffice to say that you do not have to disclose your reasons why you need the information in this country but elsewhere.

The provision and the spirit of the appointment of an information officer is to assist all those people which Richard and Teboho had referred to, the ones who cannot read. People are intimidated by the mere fact that they do not know how to handle forms. I work in the Human Rights Commission and that makes me to believe that people expect of me to handle documents and forms at ease and I am not. Whenever I approach the banker or the Commissioner for Inland Revenue I am nervous. Now can you imagine how ill at ease would be the individual who cannot read or write and he approaches this official on the other side from the public or private sector who pushes a form forward and say complete this form. So yes, there is a lot of work to be done in spite of the fact that we have travelled a long journey.

Chairperson: Thank you very much. This brings us to the close of this first session. I just want to make one little remark please. I think the reference to the Department of Justice was probably the information officer or something here. There are people from the Department of Justice who are here and they are also friends of the Commission. So when you do see them during the tea break and you see Department of Justice please do not think these are the guys who are in delay. The good guys are here. So please.

I think secondly just to say that I think this was a very exciting opening session and I would like to thank Leon, Richard, and Teboho for getting this off to a great start. The difficult issues are already out there. So we can get to the core of our business as we proceed into the next session.

Dr Wessels: Dear colleagues thank you very much for honouring our time line and beginning to take up your seats. You know what I have to do is to inform you that I will be chairing the sessions as we proceed. Our Chairperson Jody Kollapen has some other appointments. He will be in and out. I have also learned in the last years in South Africa the best way to proceed is if you have the collective support of the house. In other words when I enforce rules and agreements it will be by consensus and it would not be authoritarian.

I already see on his feet our friend Mr Presa from Mexico. We are delighted that you are ready to go and I do know that John Reid is always ready to go. I acknowledge Mr John Reid from Canada. I do see Mr Huff and from what I gathered last night he will be ready the moment we call on him to share experiences with us, and I do know the way Mr Turner informed us about his travels back home that he will be ready to make his presentation.

I will just tell you what I think. What we would love to achieve is have the benefit of these experiences, and then to create some space to interact with you in a manner of asking questions and comments about your experiences highlighted so that we could conclude the session to have at least a reasonable and relaxed time. So you will notice I am not throwing down a time limit. I am leaving it to your judgment and discretion. I do feel however a little bit uncomfortable that the colleagues from the USA and from Canada are sitting in the audience. Would you not like to join me upfront and I will not feel so lonely. Thank you so much. Mr Presa you have the floor.

Fifth Presentation: Mexican Experience

Mr. Octavio Lopez Presa, Information Commissioner of Mexico

First of all it is a real privilege to be present in this important session. We are celebrating the tenth anniversary of South Africa's democracy. It is right for me to say that I am happy in two ways. Mexico is a country that has recently overturned its democracy. For the first time in 70 years we have a different party governing the country. One of the main objectives of the new party was to implement a transparency and freedom of information law. The law that I would like to briefly present to you and of course I would be delighted to take any of your questions regarding the process that we have been following in Mexico in the last one-year and a half.

First of all we strongly believe and I believe that most of you share this view with me that at the centre of any democracy some kind of freedom of information has to be present. If people have the right to elect its officials and have the right to oversee them then the piece that is missing is information. Without information you cannot elect rightly and you cannot judge rightly.

This is pretty much how it works in Mexico. We have two articles in our Constitution that gave rise to the transparency laws. The transparency law was in the drawers of Parliament for 25 years and it was not until this administration came that it was taken out of those drawers and pretty much put into effect. We have a fairly new law, a very new law. It was enacted in June 2003 and we waited for one year to prepare government to implement a law and I think that was a wise decision. Because we really had the chance to train, not only train but to make conscious and more importantly to my perception at least to prepare the infrastructure for the law to be implemented.

In our law we classify information in three different ways. First we consider all government information as public information. There is information that should be permanently publicised. We call it transparency obligations and there is information that could be accessed through applications or requests. We also have classified information. This is government information that is temporary embargoed from publicity. This information is going to be public sometimes.

We have a third and last category that we treat as confidential information. That is information that belongs not to the government but to individuals or private entities. Not all the information belonging to private entities or individuals is going to be treated as confidential but that could attack or affect the privacy of an individual or the way to conduct business for an entity should be considered as confidential.

Speaking of transparency obligations each agency at a fair level, and we are speaking of close to 300 has the obligation by law to be publicised permanently and updated every three months. A number of elements up to 16 item among them the payrolls of all servants from the president the janitor together with the fringe benefits. Every single dollar that goes to the pocket of a servant needs to be publicised in the work size.

Also subsidies. Subsidies are an important element on a country with so much income differences as ours. We give a lot of subsidies to persons and on favoured sectors of our society, and in the first this was a way to pretty much enter into corruption. So what we decided in the law was that every penny that goes through subsidy has to have the name of the recipient.

Also all government bids and contracts are publicised permanently as well as all concessions, permits, licenses, *et cetera*. There are of course exceptions to the publicity and to requests and as in every country we have five governing principles to embark on information. One is national security or public security. The second would be ongoing international aspects we have not yet an agreement so we hold that information out of the public to make things happen. Thirdly if for any reason the information that is requested would severely affect the financial or economic strategy of the country that will be withheld from publicity. Also information that would affect the life of people or information that is in the judicial process should be kept out of publicity until a final resolution is agreed.

There is also some, and I believe this is important in our law I mean in the concept that we have put forward to implement our law that we have to make the information as cheaply as possible to the population precisely to favour the poor sectors of society. So information in nature for us is free. What can bear cost is the reproduction of that information into some materials, paper, and the cost of delivering that information sending that information to a requestor. But what happens if the information flows through Internet then there is no reproduction and there is no actual sending. So everything that goes through Internet is free for us. Information is free and access to that information is free.

Here I am presenting a little road map to what we have in our law. June 2003 was the time when we opened up doors to the public to present formal requests, applications. In September 2003 that happened already. All 300 agencies needed to have their transparency obligations on their Internet pages. In March 2004, that will be two months from now, all 300 agencies would need to publicise on the internet the indexes of classified documents. That is to say if they want to conceal documents from the public they at least need to put on the internet the title of that document and that will be publicised permanently. In January 2005 the law and the rules that we as an institution, I am going to tell you a little bit more about my institution later. We decided that every document, public or classified in January 2005 would have to have some kind of an ID code.

In far as my institution, it is the Federal Institute for Access of Information we have two missions. One is to warranty access of information to the public and also preserve the right of privacy of all the information that government has of individuals and companies and also we have to promote these rights in a larger way. We are an independent agency that all our decisions are autonomous. We are in a way a semi-judicial body because we take appeals and process appeals and decide whether requests of information should be public or not and our sphere of competence is within the realm of the government which is very overwhelming in Mexico.

I am part of a board of five commissioners. We are all same in nature. We are proposed by the President but ratified by the Senate and among ourselves we elect our chairman for the next two years. So every two years we rotate the presidency of the Commission.

As I was saying we have four major legal capabilities. One is that our resolutions are mandatory to the government. So in that way we are some kind of a tribunal. We have unrestricted access to government information. For us there are no secrets. Every single item that we request should be disclosed to us. Of course we can be reliable for preserving those secrets. We can recommend in a way sanctioning public officials if they do not comply with the law, and last but not least we can issue rules to perfect the right of information and even design systems, computer systems to make this be more accessible to the general public.

The ways in which one individual can access information in Mexico is by three major ways.

- If he wants to present himself into an agency office. He fills up a form, a paper form and that proceeds, and so on.
- They can mail or send a request by courier.
- The most popular and the preferred way of access is through a system that we have designed. This is a system we called "sisi". Probably in English it is not a good name but in Spanish it makes a lot of sense. This is how it looks like and that is the web page where it locates.

What the "sisi" does is to manage the whole process. It helps the applicant follow the process of his or her request all along the way from the time they are supposed to have the request, and by pushing a button they can even present an application with us. They need not to move from their houses or offices to do the whole thing. Agencies can manage the response times and also it cannot be deviate from the answers that the law provides.

Applicants can also present appeals. Agencies know that some appeal was presented through Internet and if want I can pretty much follow the entire process all along. An important element is that society can have access to all applications formulated and all the answers for those applications. So far our "sisi" system has drawn attention from curious nations. We have been privileged to have a visit from Canada. We also had the people from Great Britain sending us a very ample and lengthy questionnaire about our system. We had a visit from some parliamentary people from Germany and from the Czech Republic and some ministries in Peru are also interested in our system so far.

As I was saying the "sisi" system handles more than 93% of all the requests in Mexico and in just six months due to this system we have received 27 000 applications. I mean for those of you that know the numbers in these laws I mean all of them the United State that has three million a year. But in countries like Canada after 20 years of having the law in place I believe you receive like 25 000 more or less or 27 000 in a year. With our system we received so far 27 000 and we received 1 000 the first day that we opened up doors. I remember hearing that Canada received 1 000 in the first year 20 years ago. We received 1 000 the first day. So it is so easy, so cost effective that people are using it widely.

Well this is the list of the ministries that have received the most. Of course the Ministry of Finance is on top of the list. But surprisingly the Ministry of Education is second in place and third is our Social Security Institute. So this helped education and of course taxes and what we do with them are the preferred agencies where people would like to know about the most.

Well, as I was telling you before we are an appeal court that receives appeals from citizens that were denied information and the process is very simple. First of all we need to confirm that the appeal has roots. That is to say that the application is a real application and it is not a fake application. Once we do that then we enter into a process where each of us, each commissioner gets in alphabetical order an appeal and then we have a number of days. We have 20 days to analyse that appeal and present a case to the board and the board decides finally one of four different things. Either confirms the original decision of the agency to deny information or to revoke that is to say to permit access sometimes modify. Sometimes there is a grey area and it is not black and white. The other is that if the application was actually fulfilled the request or something that cannot be provided then we discard that application or that appeal. So far in six months we have received like 700 appeals and we have resolved approximately 600 of those 700. I mean 86% of the cases we have revoked. We have given access.

One other of the benefits of this for a country so far with this law I believe it has helped to consolidate democracy. Everyone is involved in the law now. The private sector, individuals, universities, the media, everyone is participating somewhere or another. That has helped for public servants to acknowledge that there is a vigilant public out there that can ask whatever they want. Their agendas, their salaries, their decisions. So it is helping us to a very vast and ample extent to put the right incentives into public servants. Of course it is also helping us fighting corruption and we believe that the applicants are receiving information that is useful for them in their day-to-day lives. Either socially, politically and or economically. They are taking better economic decisions. Well this is the end of my presentation. Those are my co-ordinates if you want to send me e-mail or so.

The last point that I would like to make is that we would love to host; I know that the next two sessions are taken but we would love to host the 2007 conference for a strategic reason. 2007 coincides with the entrance of the new administration in Mexico. We are confident that we are making straight for this to be a permanent kind of a law but we do not want to run any risks. So if we can have a conference in Mexico in early 2007 with the new administration we are certain that we are going to commit that new administration to freedom of information. Thank you very much. We have booklets with more details of our law and our system. They were given to you. We translated it in six languages just for those of you that would like to have it in his own language.

Chairperson: Thank you very much Mr Presa. That is what I call access to information in an open manner. You advertise publicly and you give your reasons why you are advertising. I am sure the conference will take your request into consideration but thank you so much. John, would you be so kind to take the floor?

Sixth Presentation: Canadian Experience

Mr. John Reid, Canadian Information Commissioner

Mr Chairman ladies and gentlemen. It is a great thrill to be in Cape Town for this conference and it is particularly a great thrill to be here on the tenth anniversary of the South African democracy. The events of the last 14 years here are spectacular from the point of view the dread that was felt by all when the end of the old regime came that there would not be a peaceful solution. It is a credit to everybody that a peaceful solution was found and a credit to the leadership and to the people who had the courage to follow that leadership and it is an indication of the strength of the democratic system here, and I think that that is what I want to talk about is access to information and the question of democracy.

I have spent some time doing elections in difficult vocations. In 1989 I was with the United Nations' team in Namibia and I have done elections in the Balkans for about four events where I have gone in and I have written election laws and I have administered elections, and I was asked once what is my definition of a democracy. I said that my definition of a democracy was that after a party in power had lost the election they walked out without destroying the documents and they turned the keys over to the incoming party who had won the election.

Having been a politician for 20 years, having been defeated a couple of times and re-elected I can tell you that this is an extremely difficult thing to do and it is most difficult to do it for the first time but that is the major hallmark of a democracy and it is very difficult for those of us in the political world to believe that we have been rejected by our electorate and rejected as a party by everybody else.

One of the problems that politicians and bureaucrats have at democracy is that change can take place and should take place and one of the engines of that change are the things that we call in Canada the oxygen of democracy, and that oxygen is made up of things like the Access to Information Act. It is made up of the auditor general's reports, it is made up of the activities of NGOs, and it is made up of all those people who take an interest in what our governments are actually doing and to hold them accountable for the actions that they have taken and for the actions that they have not taken. It is that kind of information flow that makes democracies work. And at the heart of information flow are those of us in this room that are occupied with the question of making information from government, the private sector flow out to the citizens who after all own that. But we are all human, and the problem with being human is that we all like to think that the information that we work on and that we have is our information. It does not belong to my employer, it does not belong to my government, it does not belong to my party. It belongs to me. And when an act comes along that says that you must share that information not only with your colleagues but also with the world at large that can be a very frightening experience. It can be a very devastating experience but it can also be an extremely healthy experience.

One of the reasons it can be a healthy experience is because of the nature of information. If you take a look at information flows and what information is what you find very quickly is that it is not necessarily firm stable fact based.

If you publish on your Internet site your interpretation of a set of events it is fascinating to watch the commentary that comes in with it. And with governments now being trimmed having less funds and less expertise than it used to have the idea of governments trying to maintain factual basis of their material without sharing it for testing outside means that those governments are heading for a very real disappointment. Because they no longer have the capacity to be able to absorb all of the information and they no longer have the capacity to be able to handle that information in a sensible way. One of the good things I have noticed in Canada is as we have trimmed back government expenditures government agencies are becoming more aggressive at taking their factual base and putting them out to consultants outside so that they can verify that the material is actually right. But then they run into another problem because they have trimmed down so much they do not often have people who understand what the consultants have told them. This can be a very serious problem.

So the question I wanted to talk to you about is the oxygen of Information and the adequacy of information systems within governments. When I became the information Commissioner for Canada six years ago one of the things that I noticed as I read through the files was that I could identify that there were materials missing from the files that ought to exist. And as the Information Commissioner I am an appeal court and we get to see all the information that is in dispute and we get to see the whole file if we choose. And as I was working my way through these files I noticed that there were these gaps in terms of the files and I raised these questions with my staff. And often what I would do in the early years is I would identify problems and I would organise second and sometimes third searches of the department for the information.

You can imagine my surprise when I had done this for about six months we went back and analysed what we had found in the additional searches, and on an average we were finding about another 15% to 18% more information in terms of pages but we were finding that 18% more material was valid and on the point and useful for understanding the file and without the file was incomplete and misleading. So imagine two things. The file is incomplete and misleading to the citizen who has asked for it, but the file is also incomplete and misleading for the bureaucrats who have to rely on that to do their work. So you can imagine the way in which the incompetence and inability of managing your files cascades into ineffectual decisions by government and the waste of taxpayers' money.

So I started a crusade within the Government of Canada to do something about information management. Not only from the point of view of the people for whom I am responsible, that is the citizens who have complained, but also from the point of view of the Government of Canada and its effectiveness and its ability to do its job. And as a result of that campaign the Privy Council took it seriously and commissioned a report by one of the NGOs. That report came out and said basically that the senior people within the Government of Canada now understood that the advice that they had been given to ministers was flawed and incomplete and that the policy recommendations that they were making to the government were not as accurate and precise as they ought to have been, and consequently they identified a number of areas where governments had made poor decisions, costly decisions as a result of the inadequate information.

Now all of us in the information business in this room have, it seems to me, a legislated responsibility. In my case I am an ombudsman. I have received complaints. We look at those complaints and we make recommendations, but I have decided in my office that we will do more than that. We have decided that we will take initiatives a number of fields to be able to force the government to do what it should be doing for its own good.

The first thing that we did was to tackle the question of late production of information. I did this by using my power to make a special report to the House of Commons and I did one on what we called deemed refusal or what was called mute and I graded all the big departments as if they were in kindergarten. I gave them A's, B's, C's, D's and F's. What was fascinating to me was the response. Nobody likes to be treated as if they were in kindergarten, but two things happened.

First of all departments began to get serious because my report went to a Parliamentary Committee and the Parliamentary Committee began to suggest to deputy ministers that they would have them come before the committee to explain why they were such inept and incompetent administrators, that they were in violation of the law of the land. They did not much like that.

Secondly they put pressure on the government to make additional resources to them. And when I started this complaint the monthly amount of complaints coming into my office on deemed refusals was 62% of my total volume of work. It is now down to about 15%. So we have made a remarkable turnaround in terms of doing that.

The second thing was to deal with the question of information management and I started going out and raising that in my annual reports. Then I began to get invitations to all sorts of interesting organisations within the government of Canada and without the government of Canada to deal with this question of information management. It is not only a government problem. It is one throughout our society.

We have gone to the electronic forum of data. We have gone to electronics, to computers. And there is a saying I quickly learned in the electronic management of data area is that if you make your data electronic it is good forever or for five years whichever comes first. It means that the electronic data that we are now relying upon is not stable. It is very questionable. It is dangerous because we have not yet worked out a way to archive it on a permanent basis.

In Canada we have a big factory run by the National Archives. They spend about 70% of their time restoring paper documents and the rest of the time trying to manage the digital data that they have acquired in the last 20 years. They have a veritable museum of all computers, all disk drives, all systems and they are desperate to find the time and the energy to move the data from one system to another and they are now losing a lot of data. Because sometimes the old programmes do not work and the old disk drives do not read very accurately and they are finding out that the old tapes and the old quality of the disks are flawed after ten years. Passwords are lost, information is garbled and then they have discovered that every time that they move it from one level of activity to another form of data storage something is lost. So we have real problems that have to be addressed, and those of us in the data information area have a responsibility to deal with those questions.

We are making a little progress in Canada in terms of dealing with better management and we have had some success in a variety of locations within the Government of Canada but it is small. It is difficult for people to get their minds around this because the number of people who actually understand data management within the private sector and in the public sector is pretty limited and you have to find where your experts are.

The new forms of data management had become a bit of a disaster. For example if you are interested in this you should really take a look at the report that was done by the United States Commission of Inquiry into the destruction of the Columbia Shuttle. There are big chunks of that report that deal with data management in NASA and three things to me were very clear.

The first is that they said that the shuttle had been re-engineered and reorganised so often that nobody knew where anything went anymore because they did not keep records of the engineering changes.

Second. A lot of the data that was supposed to have been communicated throughout the system was done on PowerPoint slides with no explanatory documents, and the expression that they came up with in the report was called death by PowerPoint and I see a lot of PowerPoint material going through the public service of Canada and I never find in the filings the explanatory document. So a PowerPoint presentation can mean what the person using it says it is. Neither more nor less. And the great gimmick in Ottawa is that you go to a presentation and they will do a PowerPoint presentation and then they will give you a copy of the PowerPoint slides. With all due respect most of these slides are designed to confuse rather than to help you understand and it is important to recognise that.

The third thing of the reports, which I found, was really; really important was that within NASA there was not a culture of transparency and openness and of record keeping. So that the ability to communicate and to transmit data which was vital to that particular enterprise was constricted by the nature of the culture and in many cases the nature of the culture is more important than a lot of the other things. We are going through a crisis in Canada because we are going through what is called a generational change. The people who came into the public service in the 60's and 70's are all retiring and they are being replaced not by people who have had a chance to be mentored or raised, because we have gone through very significant cut-backs. Their jobs have been taken over by new people. It is not surprising for new people to go in, be given an office, be given a file and then told here is your computer. You have got a blank screen, you have got a blank disk and there are no files.

The biggest destructor of files in the whole Government of Canada and in the private sector is the IT manager. IT managers are basically plumbers. They like hardware. They are not interested in software. So they will come down when they have an opportunity and clean your desk because it is nice, neat and clean. That you need the information to do your work is not of any interest to them, because for them a clean disk is a good disk. So the problem with information management is that very often now that you are seeing people from the IT section going into the information management section these people are disasters, and one of the things that you have to do is to watch the kind of people who go into these systems and make sure that you get there yourself to be able to explain to them what data really is and how important information is.

I have come to a conclusion that I took a long time for me to get to in Canada and that is that I have decided that the time has come that we need an information law. We need an information law that says why and how and under what circumstances you must create information and documentation. We have a system that works reasonably well for the culling of information but what we do not have is a record keeping law that dictates when you should create information.

I feel it is important because the culture of bureaucracies is very secretive. It is not only secretive from the public at large. Basically secretive from ministers often. Certainly secretive from politicians but especially secretive from citizens. They do not want to see what goes on in the sausage-making machine as we say, and the question is that they try to create oral cultures when they see access to information legislation coming down. Officials have been used to operating quietly and behind the scenes. And all of a sudden under access to information what they do, what they think, how they do it and its impact is available to the public, and in our country they use the privacy laws as best as they can to make sure that as little information as possible will go out.

Who are our allies? We need allies. NGOs are our allies; groups that are trying to hold the government to account are our allies. One of our best allies should be a member of parliament. They tend not to be as helpful as they should be. The reason for that is very clear. There is the problem of party. All members of parliament belong to parties and the party leaders like to make their own decisions amongst themselves it becomes difficult.

Secondly members of parliament see their job as legislators. They are happy when they are passing and considering legislation but that is only part of what their duties really are. Because when you have a large governmental structure that is relatively mature when your basic legislation is passed then the hard part is to make sure that that legislation is properly administered, that the benefits go to those people who deserve them and for whom they are the targets of the legislation and to make sure that the public service is spending that money the way they should. That is difficult work. It is the kind of work that the media has no interest in. Because it does not have the kind of clash and action that they seek. But for the health of democracy that now becomes the essential task of the legislature is holding both the bureaucracy and the government to task to make sure that they do what they do. They have a tremendous asset in access to information legislation, but it is interesting in my country that the biggest users of access to information are the business community. It is about 40%. About 5% are used by members of parliament. 5% are used by journalists. The rest is by ordinary people.

The people that we all thought would use it the most the members of parliament and the journalists are not big users and we have tried to explore why that is. But I think fundamentally we have to make sure that members of parliament understand the value of this tool. They have to understand that they have to make sure that the systems are operating and they have to protect and they have to be aggressive in terms of making sure that accessed information systems are operational. We have a responsibility as people involved in the system of making sure that committees and members, individual members are updated in terms of what we are doing and we cannot do that just on the basis of our reports. We have to take them out and we have to sell them to our masters.

Some are independent officers and what does that mean? An independent officer means that you do not escape the clutches of the treasury board budgetary people. It means that you do not necessarily escape the clutches of ministers from time to time. But what it does mean is that you do not report to the civil service and you do not necessarily report to the government. What you do is you report to members of the House of Commons or to the legislature. It is who I report to is what gives my independence and it is who I report to that gives me my freedom to be able to do what I feel is necessary to ensure that I have a vibrant active access to information system. Members of Parliament, members of the Legislature are vital to this kind of democratic activity.

Let there be no mistake. What we are doing we are in the heart of the democratic structures of our society. Because if people can find the information that they need it not only empowers them to become better citizens and to become effective in advancing their own interests it also makes for an accountable government, for a government that has to stand up and justify its decisions and it also makes for a vibrant democratic system wherever it is found. Thank you.

Seventh Presentation: American Experience

Mr. Richard Huff, Director Office of Information and Privacy

Thank you. I would like to address three major points. I would like to speak with regard to the United States' experience first with regard to a very brief introduction dealing with statistics and data about the volume of requests that we have and the costs of those requests. Secondly I would like to touch just a bit on one of the suggested points of the agenda that is the enforcement mechanisms and I would like to discuss what sorts of enforcements mechanisms we have in the United States, statutory and non-statutory.

And then thirdly I would like to give you just a little bit of an idea of something that both Chairperson Kollapen and Commissioner Wessels have discussed with regard to our experience after 9-11 and the extent to which it has affected the disclosures under the Freedom of Information Act at the Federal level in the United States.

Our statute was passed in 1966, which took place and came into being in 1967. It now applies to 90 Federal Agencies. Ours does not apply to the inner White House, the President's inner office and ours does not apply to Congress and ours does not apply to the judiciary. Congress certainly when it passed the law I think it decided not apply that to itself and both the Congress and the courts have a relatively but not a complete disclosure mechanism that they work with neither of which are enforceable by law. So you are rather at their sufferance but they have a fairly good record of making information public. Certainly not unblemished but fairly good.

In 2002 the last year that we have statistics available we had 24 million Freedom of Information Act requests at a Federal level. That cost us to respond to those requests. It cost us just over \$300 million at the Federal level and for that \$300 million we received approximately \$6 million in fees. Our system does not set a fee for an individual request. There is no cost for an individual or a company for anybody to make a request. It is after we then look at the request and realise what sorts of work have to be done we will then charge a fee in some cases and as you can see we recovered \$6 million out of \$300 million. You can see that we recovered approximately 2% or so of the total expenditures we had. Most requests do not have fees attached to them.

Those by companies, those by corporations, and John, we have similar sorts of experiences with our statute. When ours was passed it was generally believed not so much that Congress would use it but certainly the press was going to be a prime user of that, and that I think it would be unusual if we found more than 5% of any of our agencies having the requests made by the press. Many of our agencies, my own, I work for the Department of Justice.

We do not have a lot of commercial requests but most of the other Federal Agencies do have numbers I suspect approaching those that John gave. So that is our basic numbers and the work we have in front of us.

The statutory mechanisms we have for enforcing our act is after an individual makes a request. If he or she or it does not receive everything that they asked for they have a right to an administrative appeal. And the experience we have had approximately 1 to 3% of all requests generate administrative appeals and that is depending on the agency and the type of records. So I do not want to say that 98% of the people are happy with what they get but 98% of the people do not further extend the process. There is, as I said no charge for an initial request. There is no charge for an administrative appeal either. Both of them cost you the cost of a stamp to make out your request and that is all. Some parts of the government accept them by e-mail as well.

The appellate authority is not as John has an independent agency. In our system the appellate authority is a part of the agency. So we have 90 different appellate agencies within the Federal Agency one within our federal system one for each of our agencies.

The fair question that John touches on is whether or not I am going to have the independence that he has and I do not. I think I have a lot of independence. I have acted on about 40 000 appeals in the 20 years that I have acted in this position. I have been overruled three times by my political bosses. Once I was overruled and told I could not disclose information I thought that was appropriate and in two cases they overruled me and said I would disclose certain privacy information that I thought was appropriate to withhold but I want to point out that was three times out of 40 000. A qualm may be that I just understand my political bosses very well and before John can make that suggestion I want to raise it myself and say that is possible or it may be that I think that in our culture we have developed something that I want to touch on a bit more but that is one of our statutory mechanisms.

Our second statutory mechanism for enforcement is litigation, is bringing a lawsuit and as was touched on in the South African experience. That is an expensive process. It often is an expensive process in the United States. We have approximately 300 to 400 cases per year on the average brought under the Freedom of Information Act. Perhaps maybe half to a third of individuals without representation bring those. People that would bring a law suit themselves without having counsel represent them and that is something that certainly is possible.

In our court system right now it is going to cost generally about \$100 to file a federal lawsuit. If you are a poor person and sign an affidavit with regard to that you then generally file for free. Generally the government is better lawyered than most lawyers and generally we win the very large percentages of the cases whether we have counsel against us or whether the individual is bringing his own suit. Of course that can cost hundreds of thousands of dollars if you are a corporation and litigating, but as was mentioned before or has touched on in the experience with the South African experience there are some cases where attorneys will handle those cases *pro bono*. There are some organisations that will handle these actions. Some NGOs will handle certain types of cases *pro bono* and some of them do an exceptionally fine job.

Briefly touching on a non-statutory enforcement mechanism we have memoranda that are periodically submitted by Attorney Generals in the United States and they will encourage persons to carry out the provisions of the Freedom of Information Act. We also have sometimes that different cabinet officers will also or other agency heads will follow onto these and also encourage government employees to carry out provisions of the act to remind them of the importance of the act and that this is certainly they may have an important duty with regard to law enforcement of a Department of Agricultural work or whatever it is but they also have an important function to assist in the disclosure of information as well.

Another non-statutory mechanism the Department of Justice has which is not used very often but it is used occasionally is we will occasionally refuse to defend a lawsuit. In our system the only system that can go to court is the Department of Justice and we represent all of the other Federal Agencies. So if they want to make a withholding they have to convince the lawyers, the Department of Justice that that is appropriate and proper and occasionally we will look at what they want to withhold and either in its entirety or at least in part we will say "No, you cannot withhold that". You are going to have to release that and the suit will then be dropped or we will only defend part of that case and you will have to disclose the rest of it. So that is another mechanism.

We have had I think a development of an agency culture since 1975 we had significant procedural amendments in 1974 to our Act and we have had a very good cultural system that had developed and I do not want to say it started right. We only decided to say that it started in 1967 when the act first came in. I think we had some rocky times and we had a number of bureaucrats that John referred to with the Canadian experience. People that were saying these are my records you know and not the public's records. I did not write this record with any intent that it would be made public and that is the sort of experience that we have seen. I think that that was something that was more common during the first six or seven years of our statute. It is much calmer now. Bureaucrats have understood that the Act is there and it is going to stay.

I think another area that has really helped a lot in terms of the enforcement mechanism that has touched on the culture that helps our culture of openness in the government is the government wide and agency specific training that the Department of Justice gives out and if it sounds like I am bragging on this I am. We present a number of training programmes that are available to Federal Agency employees. I am sentenced to go down to Columbia, South Carolina and at the most wonderful place in the world to be told to report to three times a year and going in another month after I get back and I am going to spend another three days there and I am going to teach.

It is a very nice facility. It is a great educational place and it is not a fun place to visit. But if you are going there to learn Freedom of Information Act work as a new government employee who is working in the Freedom of Information Act; it is a wonderful place to go and the education is great. We teach that course and we teach a number of other basic courses and advanced courses and we teach a number of courses for specific agencies as well. I think that is an area along with our publications; our guidance and the materials that we make available on the Internet are very helpful to promoting a sense of professionalism in the Freedom of Information Act records processes.

The last point for I think an official area or non-statutory area for enforcement is our NGOs and our press and the two of them are more than willing to hold our feet to the fire and whether it is done in publications, whether it is done in studies or whether it is done in litigation. The NGOs such as the Open Democracy Advice Centre that you have here; we have got Public Citizen in the United States, we have got our National Security Archive, Reporters Committee for Freedom of the Press are three of the ones that deal with my agency most frequently and there are certainly other NGOs that work with other agencies that do a very fine job in terms of reminding us of our obligations whether it is in studies or more often whether it is in litigation and this is a very helpful thing. Similarly the press will bring lawsuits against us occasionally and will point things out to us as well.

Let me just move now briefly to a discussion of 9-11 and the impact that it has had. In my view and from what I have seen in the Department of Justice and what I have seen with regard to the advice I give to other Federal Agencies as well as a part of the work I do. I think it has had an effect but I think it has had a narrow effect. I think it is important to recognise that it has an effect but we want to remember of the 2.4 million requests that we had and I do not know of these proportions were to be exactly right but we used to disclose of this 2.4 million we would disclose the records in the entirety in all of this number here and we would withhold them in their entirety over here. We were always going to; when Mr Presa asks for my income tax returns we are never going to give that to him. It is always going to be here.

What John asks for certain law enforcement information about who the confidential sources are we are always going to protect that and that stayed the same before and after 9-11, but there is an area here that we have that much more to protect certain kinds of records of the sort that we had not protected before. And in very, very large part these are records for we look at the records now and we say my God, I never realised that terrorists might use these records against us. I had never thought of that before.

An example, and easy example for me to refer to are blue prints, and this is something our GSA agency, the Government Services Administration, if you would have asked for a blue print five years ago of a federal building they would have given you the blue print. I mean even before 9-11 we did not give our blue prints for prisons. We understood that much. But after 9-11 we do not give our blue prints of our Federal Buildings. The blue prints show where the air-conditioning ducts are and it shows where the heating ducts are. This is as pour poison here. It shows where the escape exits are, the emergency exits are. So if you are going to attack a building put a small piece of dynamite there as well at the emergency exits. That is what a terrorist can read from a blue print and these are the sorts of things.

Perhaps it may seem that we were a bit naive to some people from Europe that are used to more security measures than we had in the past but these are the sorts of things now that we have to look at. Another one we had litigation on recently that we are successful in protecting were inundation maps. These maps that were sought by the requestor and if they were made available to anyone it was an environmental group that sued us on this but if they were available to the environmental group, they are available to anybody, and we argued that these were the sorts of maps that would permit terrorists to look at 20 or 30 different dams and say here are the three that I can cause the most damage by. These are the most vulnerable dams and we can do this.

These are the sorts of things I suspect that we were willing to release had we had requests for the before but it is something now that as a four-year officer when other Freedom of Information Act officers ask me on this particular issue that can we withhold this and I am going to think about it and I am going to say you know I do not know. Let us talk to your security officer and the programme people and that is the people we have to talk to first to find out whether or not all of it or part of that should be protected. That is exactly the sort of thing where we now find ourselves. That concludes what I have right now. Thank you.

Eighth Presentation: Connecticut (USA) Experience

Mr. Eric Turner, Director of Public Information,
Connecticut Freedom of Information Commission U S

This is real pressure here. I am the only thing standing between you and lunch. Anyway it is certainly nice for me to be here today in South Africa. Obviously it is nice to be here on the tenth anniversary of democracy in this country. However I want to look at things from my approach, my needs first. I live in New England, the northeast section of United States and we have not seen temperatures above freezing in the last three weeks and I have to say that it is certainly nice. I have developed an increased appreciation for discussing the sunshine laws and it is nice discussing sunshine laws in a place where there is sunshine. So those are my needs first not to diminish the other significance and being in this wonderful city.

I want to just briefly go over the salient points and give you a brief overview of the Connecticut Freedom of Information Commission and the Connecticut Freedom of Information Act. In 1975 Connecticut enacted a very complicated Freedom of Information Act. Essentially, it provides that with very specific and sometimes complex exceptions records of all public agencies of the state, regional and local levels of government shall be opened to the public for inspection and copying. The act also provides again with the variety of exceptions that all hearings of all meetings and all meetings of multi-member public agencies at the state, regional and local levels of government shall be open to the public.

And with respect to the open meetings portion of our law there are only three rights that the Freedom of Information Act gives. It requires that the public notice of public meetings be given. Secondly the opportunity for the public to attend the public meeting and finally the availability of minutes and records of agency votes. Those are the only three rights. There is no right to speak at a public agency in Connecticut.

The Connecticut Freedom of Information Commission is composed of five members of whom no more than three can be members of the same political party. Commissioners serve part-time with a modest allowance of \$50 to avoid political patronage concerns. We have a variety of backgrounds of our commissioners. In many instances there are journalists, sometimes lawyers with different backgrounds.

There are four basic priorities established by our Commission. We provide education to public officials and to members of the public with respect to their obligations and respective rights under the Freedom of Information Act. Another priority is remedying or making whole people who have suffered harm as a result of the freedom of information violations, and thirdly punishing by imposing even civil penalties or fines against those officials who egregiously violate the Freedom of Information Act. We have only issued civil penalties a few times per year however they from time to time are imposed and quite effective. The Commission essentially functions in five operation areas. Public education, legislation, administrative adjudication, litigation and administration

We had a public education programme since the inception of the Commission in 1975. However when I was hired about eight years ago we stepped that process up and we provide very extensive training to public officials now. We conduct very comprehensive workshops for them. 16 hours usually each workshop and we have always had our public education from the standpoint of receiving probably over 10 000 calls a year from citizens and public officials. We get e-mails, voice mails and letters, faxes, *et cetera*. So we are always doing training in that capacity as well. We distribute free of course a number of publications including the latest version of our Freedom of Information Act, our highlights, regulations, citizens guide on how to utilise the Freedom of Information Act and our public education programme results in the avoidance of literally thousands of needless appeals to the Commission at a great costs savings to Connecticut taxpayers.

The second operational area is legislation, and among other things we provide technical assistance to the legislature.

The third and single largest operational area is administrative adjudication. The Commission must dispose of approximately 600 to 700 complaints each year. We issue from time to time declaratory judgements or advisory opinions. We prefer not to do that. We usually like to issue decisions on a contested case basis. But even as recently as last week, I would have been here a day or two earlier if we had not had three days of hearings on the issue of whether e-mails and voice mails, how they should be considered under the Freedom of Information Act.

When the Commission receives a complaint it simultaneously schedules the matter for hearing and refers it to a staff ombudsman or a mediator. Me being a lawyer or we even have another person in our Education Department act as a mediator trying to resolve the complaints short of a hearing. And we believe we have historically resolved at least 50% of the complaints during this process. Again the taxpayers of Connecticut can take advantage of the savings.

Complaints that are not resolved before the hearing are heard and determined as contested cases under our Uniform Administrative Procedure Act. There is no requirement that an attorney represent parties. In fact the vast majority of complainants appear without counsel or on a *pro se* basis.

Our true strength comes from our enforcement powers Richard Calland earlier you talked about the importance of enforcement powers and that is truly I think Connecticut's claim to fame because the Commission has the power to hold hearings and issue subpoenas upon a finding of violation of the Freedom of Information Act. The Commission has the power to order the disclosure of public records to declare null and void actions taken at meetings.

It can impose civil penalties as I mentioned earlier of between \$20 and \$1 000 for violations without reasonable grounds and to also fashion appropriate remedies to rectify violations of the act. For instance the Commission is empowered to require a public agency to attend a workshop maybe conducted by me. I think that is punitive it is authorised to do that.

The fourth major operational area involves litigation and by statute the Commission's staff attorneys represent the Commission in all appeals from its decisions and in any other litigation affecting them. A long time ago the litigation used to be handled by the state Attorney General's office but they found that that in some instances created a conflict. How could you have Assistant Attorney General representing a state agency on a matter for a state agency that was a respondent in the matter? So after that they decided to give us the power to represent ourselves in those matters.

The Commission's fifth operational area is the administrative area. As the state agency it is accountable to other government bodies and it is obliged to follow general administrative regulations, and there are several obvious advantages in the Connecticut system of administering and enforcing the Freedom of Information Act.

We believe that a single administrative agency with plenary authority developing you know great expertise in this area is not only useful in adjudication but is also a source for public and government wide education. Moreover an administrative body can act more informally and more expeditiously and less expensive and that could benefit both the people and the agencies that it serves. But a somewhat more subtle issue is the enforcement powers that we have and we cannot underestimate the advantage of how even the fact that we have these enforcement powers have probably enabled the taxpayers of Connecticut to avoid a lot of unnecessary litigation. Because; public officials are in many instances trying to do the right thing for one reason or another.

They do not want to receive the bad publicity, which they could receive from violating the law. Certainly even the civil penalties of between \$1 000 and \$20 000 you know that may not be a disincentive for certain agencies. A more feared activity is perhaps having a posting of public agency that they violated the law and that could go further than even imposing a penalty of \$50 or so.

You know I think that is about all I want to say. More background information about our agency appears in section 4 of your materials and I do not want to be argumentative with respect to the comments made by our friend from the Justice Department but we have been finding at least in Connecticut that as a result of 9-11 many public agencies are under the guise of 9-11 and terrorists refusing to disclose information that is clearly public. I mean I do not know if this is a good example but you know in the past there would be a town map that would have on it where the reservoir is and everybody knows where the reservoir is in town.

It is usually on reservoir road. You know just after 9-11 people basically lost their minds and say we cannot give out this and we cannot give out that and we are just asking people to calm down. I mean I do not know all the facts and circumstances surrounding the issue that you were engaged in with litigation about the dam but the reverse argument of not revealing the certain I think inundation factors of the dam you could argue that the taxpayers have a right to know about the makeup of the concrete of the dam and how long would it take to get to the village if it does break. So there is a flip side to all of this. Thank you very much.

Mr Calland: I think that the presentations were very fascinating. When we drafted our own legislation in the year 2000, there were a number of areas where we deliberately did not go as far. One was we confined the legislation to records that are already in existence. So it was not an obligation to create a record. And it is interesting how you know the debate is evolving around whether there should not be an extension of the obligation to actually sanction the creation of a record. Let alone record keeping in the sense of people destroying existing records, and that of course is the area of privacy legislation which I heard some of the presenters and finally what question of what kind of circumstances would you sanction automatic publication of information generally available to the public. I just wanted to understand from the presenters

Mr Reid: As you were asking to nominate. Mr. Reid. I would like him to answer the following proposition or tell me whether he accepts the following proposition, which has two parts.

The first is that the enforcement model to be chosen for a particular country is more than perhaps any other aspect of this sort of law related to context, socio-political context and must be crafted accordingly. Secondly with regards to his model which is one of the two or three prime models to pick from so to speak on the menu where the defining characteristic is one of advisory and recommendatory powers as opposed to order powers.

Would he accept that what may work in Canada may not work elsewhere and that in certain circumstances advisory powers are just not enough and that although he has had a lot of success over a long period of time nearly 20 years with advisory powers there must be times at which he wishes he had order powers and might in certain other context advise that the new institution have such order powers. Thank you.

Ms Michele Puybasset: Question in French but not interpreted.

Dr. Alexander Dix from Brandenburg, Germany. As I have a double responsibility for privacy and information, I am a privacy and information commissioner, and I am very interested these extremely impressive numbers in Mexico, Canada and especially the United States whether these numbers include requests for information referring to the applicant. Because under German Law we have a separate system under privacy legislation and I would be very interested if you have a short breakdown anyone of you having quoted numbers. Thank you.

Mr Castro Martins: Question put in French but not interpreted.

Chairperson: Thank you very much. I think we could take the answers now. Then at least the four of you can relax and enjoy your lunch. Because I caught the eye of our organisers and it will not be a catastrophe if we take the answers first. Shall we start with you in the order that you presented? Mr Presa

Mr Presa: Well, answering whether our legislation accounts for just existing records or prevent the possibility of creating records. Our legislation as well as yours presents only existing records. Yet in practice we have allowed to the creation of some documents. Why, because we want to promote the law and we do not want agencies to use this as an excuse not to provide information. Now if the creation of new documents would exceed the cost or would be very demanding in time then we stated that what the applicant is demanding cannot be given because they will be too costly or is not in existence. But in practice as I am saying we allow some leeway on this.

Now record keeping is key of course as you mentioned and our legislation presents also the possibility of record keeping and this is why I was saying that for the year 2005 all public documents would have to have an ID code so they could be identified.

Mr Huff: I will answer two questions. The first is by Mr Calland on the nature of enforcement. The information commissioner for Canada has no order making powers but he does have the power of a superior court of record, which means he can do a very, very thorough investigation, which he does. And at the end of the day when my investigation is done we go to the department involved to discuss the questions and we settle 99.8% of them by mediation and negotiation. There are two cases a year on average for the last 20 years that the information commissioner has taken to court. Now what happens under these circumstances is that because they know I can go to court and they know that I have done the investigation they are inclined to settle so it is pretty an expensive system. Now in the provinces of Canada half of the information commissioners have the ability to issue orders to compel information to flow immediately. Two things happen to them.

First of all it is very effective in smaller jurisdictions. A small town, a high school, maybe even a university they will agree to release the information because they cannot afford to go to court to fight it. Because when you have the order making power the courts can also review it. If it becomes a question of a big department say like the Department of Justice in the court case that we were discussing today. Even if the commissioner had order making powers it is still going to end up in court because there will be an attempt to overturn that.

So the question is you have to decide in terms of your culture the best way of being able to get a solution as inexpensively and as cheaply as possible, and order making powers are in every jurisdiction that I have looked at they can always be overruled by a court of record above you. Nobody has the ability to make an order without it being reviewed by the judiciary. So the question is if you are going to go there you have to decide which way you are going to go there and what is going to be the most effective and the least expensive.

I want to say something on the question of record keeping and making documents. We too have a law that says documents do not have to be created in response to a request. There is one exception. So much material held by governments nowadays is in the form of electronic data base that when you query a data base you can get almost any kind of information that you want as long as it is in there and you can get it out in different ways. So the rule has now become in Canada that if the material is held within electronic database and you ask for that information in a particular way and it can be produced out of that database then they can provide it.

We had a case in the House of Commons where three Members of Parliament asked different questions of a particular data base and they got together one day over coffee and they discovered that they all got different answers, and of course they did because they all asked different questions. So electronic data base information that is the exception to the rule because the information is created almost anew each time you query it and that is the exception.

Mr Turner: Our experience is the same as John's with regard to record creation. We generally are not required to create records, and just as he says out of databases we have had the same experience. Our law was amended in 1996 that made that absolutely clear that we had to do just the same thing John has described.

The only additional point I wanted to just touch on was our numbers that I gave you did include both the number of requests under the Freedom of Information Act for third party information as well as individuals seeking information about themselves. The numbers did include both of those. I do not have statistics breaking that down government wide but I can tell you it varies tremendously by agency, as you would expect. In my agency it is anecdotally it seems to me that it is probably about 40% or so of individuals asking for records, maybe 50% about themselves.

At Veterans Administration, which is made up almost entirely of medical records, it is probably 98% of people asking for their own records. NASA on the other hand of which I have a little bit of experience with probably 1% ask for their own records. So depending on that if it is an agency that works with business and with business issues the smaller that is going to be. I doubt that has ever been calculated government wide.

And I was asked a couple of questions where civil penalties have been imposed by our agency the civil penalties are imposed on the official responsible for violating the Freedom of Information Act. But we will take the cheque from either the individual or the agency and that is how people handle it too. Many instances the municipality let us say will pay the fee for the official. The second question was can a victim or in our situation a complainant takes an appeal to court? No, our Commission represents the complainant in that situation. The court of appeal is from the Connecticut Freedom of Information Commission and therefore our Commission defends our own decisions.

Lastly we have received about 25 or 30 roughly court appeals from our decisions per year and generally we have a very good success rate. I would say it is over 90% of the appeals that we face we prevail. Thank you.

Mr Presa: Well the statistics that I provided does include both. The breakdown would be 95% up to this point public information or government information and 5% information belonging to individuals. Yet we have not advertised widely that we can take individuals' information or individuals' requests because these are going to explode. So we are waiting a little bit for the system to stabilise before we advertise this more heavily.

Further comment in French, Ms Puybasset not translated.

Chairperson: Ladies and gentlemen I think we have to thank first of all the four speakers sharing their experiences with and not only thanking them for the content which they made available to us and shared with us but also the way in which they kept on entertaining us. We are really indebted to you. Thank you so much for that.

Before I invite you all to lunch I guess it will be lovely to thank the lady who is doing all the translations. She has been working pretty hard out there as well. And thank you for being a very attentive audience and not making it difficult for me.

Somebody told us recently that there was a very experienced United Nations diplomat who had a long and illustrious career in the United Nations and in various multi-national organisations and on his retirement he said the following: "In my whole career which spanned over so many years I failed to be late. I tried the best I could and I was never late." Now at least I would love to move the proceedings to the best of my ability but I would really like to do justice to the colleagues who are going to present the papers and I wonder if they would not be so kind to join me here at the front desk in the front table. And as I do so I would like to pose a question to you and that is about the temperature of the room. Is it hot, is it cool, is it bearable? Somebody said well it is much better than Europe at this stage. But it was also the Europeans this morning that said this morning it was too cold. Is this okay? It is fine. Everybody says it is fine."

We are thankful to welcome to this podium, colleagues and speakers from France, Sweden and Portugal. I suggest that we go through the same procedure that we followed this morning. We ask each of them to just make a presentation and we will look at the time and then we will gauge as we move forward.

But I would like to make two comments at this juncture. The first one is to let you know that the proceedings are recorded. In other words we have in mind to make available a record of the proceedings over here so that you could relax as far as that is concerned. You do not frantically have to dive into your notes. But we are also trying to make available the relevant documents as they become available during the course of the day.

Secondly we will adjourn this afternoon by agreement. In other words I will keep in touch with you and I will not extend the meeting unnecessarily and declare to pronounce on closure or not without consulting with you because I think there is a wish that some would go to their hotels and freshen up before we return tonight for the evening function but I will keep you informed about that. Thank you very much.

Session B

First Panellist: French Experience

Ms Michelle Puybasset

Presentation in French but not interpreted.

Chairperson: Thank you very much Madam. Our next colleague is at a disadvantage and I speak from experience and I am sure Graham Smith will echo my sentiments. On a previous occasion our luggage got lost or delayed or relayed somewhere on the globe and this seems to me a pattern which is developing whenever information commissioners meet, and I am sorry to say that the victim this occasion is Dr Swanström. I think the airline should have shown more respect to him because his country has had an information regime for many, many years.

And even if that was the only reason they should have shown him the necessary respect but we hope everything will end well and we are looking forward listening to you. Thank you very much.

Second Panellist: Sweden Experience

Dr. Kjell Swanström, Chief of Staff Parliamentary Ombudsman

Thank you very much. First I want to thank the South African Human Rights Commission for inviting us to this wonderful conference in this wonderful town Cape Town. For me, it is the first visit here and I am really delighted.

It is also thrilling that you have chosen time when South Africa just now celebrates the ten-year anniversary of the democratic breakthrough in the country. It is very interesting to be here just now.

You have also chosen a very good time when the weather conditions here are on the top than in Europe from where I come in the bottom.

Last time we met in Berlin I gave a brief survey of the Swedish system and I am not going to bore those of you who were there and attended the conference by repeating this. If somebody who did not attend that conference would be interested in that survey I can give it in a written form and I also know that our German friends have publicised it. But if you want to have a broader survey of the Swedish system in a written form you can turn to me and I can provide it to you.

This time instead I want to highlight some recent events in Sweden, which illustrate in, I think, a good, way some of the main issues we are discussing here.

But before doing that I just want to repeat one main feature of the Swedish system as it seems like one question which is very much in focus here is this one what does the citizen do when the authority refuses to give the information which the citizen thinks ought to be public or when the authority fails to handle his case in compliance with the legal regulations. In our system there are two remedies. If the requestor wants to have the decision changed he has the right to get the information, which he is denied he can appeal to an administrative court, an administrative court of appeal. This process is rather quick. It is very simple and it is not costly at all for the citizen.

The court of appeal has to handle such a case with highest priority so normally it will be finished within one month or something like that.

Administrative courts in Sweden investigate the matter themselves. So the applicant, the one who appeals he does not have to conduct investigation himself. He just has to inform the court of what has happened and ask them to review the case and to make a new decision. If the court of appeal is of the same opinion as the citizen they just make a decision that the information should be disclosed.

If a citizen feels that his case has been handled in the wrong way not in compliance with the procedural regulations he can turn to the Parliamentary Ombudsman who can make an investigation and who can finalise the case by giving his opinion with the critical pronouncements and maybe laying down guidelines for the authority to avoid the same mistakes in the future.

In a very serious case the Ombudsman has the right to start criminal proceedings against the officials. That in very short is the way the Swedish system offers to the requestor of information.

And after this as I said I want to highlight a few recent events which have occurred in Sweden and which illustrates I think in a very good way that our system in spite of being developed over the past 238 years and in spite of being to some extent extremely transparent in comparison with systems in many other countries is far from perfect. There are deficiencies and there are shortcomings and we in Sweden as in all other countries we have continuously to observe these shortcomings and to try to make the system function better.

The first examples I want to talk a little about to illustrate this they have to do with the limitation of the applicability of the principle of transparency of access to files.

Like in all countries I know except for South Africa where you carry on now as we heard in the morning a very interesting experiment the principle of access is limited to the information held by the public sector you can say. In Sweden this is defined as information held by state and local government authorities and it also applies to local government owned companies. But the whole of the private sector is outside and also the state owned companies. And during the latest half-year, latest six months there have been two very illustrative scandals erupting in Sweden. Which are interesting from this point of view.

The first case concerned a very big insurance company, which means it is in the private sector. They made very dubious business. One thing was that this insurance company who had a mother company and different daughter companies. One daughter company is offering life insurance and pension insurances.

They sold one very important branch of their business making to a Norwegian company and this branch was the only one, which gains money during the time when this happened. They got a number of a billion Swedish Crowns and according to Swedish Law this money ought to have stayed within this daughter company to the benefit of the small savers, the insurance holders. But instead they let the money pass on to the mother company to the benefit of the shareholders there and to compensate for very big losses which this mother company had suffered during the latest years.

The other thing that also happened within this company was that during a number of years when business went very badly for the company they did not earn money at all, they had debited. In spite of that the highest chiefs, the bosses they had very good bonuses in addition to their salaries. Bonuses, which were intended you might say to fall out only if the company, was running well. But it turned out that the roles of these bonus programmes were constructed in a way that the directors they got very much money in addition to their salaries in spite of the company making losses.

And all this information about what happened within this insurance company it was not revealed until the summer of 2003 and then this had gone on for many years. And it has been very much discussed. It has caused turmoil in many aspects in Sweden and it is still on the agenda as one of the most discussed points in the society. And I think that if the principle of access to information and of transparency had applied to private sector held by investigative journalists this had been revealed much, much earlier and the damage had been much more limited.

The second scandal, which was revealed nearly at the same time it, concerned the state monopoly, which is selling alcoholic beverage to the Swedish people. You know distribution of alcoholic beverage is very strictly regulated in Sweden, and before the country entered the European Union there were two state monopolies operating in this area. One as importer and selling and one as distributor selling small quantities to the consumers directly when Sweden entered the European Union the country was allowed to keep their monopoly on the level selling to the people. But Sweden had to give up the monopoly for importing and ongoing. This means that a number of new activities took place on the market and they were competing in getting their different products sold and exposed in the shops of the state monopoly company. And what happened? Of course corruption started and it has been revealed now that at least 100 chiefs of the shops throughout the country have taken bribes, they have taken substantial bribes for exposing and giving good place in their shops the products of these importers and not the least they have taken bribes from representatives of the big one, the state owned company which formally held the monopoly. This is a classical corruption case of course. And many Swedes have reacted with a great amount of surprise that this could happen in Sweden, because there are many people in the country who believe that corruption did not exist in our country. Now they have learned better.

I think the same opinion applies in this case that if the state companies had been under the regulation of access to information maybe this would never have happened. At least I think it would have been revealed on a much earlier stage.

So what you are doing in our host country South Africa in trying to get the regulation concerning access to information spread also into the private sector is I think very, very important and it was discussed in all our countries.

Besides these two specific scandals I also want to mention a legislative matter concerning our Official Secrets Act. You may know that in our system according to constitutional provisions basically all information, all documents with information kept by state authorities are open to the public and all exemptions from this basic principle must be mentioned in one specific act or legislation, the Official Secrets Act.

And this Act, which is enforced, now, was decided by Parliament in 1979 and came into force in 1980. And already then it was rather complicated and in some cases rather difficult to interpret and to apply in single cases.

But this is a very dynamic area and since 1980 this piece of legislation has been changed and amended hundreds of times. I am sure there is no single law in Sweden, which has been amended and changed so many times as this law of Official Secrets Act. Most of these amendments and changes they have a tendency to increase the area of secrecy. Because there are many strong lobbying interests in politics, which are active in lobbying for, increased secrecy in one specific area. And normally they are arguing that transparency on the whole is very little damaged by one small reform, which is very important in just their area. And to have it turned away there ought to be somebody who has the whole perspective and who defends the basic principle of openness. If you do not have it you run the risk that step-by-step the system will be more and more closed although the basic principle is openness.

We have had a special committee of parliamentarians and specialists with the task to overview this Secrecy Act and they gave their report late in the autumn of 2003 and there they suggest a completely new Act on official secrets. One reason for this is that they say the old act has been too complicated, too difficult to appeal. You must simplify it, you must change the language and you must make the chapters and the paragraphs shorter so that the ordinary officials who are to apply the legislation in the cases have a chance to understand what is the real meaning of the legislature.

But the committee they have also observed this more principled problem that I mentioned that may be gradually secrecy has increased and they have an interesting discussion of what to do against that. And I just want to quote a short part of what they say, which is very interesting in the circumstances. They have a chapter with the headline efforts that should be made in order to retain the balance between openness and secrecy. Once they say that this balance ought to be retained. Of course they are of the meaning that maybe the balance is not at the optimum at this time. The Committee says:

"We consider that efforts should be made in order that the overall consequences for openness of the various legislative changes can be surveyed. In this way the balance between publicity and secrecy can be ensured. Various efforts can jointly or severally give a better overview of the changes in the Official Secrets Act and the consequences follow this. One kind of effort would be to establish a commission or standing committee with the task of following developments in the sphere of secrecy legislation.

Another input could be an annual written communication to Parliament in which the government reports on the changes in the Secrecy Act that have been implemented together with other works on issues concerning openness and secrecy. Another possibility would be to appoint one or more organs as compulsory referral agencies with respect to issues concerning openness and secrecy."

So the consequence of this is that maybe in two or three years there will be a special organ created in Sweden with the task to see to it that the constitutional principles on openness and secrecy are obtained in good order and maybe I will be replaced in this network by a specialised ombudsman in this field which we do not have now.

Another interesting suggestion in the report of this Committee is that they want a new regulation to be introduced that makes it possible for individuals to be given information when the general interest that there should be transparency clearly outweighs the interest that the secrecy is intended to protect. This means that in a specific case where if you follow the specified regulation secrecy should be applied there should be a chance for the authority to weigh the interest of secrecy against the overall interest of openness concerning the specific information and to give it out although there is an exemption certificate.

In the old Secrecy Act this is possible only in the relation between different public authorities. There we have a general clause that says that secret information could be given from one public authority to another one in a case where it is obvious that the interest of disclosing the information outweighs the interest of secrecy. But now this commission has one more remedy to the tendency of increasing secrecy suggests that this kind of reasoning could apply also in a case where an individual citizen has asked for the information.

And finally, I just want to mention another rather interesting case on new legislation going on in our country. This is in a field, which was mentioned by our Canadian colleague in the morning, namely the need for a regulation concerning information management.

We have not had in Sweden specific law in this field so far. We have an archive law and we have some regulations in one chapter of the Official Secrecy Act concerning how the authorities when obtained concerning provision on registration and such things should handle information.

But now it is suggested by a Parliamentary Committee that these two regulations be amalgamated into one specific law concerning the management of official documents. And a main purpose of this law should be to create what they call a good public access structure.

I can say that one reason why the problem with the management of information, management of a document have been observed now is that many people in Sweden not least the former Director-General of the Central Archive Authority has observed a tendency which of course is a risk in a society where you have what many people regard as an extreme openness, namely a tendency not to create any documents just to avoid information from being public which you think yourself ought not to be public.

And I think exactly one year ago there was one-day conference organised by our Central Archive Authority on the theme what if the use of the right to access to documents if there are no documents. And they mean that in some files there is a tendency in Sweden that when they go back and look into the files, things which happened let me say 30, 40 or 50 years ago they find that the files are very meagre. They do not find the information at all that ought to be there.

And anyhow we have provisions in the Administrative Procedure Act that say that when single cases are handled within the administration all information which is obtained and which is important for the case ought to be documented in written form. But regulation is one thing and what happens in reality sometimes is another thing. And to try to solve this problem one way might be to create legislation concerning information management in the way they try now. We have answered to this from the Parliamentary Ombudsman to this draft from this committee in a very positive way. We think it is a step in the right direction. I think I will finish there.

Chairperson: Thank you very much. I hope that there is a document created by a certain airline about the status of your luggage. Because otherwise our secretaries will be calling in vain. But may I thank you and just say one draws some courage from the fact that after 200 years you are still battling to perfect your situation. But tongue in cheek I would like to say it seems to me that time does not necessarily help you to correct the imperfect but there is a possibility that it does create the opportunity for you to perfect the imperfect. But thank you so much for participating.

We are coming south now and we are coming to Portugal. Welcome. Thank you very much.

Third Panellist: Portugal Experience

Mr. Augustinho Castro Martins

I will try to speak in English but I am afraid I will make many mistakes. So this afternoon I am hoping but I am not sure if after my speech we will go on so beautiful like as I see it because my mistakes perhaps are going to make the afternoon less interesting.

And I fear another thing. I fear that perhaps I am going to repeat some things that we heard this morning mostly from France because our law is very close to the French law but I will try. If I cannot speak English I will change to French because I can speak that less badly, not well but less badly with French.

But I have to begin by congratulating the organisers. I did not expect so much frankly. I did not even expect a translator. I did not know but I have to congratulate because there is a degree over that I expected. But I have to congratulate the organisers and I have to congratulate the organisers for its tenth anniversary over the great change. We did not expect so easily and so quickly the changes we see. It was very quick and not totally but very specific.

I have taken a written document because my speech is not easy even in English or in French I do not speak very easily. [Rest of speech presented in written form.]

Chairperson: Thank you Mr Augustihno. I think if you would like to make that document available to me we will make copies of it and we will certainly make it available. We will make it available tomorrow.

Chairperson: Thank you very much. I wonder if I could make the following suggestion that we just take a few crisp questions now and then we adjourn for the day. There will be Coffee. Rather than adjourning for coffee now and trying to get you all back and then trying to buzz you off that I take a few crisp questions. Matters do not have to resolve here and now. There is an evening ahead, there is a boat trip ahead and lots of things tomorrow. So I just want to make a few announcements after the questions pertaining to arrangements tomorrow. Are there any questions right now? I was going to ask whether there are any burning questions. There are no burning questions.

Let me thank our three contributors. I think all of us have gained from the tremendous amount of information, which we have departed to the conference today, and we are indebted to all of you. North, South, America, North, South Europe, Central Europe, South Africa at the bottom of the continent and we have the benefit of participants from the African continent who are listening and learning and also engaging in interacting. Can I ask you to give a hand of appreciation to our three guests? Thank you to you.

Section C

Mr Huff: I received a fax from my office last night and it was concerning an area of access to information that I was quite surprised about.

The provincial government in Shanghai in China has announced that it is now promulgating a government rule, an official government information rule; they have regulated and permit access to municipal and provincial information in Shanghai, the first in the Peoples' Republic of China. The state council in Beginning first reviewed this rule and the Shanghai Peoples' Conference also reviewed it and then finally the mayor of Shanghai just promulgated the rule. The United States taking one year for implementation, Mexico taking one year, Great Britain, what is it five years and counting right now, but Shanghai's regulation is going to take effect on May 1. So that is certainly news to us and I think that it is going to be very interesting for all of us who talked about access to government promoting democracy.

I think we are going to have to think about the word democracy for the Peoples' Republic. Maybe just citizen participation is what it is there. But it is certainly I think very welcoming news and very exciting.

Chairperson: Thank you so much for that information Richard. Ladies and gentlemen may I on that good footing and good note say to you thanks for the lovely evening last night sharing company, talking, chatting, doing what had to be done and I am very pleased that those of you are here and made it as punctually as you did and I trust those who are not here are travelling safely and on route to our event.

As I indicated I am keeping a tight close look at the watch today. We have had a caucus amongst the four of us and at least between the four of us we have agreed that we will move proceedings forward in good time to ensure that we do not crowd anybody out towards the end.

Therefore after this session there will not be a question and answer session or a discussion but we will rather have it towards the end of the proceedings after we have listened to the other three speakers from Hungary, Scotland and the United Kingdom. Thank you so much.

Can we call on our colleague from Estonia to take the floor. There is a paper in your documents and he will just speak to that.

First Panellist: Estonian Experience

Mr. Urmas Kukk, Information Commissioner

Good morning. First of all I would like to thank you for inviting us to this great meeting and especially as part to that of yesterday. I have not prepared a speech because I thought that I will give written report and that is it two days ago they convinced me to have some five minutes. Okay I will try to explain in five minutes. My opinion is that we do not have such more big differences in law and I just want to stress two points what we have a bit different.

First of all every information gets a copy of existing document by five working days. I think it is long enough to find existing documents. If you ask some opinions by law it means you have 30 days. But for existing documents I think five days is good enough.

Secondly, Data Protection Inspectorate in Estonia has order making power. It means that if anyone violates Public Information Act we do not need to go to court. I can give myself up to, it is not big amount, less than \$1 000 but it is good enough. Because for example from my quite short time in this position, it is just four months, I had just once made the penalty towards state police administration. But it was not filed in public information. It was filed on handling and delegate personal data. So I think it is a possibility to have right to make order. It has disciplined all the public servants quite well.

Maybe our most colourful case is the dispute with taxation office on question of the fact that you have correspondence with taxation. This says taxation secret or not. So a taxation officer thinks that it is a taxation secret but we on inspectorate think it does not but we have not finished this yet and my colleagues know I am collecting information here and I know it is no common rule nowhere.

It is very open in Sweden and it is very closed in German and the other ones and somewhere between there. So we try to file it our way in Estonia. So thank you for your attention.

Chairperson Thank you so much. As I indicated the document is in your pack and I am not sure who is taking the floor. Dr Dix is taking the floor first.

Second Panellist: German Experience (Brandenburg)

Dr. Alexander Dix, Commissioner for Access to Information

Good morning ladies and gentlemen. Fellow Commissioners and friends. First of all I would like to thank my friend Leon and his fabulous colleagues for inviting us to Cape Town to this lovely city and letting us join you in celebrating ten years of democracy in South Africa. And indeed only last night I learned what it means celebrating in South Africa. So I did enjoy it very much and I am sure you did too.

I want to give you a short overview, short update of what happened not only in the state of Brandenburg of which I am an information and privacy commissioner but also briefly on the situation in Germany and indeed Europe. My slides distributed yesterday. We are not in a position to have them on the wall but you might follow it in the printout.

First of all shortly dealing with the development of freedom of information in Europe. There has been a fundamental right to access to union documents in the Treaty of Amsterdam which is part of the European Union Treaty and that has now been, developed, has been included in the draft constitution for Europe which is still under consideration by the heads of state. There was an attempt last December to come to terms with that. They did not but I am confident and hopeful that they will manage some time this year to adopt this European Constitution as it were for the first time and that will include a universal right for Union citizens and indeed residents in the European Union to get access to Union documents wherever they are. Such an application may even be directed to national institutions holding Union documents.

Secondly some of you may know that there is a second institution in Europe called the Council of Europe including many more countries such of the European Union, including for instance countries such as Russia, many countries from the former Soviet union and Turkey for instance and members of the Council of Europe. And there is an interesting development right now in the Council of Europe. They issued a recommendation on access to official documents two years ago, which is not legally binding. You can find that on the website of the Council of Europe. At the moment there has been a proposal to draft a legally binding convention on freedom of information for the Council of Europe and I must admit my own government is in fact opposing this move so they have slowed down the process but I hope that at one stage there may be a Council of Europe convention on freedom of information, and if you remember the example of the so called crime convention then there even be a possibility for other non-European countries to join such a convention and South Africa could be one of those countries but at the moment it is still under discussion.

Now as far as Germany is concerned since our last meeting in April 2003 we have no relevant new developments I could report on. I have to say there is still on the federal level and the Federal Republic of Germany no Freedom of Information Law in place. Our coalition parties supporting the government have twice indicated their intention and their

pledge to have such a law introduced into parliament but so far the government and the ministries have been dragging their feet on this.

There is particularly a remarkable strong resistance from private enterprise against such a law, which may sound strange for countries, people from the United States for instance, and other countries with long tradition in freedom of information such as Sweden but I can say there is still some hope.

But there will be a new attempt by the home office to get consensus within the government on an FOI bill in Germany and there is even a chance if the government does not decide on legislation within the next year or so there is a group of members of parliament who might sponsor such a bill from within the federal parliament.

I should mention that environmental information has played a major role as a driver for general freedom of information also in Germany following European directive. There has been a Federal Environmental Information Act since 1992 in place in Germany and this is at present revised to come in line with a new European Directive on this issue and the so called Aarhus Convention. This would mean that the concept of environmental information would be considerably broadened. Any planning mandate for instance would include environmental information and would therefore be accessible for anyone without giving reasons. Also the access rights in different respects are going to be strengthened quite apart from this ongoing debate ...

Also there has been an attempt to adopt a Consumer Information Act in Germany. Our second chamber before the last election has stopped that and there may be now a second attempt to introduce a specific law on consumer information. This had been triggered by food security problems in the past. We had severe food security problems as the whole of Europe and nowadays even the United States has them. So there is still a separate strand of discussion on consumer information and obviously one should try to merge all these strands to come into one codified or harmonised body of law governing freedom of information.

Now as far as the situation of the state level in Germany is concerned, we are a federal state with 15 states, the Federal Republic and Brandenburg amongst these states has led the way to Freedom of Information legislation in Germany in 1998. First of all in 1992 it has just been two years that we celebrated ten years of our first democratic Constitution in my state. And in this 1992 Constitution for the first and only time in Germany so far there is a fundamental right to access to information to public documents and it is remarkable I think that the fathers and mothers of this Constitution thought of access to information as an essential tool for political participation. It is expressly stated so in our Constitution and it is a heritage from the Civil Rights Movement in the former German Democratic Republic, former East Germany.

In 1998 so six years after the Constitution of Brandenburg was adopted we had an Access to Information Act in place and two years later in 2000 the state of Berlin followed, the state of Schleswig, Holstein are the last two states having enacted such legislation whereas the other 11 states are still waiting for an FOI Bill on the federal level situation in Brandenburg briefly. I have as commissioner proposed extensive amendments after three years to our Access to Information Act in 2001. Especially trying to cut back on the long list of exemptions, which we have in our act.

Parliament therefore in 2002 called on the government to introduce at least a time limit on deciding on applications, which did not exist so far, and then an interesting development took place. The government drafted a Bill severely cutting back on access to information in order to as they called it discharge local authorities. They thought the whole process of freedom of information was too cumbersome and they wanted to cut back on that. And Parliament after my intervention rejected the most harmful amendments proposed by the government. They introduced a time limit at least to grant or reject access within four weeks last December. So that is a very recent development but also I must say a very modest amendment.

The Commission of Access has argued to shorten as I said the list of exemptions to facilitate the application of the Act. Because I believe that really would discharge administration from cumbersome bureaucratic processes but Parliament so far has not accepted my arguments and this teaches us a lesson from the Brandenburg experience. Once you have an excessive list of exemptions in the law this is extremely difficult to convince parliament to shorten it later on. So when you draft a law for the first time you should be very careful of how to draft these exemptions. I agree that it is not a solution or alternative to have vague clauses as far as the exemption are concerned but you have to strike the right balance and try to avoid an excessive list of very detailed exceptions.

Sometimes even the forces, which try to put back, the clock in terms of transparency grows stronger and one is busy to defend the present limited level of transparency. Much at any rate will depend on the restrictive interpretation as the person from France said yesterday. Restricted interpretation of any exemption clauses we have on the statute books.

One last point, which I think is interesting to discuss, is there a chance for the South African model in Germany or indeed worldwide. By the South African model I am meaning the extension of freedom of information to the private sector. South Africa has been the front-runner and still is. Freedom of information law in the four German states is restricted to the public sector and any Federal Bill on this issue will also be restricted to the public sector. However public and private partnerships become more and more common. Outsourcing in the public sector is still growing. So the borderline between public and private sector becomes increasingly blurred. Any citizen cannot find out and does not in fact care what is public and what is private. So there is no real rationale for having a different level of transparency between the public and the private sector in my mind.

Public bodies are claiming exemptions for their fiscal activities in Germany a very common problem, for instance when they are selling properties. Public utilities for instance in the public transport sector are outside the scope of the access law at present at least in my state if run as usual by private but state owned companies and this will have to change as I said earlier when implementing the Aarhus Convention these parastatals I think they are called in South Africa and these companies will be covered at least by environmental informational law very soon.

Also I think the South African model does have a chance even worldwide when you look at the discussion on corporate governance. I read with great interest yesterday in the book distributed by Richard Calland, a contribution by Dennis Davis who is a high court judge in Cape Town and this coincides with my analysis. Because after the Enron and WorldCom scandals in the United States and similar scandals for instance in Italy and I read in South Africa as well.

There were a lot of governments, South African governments and the German government as well who introduced commissions on good corporate governance and they issued codes of good practice. The European Union is supporting this very strongly and this is a very limited approach of this field. The German corporate governance code for instance recommends transparency in matters of fat cat pay as our British colleagues would call it the pay salaries of chief executive officers but also on certain stock transactions. The prevention of insider trading and all this requires for more transparency in matters of public corporation.

But this is also an issue of general access to information because companies and corporation are required to publish such information even on the Internet. So it is meant to protect shareholders and stakeholders but it also has an effect on the general public. It makes companies more transparent, and this is a development I think which could be merged and could be supported by the extension of freedom of information legislation to the private sector in certain periods of time. So these are really the thoughts I wanted to share with you and I am looking forward to further discussion. Thank you very much.

Chairperson: Thank you very much. It is interesting to hear you weighing up the South African model in the international context and to see what the possibilities are for it to take hold internationally but also to encourage us further when we begin to doubt whether we are too ambitious or not but thank you so much for that contribution. Hansjürgen you have the floor?

Prof. Dr Hansjürgen: Thank you Leon. I only want to make short remarks in addition to that what Alexander reported here regarding two further projects. First project as you heard we are four states in Germany who has freedom of information legislation, Brandenburg, Berlin, Schleswig Holtstein, the Northeast estates in Germany and Northeimus Phalia the biggest state. We have the four commissioners who are all a combination of better protection, privacy commissioners and freedom of information commissioners founded late in 2001. A conference of German information commissioners and I want to report about the topics about which we made resolutions in the last years.

We started with a resolution of course demanding Federal legislation regarding freedom of information on the Federal level. Alexander reported on that.

The second item we dealt with was public procurement. In our practice the problem under which conditions citizens have the right of access to procurement files was very crucial. Even in Berlin we had some cases where for example citizen initiatives wanted to look into procurement files regarding the building a very big building in a very old city. They wanted to resist against these plans and they wanted to look into the procurement files because they thought they made mistakes there. There were not very accurate procedures. They have had some difficulty. So we have a very rigid legislation in Germany that is nearly impossible to get access to these files and so our demand is that we change this legislation that we can have access to these files, as far of course as commercial secrets are not touched. We hope that this demand will have effect in the direction that legislation will change.

The next point we dealt with was the relation of Freedom of Information Act to archives legislation. We have in Germany maybe in your country a very rigid archive legislation, which means for example that 30 years after the documents go to the archives they are closed. There is no access. Of course there are exceptions. But in general there is no access to files, to documents when they came to the archives for 30 years. It is a very funny. You have access regarding Freedom of Information Acts while the documents are in the administration or in the office let me say ten years and after these ten years when the documents are already old they go to the archive and then 30 years they are closed and other effects. So that is a situation, which is not very good. So we demanded to make new legislation, which corresponds both fields of legislation.

Next point. In Germany there is no duty to publish sub-legal administration rules. Of course if you have legal laws, if you have legal government orders on the grounds of these laws these documents have to be published. There is no duty up to now to publish sub-legal administration orders on the basis of these legal acts and so we have many sectors of the public administration in Germany where it is very difficult to have a look, to have access to these orders for example in the tax administration. It is very complicated or a foreign citizen administration. It is very hard to look into the orders, official orders with which the civil servants work. Of course the idea to give no access is that the citizen should not see where are the holes in the tax law and of course you can see it if you look into these orders, the same thing and foreigner citizen administration. They do not want that you see in these orders what could be a way to stay in Germany after coming in there. But we think that is not in accordance with the idea of freedom of information of course and so we demanded not only to open it but also to put it into the internet if possible.

And the last item we dealt with, the problem has already been mentioned here. We called it the escape into private law. The state more and more outsourced branches of administration. These outsourced bodies' work on the basis of private law and that means they escape from the scope of Freedom of Information and so we demand very strongly that making the scope of freedom of information legislation bigger must prevent this. Not absolutely into the private sector reported. That is difficult. We are only at the beginning. But at least in these fields where the state has the majority of their private body enforces public tasks. In this case the scope of the Freedom of Information Act should be effective. That was the first project I want to report about.

The second relates in first line to the relation between privacy legislation and freedom of information legislation. In some states in the world we have a combined legislation where you have one Act and in this one act you have bills, privacy rules and freedom of information rules. I think provinces of Canada were the first who made that. We have some states more, and also in Germany we think about that to combine both regimes.

In 1998 there was a decision of the German Lawyers Association, which is very influential in Germany. They decided to develop a project how it could be possible to combine these two materials in one what we call "information gazettes bunch code. Two professors of public law got on the basis of this decision. Some money of some big foundations and they started to develop a proposal for such information code and the idea was not only, and I think that is also interesting. Not only to combine privacy legislation and freedom of information legislation but other fields are very narrowly related to these fields, for example Archives Law, Statistics Law, Register Law. And this is new for us a special act regarding all the secrecies we have.

The secrecies of the physicians of secrecy, statistical secrecy and so on, to develop general rules how to handle these secrets and in which relation these secrets are to freedom of information and privacy on the other side. So it is a very big project. Hopefully that will be finalised end of this year. That will be a book of some thousand paragraphs but maybe that could be worldwide another kick to bring information law as such forward.

So small variants of this idea we will have in Berlin and our states next time because last year the parliament of the state of Berlin decided that the state of Berlin as state should go forward in this direction and also combine at least freedom of information and privacy in one act and we are working together with our ministry of interior at this project at the moment. That is what I wanted to report in addition to Alexander's report. Thank you very much.

Chairperson: Thank you very much for that contribution. One continues to learn about these matters and you continue to be fascinated by the words as you coin them. The escape of freedom of information into the private domain and the relationship between data protection and all of this makes interesting space for all our regional and national peculiarities but thank you so much to the three of you.

Now I am very unceremoniously going to change the guard if you do not mind. My suggestion is that we take our other three colleagues on board immediately and we have the benefit of their contribution, and as the guard changed may I be so bold to say under my stewardship I just want to talk you through one or two little things just to know where I am trying to make you to and where I am heading.

I need, and I am speaking in public now but I hope my colleagues are listening and I know for sure Mothusi is not listening because he is not in the hall. You are welcome to take your seats. I need three documents. Aubrey maybe you can listen on Mothusi's behalf. I need the list of participants, which has been prepared because I want people to check whether the information is correct on that list so that when we close business today everybody has contact details of each other. That is the one list I need.

I need a second list, which is the list of only the freedom of information commissioners. Because they will be called upon to sign the declaration, which we are going to negotiate in public now we have two versions. We have a short version prepared by one group and we have an extended version and it is being integrated and we will put to all of you. So I need to create some time to ensure that we know what we agreed to.

What I will try and do. We will listen to our three colleagues. We will jointly take stock on where we stand time wise. Hopefully at that stage I will be able to present the documents to you so that we can break for tea and then talk through it. In other words correct the information, which we hold of you to ensure that we distribute the correct information and secondly begin to talk through a declaration. Do you mind if I conduct the negotiation session in private please. I am not creating a document at all. I am serving notice I am not creating a document so there will be no access to a document.

Our friend from Hungary will present first, then Scotland and then the United Kingdom.

Third Panellist: Hungary Experience

Dr. Peterfalvi Attila

Thank you Mr Chairman to organise this excellent conference in this beautiful city and this beautiful place and thanks for the lovely dinner yesterday. So ladies and gentlemen I will be short because I sent my lecture on e-mail. So I would like to procure your interest only about the Hungarian new legislation. In Berlin last year I presented the most important rules so I would like to repeat only the most important basic principles about the Hungarian legislation. In Hungary both rights, the right to disclosure of data of public interest and the right to protection of personal data our constitutional right since 1989 a year before that the political changes has happened.

Under the act on the protection of personal data and the disclosure of the data of public interest which was passed about in 1992 with a two-third majority, data of public interest means any information under processing by an authority performing state or local self-government functions or other public duties except for personal data and these authorities shall grant access for everyone to the data of public interest for access by it.

In Hungary the protection of both rights constitutes the task of the data protection commissioner and in connection with the access to public information, the commissioner has no administrative power. Last year our Act was amended and the commissioner got administrative power in connection with privacy but the commissioner has a power in connection with state and official secret because he can call the authority who classified the data for the duration or deletion there of if he considers the classification unreasonable. And our Act was amended to reduce the time limits so now the working documents and the other data prepared for the authority's own use are not public within 20 years of their own creation but that is missing from the act. So that is only 20 years but who knows from then. So I will give a recommendation within the 20 years of their own creation.

And the last year 2003 was very important because since the adoption of the act the most significant legislative changes had come into being which stopped the uncertainty of interpretation of the conflict between business and data of public interest and they brought that in the freedom of electronic information. In April the Parliament adopted the act on amendment of certain acts in connection with the publicity of and the use of transparency and the enlargement of the control of common property that is a package amending 19 Acts. After the publication of the Act, commonly briefly recorded as the Glass Pocket Act, the government by accepting the comments of the Data Protection Commissioner also prepared the decrees necessary for execution thereof.

The framework of the Transparent or Glass Pocket Programme is significant, leaps forward in the field of freedom of information. The most important ones are:

First. The legislature resolved the conflict between the protection business secret and disclosure of data of public interest because he said that some of the money from the budget cannot be business secret and the state auditor has got the right to investigate all the private companies and known government organisation in connection with the budget. And the report of the state audit of this is public too.

Second. By introducing the concept of data of common interest, freedom of information is extended to organisations of privacy creating, financial and business relations, which the state pictured.

Third. The decree of the government regulated a divided range of data of public interest that are in connection with the state, provided without request to be published on an internet website, though the freedom of electronic information have always extended to a wider range.

Fourth. It made the obligation for all organisations belonging to the state budget to charge a professional person with an organisation or unit to carry out tasks in connection with disclosing data of public interest.

The resolution of the government called upon the ministers and asked the chief officers of supervisory organisations to make plans for arrangements with the opinion of the data protection commissioner to discuss the tasks necessary for the execution of the act and make suggestions on the amendment of legal regulations where it is justified to regulate the obligation to disclose the specified data of public interest, and finally called upon the President of the Central Statistical Office to create together with the Data Protection Commissioner the system for compulsory statistical information in connection with disclosing the data of public interest. Because at this time the authority had to report to data protection commissioner only on applications denied and the reasons. So we think of these changes that started off the Glass Pocket Programme, it would be too early. The important experiences I hope they will be mentioned in the next conference. Thank you.

Chairperson: Thank you so much.

Fourth Panellist: Scottish Experience

Kevin Dunion, Information Commissioner

Good morning everybody. Unlike everybody else I am delighted to be here in South Africa. This is only my second visit but I seem to come for only important occasions. I was here for the World Summit in Johannesburg in 2002 and here for this Information Commissioner's International Conference.

I want to explain to you first of all why we have two people here from the United Kingdom. A quick geography and history lesson: Scotland is part of the United Kingdom but it has its own Parliament since 1999 which is responsible for own matters affecting out of 5 million citizens except those explicitly reserved to the United Kingdom such as Defence and International Relations. On all other matters such as education, health, the police, law and order and so on the Scottish Parliament has jurisdiction.

In 2002 the Parliament approved a Freedom of Information Act, which affects all Scottish public authorities and that is the key distinction that you have to remember that the Scottish Act is entirely separate and of a separate date to the UK's Freedom of Information Act, which Graham will speak about after me. So I am the Scottish Information Commissioner and have the dual responsibility by law to enforce the act but also importantly to promote it.

The Act starts very simply by saying that a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. So what does this mean? It means that anybody anywhere in the world is entitled to be given the information. The Act does not just apply to people living in Scotland of the UK. You could be from South Africa and request the information from the Scottish Parliament, and secondly it is information of any age. The Act is fully retrospective so it applies to information held by the authorities or archived by the authorities and applies only to of course Scottish public authorities. Our jurisdiction is not greater than that. So briefly it has affected Scottish not UK public authorities. There are 106 categories of authorities listed in the Act. Some are large ones: the National Health Service. Some are small: Scottish Screen, the organisation responsible for promoting the making of films in Scotland. In total there are some 10 000 public authorities in Scotland. This includes the Scottish Parliament, universities, publicly owned companies, police forces, and so on. But it also applies, and this is why the figure is so large it applies to individual doctors and dentists who are contracted to our National Health Service and to carry out their functions of a public nature and receive public funding.

The implementation timetable is somewhat quicker than has been in England or for the United Kingdom but we are trying to achieve it by the same date. Our law said that we could bring our Act into force by 31 December 2005 but the Parliament sensibly I think took the decision that we wanted to come into force earlier and if possible on the same date for the UK Act. So there was a scope for confusion. Our Act was passed on 24 April 2002. I took up my post on 24 February of last year so I have been in this job for 11 months and before 21 January 2005 we have to approve publication schemes, which are submitted to me for approval by all of those public authorities.

These publication schemes have to set out the classes of information which the authority holds and intends to publish and the class things like the minutes of the Finance Committee, personnel manuals and health and safety procedures and so on. That has to say what the cost of such information will be to the applicant and the manner of its publication. Is it going to be on the web or is it printed or whatever. After 1 January the Scottish Act fully comes into force. There is a general entitlement to recorded information. So this is restricted of course to matters or information which has been written, printed, filmed, audio taped but it does not include information held in the head of an official as some jurisdictions seem to have. Importantly there is no requirement for the person asking for the information to make any mention of the Freedom of Information Act. This is extremely important for the public authorities to realise that nobody is going to alert them through the use of an official form or the specification of a piece of legislation that they have been served with a request under the Act.

The costs of receiving the information have not yet been established. We have not yet agreed the regulations establishing what authorities can charge for providing the information. However we have a fair idea of what is going to be in the regulations and I think they are reasonably generous to the applicant. Not as generous perhaps as Mexico but by comparison elsewhere in Europe. We expect that information costing up to 100 Pounds to provide will be given free of charge to the applicant. Between 100 and 600 Pounds the authority may recover only 10% of the cost. So in Scotland the maximum that you can be charged for information costing up to 600 Pounds will be 50 Pounds, which is no unreasonable figure. And in the discussions that we are having with the Scottish government we want that figure to include the cost of the covering information, reproducing it and posting it. So we do not have any hidden costs being imposed upon the applicant.

Of course the act has exemptions like all acts do and there are 17 exemptions in the Scottish Act by which authorities can refuse to give all or some of the information requested. Again there are distinctions between the Scottish and the United Kingdom Act. If the authority believes it will be harmed by the disclosure they have to demonstrate to me that its interests will be substantially prejudiced. In the UK the chance is simply one of prejudice and the assumption is that there is a distinction between prejudice and substantially prejudiced.

The applicant of course can appeal to me for a decision if the authority refuses to provide the information and I have full enforcement powers similar to what you have heard from other commissioners. I can oblige the public authority to give me the information. I can require them to disclose the information if I determine that the applicant should get it. I have powers of entry and inspection to seize documents or to inspect any technology which the authority has and I can go to court if the authority ultimately refuses to provide the information and the penalty for not complying with my decision is that the official can go to jail for two years or face an unlimited fine. So it is a stand. I want to give you an insight on whether or not Scottish public authorities are ready to implement the legislation. We commissioned some research to question a representative sample of 116 Scottish authorities and we were asking them on issues like what is your investment in staff training, what is the investment improving your records management, what is the investment in information technology. Overall the response has been very encouraging. Over 80% of the organisations that we have questioned, the public authorities we have questioned believe that freedom of information will have a positive impact on their organisation, which I think is extremely encouraging. There is not a high level of resistance to the legislation.

The similar percentages around 85% are fairly confident of having systems in place to deal with requests by 1 January 2005. That is they expect to have staff trained to recognise the requests as covered by the Freedom of Information Act, that they are able to recover the information and supply it within 20 working days. However that leaves around 15% who are not confident of having such systems in place by 1 January, and if you press a little harder you find that about 22%, nearly a quarter of Scottish public authorities are nervous about the ability to recover information which is held electronically held in e-mail, because these things are purely indexed and difficult to search and to do that within a time limit of 20 working days they are not confident about. In addition to the questionnaire, we also asked the research company to conduct much more detailed interviews with some 33 senior officials within the organisations that were targeted across the range of local government, health, universities, police forces and so on. And we got back anecdotal, subjective but probably a useful insight into the thinking processes of some of these senior officials. The majority again remained very positive about the legislation and some, but not to say surprisingly so, but certainly there is enthusiasm, a genuine enthusiasm for an unopened culture and the determination to avoid using the exemptions. So although we have the 17 exemptions many of these authorities do not see it as being a case that they will scrutinise every freedom of information request to find out if they can use the exemptions to avoid getting information.

Some also see that the Act has tipped the balance so that they have to make the investment in providing the public accountability and making improvement in their decision-making processes and I think Graham will speak about the consequences. But certainly within the UK I think the public mood is no longer to have decisions taken in the dark, in unrecorded meetings for which not only the decisions but also the process and the facts behind the decisions are kept secret. Finally the archivists are now crawling out of the basements of the buildings in which they work. They now see the Act as being their chance to be the heroes of local and public government and so they see the opportunity to tidy up records management as being an important manifestation.

However there were some quite negative and cynical comments. Some see the Act as a burden to public authorities an expense that they would otherwise not wish to incur. They see the people who are using it as being not seeking information, which is genuinely useful to them but simply wasting the time of public authorities. People like myself who have come from the back and have campaigning for the act and have indicated strongly that I believe that it is good for Scottish society and public administration are raising the expectations of the public only to disillusion them when the reality hits is the view of some of these officials. They see the Act as just another piece of necessary legislation to be implemented like personnel, equal opportunities, health and safety legislation, which has to be done if you are on a public administration.

And finally the question of whether or not the public is really interested. We suspect that the Act will be used by the media and campaigners who hope to cause trouble rather than by the ordinary citizen genuinely seeking information of value to them. Finally, that I call the ugly. There is the good, the bad and now the ugly who are determined that no matter the Parliament has decided that there is plenty of scope for them to thwart the intent of the legislation. They will use the 17 exemptions to get round all sorts of requests. They boast or they claim that the inefficiencies that are built up in Scottish public administration over 150, 200 years is such that it will never be overturned by well meaning legislation and that there is almost no hope of providing the information in 20 days claiming that it is taking up to six months simply to find the files far less to decide whether or not the information can be provided. I am giving you this information on three sheets but please do not presume that it is there for equally divided 30% for each. The vast majority are positive but there are these cynical voices and we will be naive to assume that they do not exist there. So finally what are the current challenges that we are confronted with. Well we need to prepare Scotland to not just implement the Freedom Of Information legislation but also to make best use of that. We need to make sure of course that the systems of the authorities are up to the task. But we also need to make sure that the public is not just in terms of the general public equipped to use the legislation but that we target those members of our society that we believe would be best helped in using the legislation.

And I was struck by what the Mayor of Cape Town, Ms Nomaindia Mfeketo, said last night about challenging us as commissioners to question whether or not what type of information and who is accessing it has been the activities of existing campaigners and elite groups. I also want to give a message to Scotland that I have enforcement powers and I will intend to use them. This is not trying to be tough. This is simply sending a message the Parliament has given me powers to protect the rights of the citizen then it would be wrong for me to decline to use these powers. Yet I know from my previous life as an environmental campaigner that many of our environmental regulatory bodies also had quite considerable powers but did not want to have a poor relationship with the polluter and therefore declined very often to take them to court or to enforce their decisions upon them.

That is not my style and I do not think that was the intent of parliament when it passed this legislation. So I will use my powers to require bodies to give information. I will use my enforcement powers to cause the information to be released.

Secondly, I am very concerned to make sure that the intention of the Act is not undermined by decisions taken at a lower order and in particular the whole issue of charging for information. I am becoming very disturbed by what has happened in Ireland. I was in Dublin last week and unfortunately the Irish commissioner is not here but they have had a change to their legislation. I saw that now instead of accessing the information for free in Ireland you have to pay 15 euros or \$15 equivalent simply to make the request. Not even to get the information but just to make the request.

If you are refused information you can appeal but you have to pay in advance \$75, 75 euros to make the appeal. And if you want to appeal to the commissioner in Ireland you have to pay in advance 250 Euros. Not surprisingly it looks like the request for information in Ireland has plummeted and a number of appeals has plummeted as a consequence. And it is that which I want to guard against for you have a good piece of legislation but then the parliamentarians think wait a minute, the commissioner is getting too much information out of here, too many questions have been asked and you choke off the information flow by using non-primary legislation.

We do want to help authorities to understand the Act and we will be providing guidance on the exemptions and we will be looking at the decisions that commissioners elsewhere in the world have taken on things like what is the public interest. What is commercial confidentiality or sensitivity? But we are doing that not to provide them with a guidebook to avoid giving the information but a guidebook to help them to recognise that these exemptions are actually extremely restricted and they should not push the boundaries of them beyond what parliament intended. And finally we are spending a considerable part of my budget on a campaign building public awareness of rights under the act and I take my duty to promote as importantly as my duty to enforce. Thank you very much indeed.

Chairperson: Thanks Kevin. I suddenly felt extremely exhausted when you spoke because as we went through this conference together my mood was rising. All the time I felt listen, I am learning, I am learning, I am learning and at daybreak this morning I felt well now I know everything and then you took me down again and you are saying to me well you actually know nothing. You are not there yet. You are not there yet. And the new buzzword, which you coined, was to say anybody, anywhere, can access a document regardless of the age, so thank you so much for your contribution. The final person to speak to us would be Graham. Graham we negotiate in public in South Africa. I am going to ask you to take the floor please Graham. Welcome.

Fifth Panellist: United Kingdom Perspective

Mr. Graham Smith, Information Commissioner

Thank you and good morning everybody. It almost goes without saying but I still feel that I must say how impressed I have been in this conference in Cape Town. How grateful I am to Leon and all his colleagues from the South African Human Rights Commission who have put on a most excellent programme for us both in terms of the content of the presentations and the range of views that are being expressed and also the social programme as well.

My first slide, I was aware that I would be speaking after the social programme and the events of yesterday evening. And just in case, you never quite know how these things are going to go. So just in case anybody wants to have a quick reminder as to where they were this morning and what day it was I always have that first slide and then for my own benefit I have to remember just who I am and where I am from. But fortunately I feel fine this morning and most of you look as if you feel fine as well. So we can dispense with those and move on to the next one.

I do not intend to repeat a lot of the detail of the United Kingdom Freedom of Information Act. Many of you will have heard that before, perhaps at my very brief and hurried presentation to the Berlin Conference last year. And Kevin has given an excellent exposition of the main features of the Scottish Act. He has drawn out some distinctions with the United Kingdom Act but basically the overall framework is very similar between the two Acts. So I am just going to draw out a few points of distinction. Say something again about the key differences and then I am going to talk about the way that in this long period between the passage of the Act and to our statute book and implementation which is scheduled for 1 January next year. Some of the recent developments, which I think, may or perhaps may not have an impact on the Freedom Information in the United Kingdom.

The first thing that I want to say is that whilst we have heard a lot about freedom of information being incorporated into new constitutions, Kevin with the new Scottish Parliament they built this in. We have got a very different situation in United Kingdom. We have a mature democracy. We have no written constitution. So to bring freedom of information in on top of that has presented some particular challenges and perhaps led to more resistance. But I do want to say that it is not that we have had no access to information previously but we have had some very specific provisions about specific parts of the public sector. So we have had this code of practice on open government which applies to White Hall departments, to the civil service, central government bodies and that is a code of practice which follows the basic framework of most freedom of information legislation with the right to access information and a series of exemptions and the public interest asked. But interestingly that is regulated by our parliamentary and ombudsman and as again we have heard of many ombudsman models she only has the power to make recommendations. As you have heard from Kevin and perhaps from myself, the Commissioner in the UK under the Freedom of Information Act will have order making powers with the same kind of sanctions as Kevin has been referring to.

We have also had regulations for local government, which has primarily been about the decision making process in meetings and we heard yesterday about some similar models there about access to documents, allowing the public into meetings and allowing for the minutes of the decisions and some background papers to be made available. And then we have also made the Environmental Information Regulations, which Alexander Dix mentioned this morning. We have had those from 1992 but they have been very rarely used to any great effect in the UK and primarily again because there has been no enforcement mechanism except through the courts and we have had the issues of access to justice rehearsed many times during the course of the last two days and so I would not repeat all of those.

And then finally we have had some other specific provisions, for instance regarding education policies, schools having to publicise their policies on punishment, on homework, on sex education things like that. So the people can take that sort of information to a kind while they are exercising what limited choice they have to send the child to the school of their choice. So that brings us to the timetable for the implementation of the Freedom of Information Act. I have to say that I am still slightly hesitant about this. We have no reason to believe that it would not happen in January 2005 but we do not yet have the legal order, which says that that will actually take place. We have the Lord Chancellor standing up with great pomp and ceremony in the House of Lords in 2001 to tell us that this was going to happen but we have not actually seen that in writing yet.

Publication schemes. Kevin explained about the publication schemes. We have those phased in over a longer period and we are now coming to the end of that programme so that all our public authorities will have publication schemes, which provide for the proactive publication of information. It was effectively a promise. Again it is legally binding and Kevin like the United Kingdom commissioner can take action against public authorities who say in that scheme that they are going to publish something but actually do not and keeping the information flow going in accordance with the promises that are made in the publication scheme I think is something that we are going to have to monitor quite closely.

And then we have also got the new Environmental Regulations following the latest European Council Directive, which Alexander referred to, Directive number 2003. And the plan here is that they will be introduced into our regime at the same time in January 2005 and the information commissioner will have the same powers with regard to promoting and enforcing these environmental regulations as we have with FOI. So at the moment we are very much involved in a process of trying to join up these two access regimes. Personal data of course is regulated by the Information Commissioner but comes again from a separate source.

Again the key features Kevin said. The only thing I will say in terms of the definition again of public authorities is just to draw out what Kevin said about the fact this goes right down to individual practitioners delivering health service. Doctors, dentists, practitioners and that accounts for the huge number that we have got and what I think is going to be a particular challenge for us when we try to enforce the legislation in a fair but a common way is the fact that the rights of individuals with regard to these public authorities and the obligations of the public authorities themselves in law are the same whether it is an individual dentist in a remote rural town or it is the largest government department such as the Ministry of Defence or the Department of Work & Pensions. In law their responsibilities are going to be the same.

The Information Commissioner independence in government; that is very important person accountable to Parliament and as I have said also regulates data protection has the duty to report to the Parliament annually and I was very interested in what was said yesterday about the use of the power to report to Parliament as a sanction if you like of a way of really bringing to parliament's attention some issues which are perhaps not going right in the access to information field and this is something which we have not done in terms of data protection although we came very close to it last year, but we decided in the end that this was not the way forward but I can see that this may well be something that we are doing in relation to freedom of information to draw matters to parliament's attention. Again similar functions with regards to the Information Commissioner as in Scotland. A difference in terms of appeals and enforcement is whilst we have the same order making powers there is a further layer, an appellate layer which sits between the information commissioner and the courts in the United Kingdom and that is the information tribunal with again a free right of access either for the public authority or for the applicant for the information.

If they are not satisfied with the decision that we have made or if they want to challenge one of our other notices like we have one called an information notice which is if somebody is refusing to give us the information so we cannot actually make a judgment on it we have an order making power there, but those notices too can be appealed to the information tribunal. Kevin does not have the tribunal sitting above him. He has the last word subject to the courts on a point of law. And then there is also the responsibility we have for records management. I was interested in what Councillor Castro was saying about the link with the archive legislation and we have the statutory link with our national archives as if they have you like the best knowledge and they are the advisors with regard to good practice on records management and under our Freedom of Information Act they make a non-statutory code of practice giving good advice on records management and we have the duty to enforce that. So we have a kind of statutory partnership with the national archives to keep an eye on the record keeping capabilities and practice of public authorities simply working on the basis that if they do not have their records management up to scratch then finding the documents and being able to comply with their duty to release information on request within 20 working days is going to be very difficult for them. Now in terms of preparations for the act, if I can just stick with that records management issue first of all. We are finding very different practice across the public sector. One thing that White Hall has been reasonably good at is that they have always had a standard means of recording information, filing information. They have been subject to the Public Records Act for many years, and although it is not good and they have probably far more information than they actually need but there is some kind of standard.

When we go to local authorities there is no standard at all. There is no common approach across local authorities and as local authorities have been sort of reorganised, have merged or they have had changes in their functions over the years. What tends to happen is they have inherited a whole load of information but they have never sorted it out. They have just put it away in the attic or the cellar or somewhere. It is there but it is in a state. Now when you layer upon that the fact that our act is fully retrospective. Some people out there will want to know what happened about a certain development or a certain case back in 1958 or whenever it was and they will know that the authority holds the information. The concern is that the authority perhaps might not realise that they hold the information or they know that they hold the information but they have got no idea where it is and this is something which I think we are really going to find is quite a challenge and where this dual responsibility of the information commissioner and the national archives will come together.

We are having some research undertaken at the moment. We do not have it yet in terms of the likely volumes of cases that we will receive. From our own sort of anecdotal enquiries we see that there are common experiences where there is perhaps an initial flood of interests and a flood of appeals for information but then that might tail off in the future. We are not quite sure how it is going to pan out in the United Kingdom but the fact that we have been waiting and have been promised this legislation for such a long time suggests to us that here is a kind of a build up of expectation and we know that because we have had bodies making requests for information who have been frustrated, and when I referred back to those existing regimes we have had little in the way of formal enforcement mechanisms. People have not found that kind of worthwhile or viable to pursue their access to information requests because there has been no legal framework. But now we have a legal framework. We have free access to the information commissioner and then to the tribunal and we anticipate that there will be a lot of testing out of the new regime to see what difference it makes in terms of Peoples' Act and rights of access to information testing out the information commissioner, and our approach will be very similar to that which Kevin said. Parliament has given us these powers to use and there will be a legitimate expectation from parliament and also from citizens that we will use them and we would not fight shy of using those powers. So I think we are in for quite a turbulent time ahead.

We too have surveyed some public authorities and we have had similar sort of responses if you like to Kevin's and very positive messages coming out. Some very positive messages from the people who are actually charged with delivering Freedom Of Information within their own authorities. And what often concerns them is actually engaging their directors, their chief executives and their politicians in the reality of access to information and the fear that that will really only bite when they get a difficult case which causes them some kind of embarrassment. And for all that we try to give them wake-up calls the reality is that it is probably only going to be when it smacks them between the eyes that they really realise what this new regime is all about and what it means for them. One of the things that I have been struck by as I have talked to colleagues from other jurisdictions is the fact that you can have whatever legislation you like and we have heard how governments can subsequently interfere where the legislation if they find it does not suit their purposes but what really makes a difference is culture. And so many people have said that obviously we are not going to change the culture overnight on 1 January 2005, and it is only with long term culture change that you really see the benefits of freedom of information and that is what really makes the change.

And for us in the United Kingdom I think there have been two significant issues just lately which may affect the culture and may lead to a demand from citizens and from the media for a more transparent government. The first one, which is most famous, the second one has been the Hutton inquiry and the recent issue of the report into the death of David Kelly. Now I am not going to say anything in terms of the findings of the judge there, but what has been of great interest to us from commentators on the political scene and access to information generally is the extent to which the mechanics, the workings and the documents behind that of government have actually been revealed to the world on the internet.

E-mails from within government documents, notes of meetings, the notes from the black books that John Reid was talking about yesterday or their equivalent they have been produced to the inquiry and they have been put on a website. Now very much of that information is information, which we would not be able to order, should be released under the terms of our Freedom of Information Act. But what has happened is that through the Hutton report and through the whole kind of political climate surrounding that is that

information has been put out there and the roof of the world has not fallen in. It was quite a shock to the people and to civil servants to see that this information which when they created it they had no idea would be put into the public domain or at least not until Campbell decided that he was going to publish his diaries on his own terms.

As I say that is an example of what transparency really means. And it is because of that that we now have the debate after the Hutton report has been released as to whether or not he reached appropriate conclusions in his report because people can see a lot of the evidence for themselves and they can make their own judgments and they can interpret the evidence in whatever way they want. There had been an expectation that perhaps with more criticism of the government which was expected in the Hutton report that there would be some comment about access to information and about transparency but that has not come about. But where it has come is in a report which perhaps you would not have heard of which was released just a couple of weeks ago. It is called the Phyllis report and this has been from an executive director of the *Guardian* newspaper who chaired this committee and it had people from a government-wide range of interests on this committee. And they were set up to review the workings of the government information and communication service and they were charged with doing this review on the back of the scandal which arose out of what was become known as the Joe More E-mail and this arose out of the events of 9-11 where Joe More was a political advisor in one of the departments in the United Kingdom government so she was not strictly speaking a civil servant but was a political advisor to the minister but she was responsible for communications and media releases, *et cetera* and had access to people within the department. And as she saw the events of 9-11 unfolding she put out e-mail around her department, which said that this would be a good day to bury bad news.

In other words if there were some messages which would be unfortunately embarrassing for the government department to have to put out in the media then this would be a good time to do it because they would not be widely reported because the headlines would be full of other matters. Now as this became exposed I think it is not an understatement to say that most citizens were shocked by this and very angry and felt that it had shown the workings of our government in an extremely bad light. And finally after a while not only was she forced to resign but also the director of communications in that department was forced to resign and after hanging on for quite a while the Minister was forced to resign because initially he had backed her. So they were looking into all of this. And I think because we have had this shall we say less savoury side of government communications revealed there is perhaps certainly more suspicion, more transparency, more of a thirst for people to look at what exactly is going on in White Hall. And I think the Freedom Information Act will be a tool which people are more inclined to use because of these incidents because there is more of a genuine interest rather than just let the government get on and do its business.

There is a feeling that the government is less trusted. Politicians perhaps even less trusted than they have been previously. And it was interesting that one of the things Kevin mentioned was that there is this distinction between the two Acts, the United Kingdom Act and the Scottish Act. That under the United Kingdom Act what has to be demonstrated to take advantage of one of the exemptions is prejudice as opposed to substantial prejudice in Scotland. The view is that this is different perhaps stricter in Scotland before the exemption can be relied upon. And one of the recommendations from the Phyllis report was that the Freedom of Information Act even before it has come into force should be amended in line with this provision in the Scottish Act so that the exemptions were not so readily available.

There is another provision in our Act where a cabinet minister can veto the release of information and can actually veto an order of the information commissioner if we were to order the release of some information regarding the workings of the central government department. That is called the ministry of veto. And another recommendation of the Phyllis report was that that should either be removed as a possibility from the Act or that there should be a commitment given by the government that it would not be used. Now, not surprisingly perhaps, the initial response of the Prime Minister, having accepted fully the recommendations and the findings of the Hutton Report you will remember, has said that in relation to the findings of the Phyllis Report and these proposals to strengthen the Freedom of Information Act that we should wait and see because as yet the Act is not enforced and we should see how it operates for a period of time and then we will consider whether in fact there is a need for it to be amended. But all this I have heard over these last two days as to the way in which the government has amended or try to amend its Freedom of Information Acts once they are on the statute book did not encourage me. So that is where I wanted to finish really with those interesting events in the UK recently which may or may not impact on the Freedom of Information Act. And I sincerely hope I will have the opportunity before too long to report on how it is actually working in the United Kingdom. Thank you very much.

Chairperson: Thank you very much Graham. Certainly the four Ps, which I was taught when I began to practice law, certainly applies in your case. The four Ps being a poor preparation makes for poor performance and that is not going to be a lack of preparation as you prepare for your turbulent times ahead but thanks also for those interesting comments.

May I give an indication of first of how I feel and then of how I want to guide you. I feel like this one who appears to be calm but I am not calm. I am paddling like crazy because I do not want you to be late for the boat trip to Robin Island. In order to ensure that you arrive on time I have to steer you carefully through the work, which we want to do.

I would like to thank just briefly our final contributors and presenters and then open the floor to you to ask questions and make comments. But I would like you to keep in mind that you have a lengthy boat trip to Robben Island to also pose those questions to everybody who will be here. And you would have a captive audience in that boat in the sense that any person you engage in the discussion will not be able to run away or escape. That goes for Robben Island and the visit back as well. But I do not want to stifle the debate. Because I know as you speak from the floor you speak for the record. Then after that short interaction I would like us to take a brief adjournment for coffee which is a little delayed to allow my colleagues just to make available to you the list I spoke about as well as the declaration which is somewhere in the process of being typed up because I will need your full attention to help me reach a document which we all can endorse. And then we should prepare ourselves to have lunch and depart by 12:30. That is the latest information I have. So there is quite some work to be done. I open the floor. I have a roving mike. Anybody who would like to ask a question from the floor at any of the six participants this morning you are welcome. I am looking to my right. I see two hands. Jody and Ms Chohan-Khota.

Mr Kollapen: Thank you Leon. I want to ask a question to Alexander. You spoke about the mooted of a Consumer Information Act and how consumer groups with regard to the issue of advancing food security would use it in the sense. Could you perhaps just explain I think at a practical level how they would have used it but also explain why the same groups to access the information could not use existing law?

Ms Khota: My question revolves around the interplay between the information commissioner and the courts. I see in one of the models you actually have a tribunal and that is between the courts, as I understand it and what the information commissioner does. That seems like a very novel concept to me and I just wanted to tease out a little bit whether in fact that enhances access in your opinion or whether that perhaps is just a further bureaucratic step before citizens can access the courts and you know what is felt.

Chairperson: Thank you very much. That will be the questions and the answers. We will receive the answers. Thanks a lot.

Dr Dix: Thank you. There have been legal ways and remedies for individual consumers or consumer groups previously but we had some food security crisis one could say or even scandals in Germany which showed that they are still too weak. So the chain of authenticity of the chain of production from the producers to the consumer, there were many holes in it so you could not really find out where a certain piece of beef came from, from which production side or from which farm. Sometimes you had to indicate by food labelling whether it was imported from another country, from a non-European country but not from which particular farm it could come. So one result of this public discussion on food security was that this chain should be a transparent chain from the state to the consumer. This was the political aim. We have a consumer minister even. She is a very active Green politician and she then proposed to have a Consumer Information Bill which would allow public authorities to disclose whether some even individual farmer was, his cattle was infected so that would also have economic consequences for that farmer so a delicate balance would have to be struck there. And in the end as I said the second chamber threw out this bill and we may face another second debate on such a bill but I doubt whether we will arrive in the end at a valid statute. Also we had some jurisprudence on these cases so public authorities are very scared to disclose any kind of this information although it can be vital for the individual consumer.

Professor Hansjürgen: Something we discussed in Berlin, because we have a State Consumer Information Act but this is a very narrow one. It only allows the authorities to give information to the citizens and gives no access to information for the citizens. But what we discuss is to give citizens more rights to get information from the vet's authorities who have information for example about diseases of cattle and so on. And at the moment in most cases they say that is a secret. There is a commercial secrecy of the farmers or of the producers of the food and so on. So that was the first step to give them more rights even if there is a commercial secrecy against these authorities.

And the second step that we discussed too was more difficult is a direct right of access to the producer. The producer for example must open the elements of food, give information about from where he did have the material from which he produced the food and so on. So that is the second step and that is more difficult and we are in discussion about that. And our minister I think if I am informed exactly thinks again about this right of access again to private institutions, which means here the producers of food.

Mr Graham: Yes fine. If I can take the question on the tribunals first and Kevin maybe wants to answer something afterwards. I think there are pros and cons of that as a model but I share the fear, which I think is being expressed that this could be a further bureaucratic step.

I think it was born partly out of a nervousness of giving such stringent order making powers to an individual independent official. But I think it is also born out of the fact that freedom of information in the United Kingdom has been grafted onto our data protection regulation regime. We have had data protection in the United Kingdom enforced by a commissioner who has now got the dual role under the information commissioner. And there were order making powers under the data protection legislation but very rarely used because the regime is significantly different in many respects but there is a data protection tribunal to which appeals against those orders can be made. So they have changed the whole regime and just say, well, cross out data protection and add in freedom of information and call it the information commissioner and call it the information tribunal. But because there is this free right of appeal I think it will be very kind of widely used. Now it will mean that we will be able to get some higher authority in terms of the development of jurisprudence. One of the speakers yesterday said that that is perhaps something, which has been lacking in some jurisdictions I think that you do not get the opportunity for decisions to be challenged and any real jurisprudence to develop. We will have that although of course commissioners themselves develop jurisprudence and that is what they have done in many respects.

But what I fear as the main disadvantage of this model is going back to the now well used phrase that access delayed is access denied and it will mean that if somebody is wanting to delay the release of information in relation to a matter which is very kind of topical and pertinent and that they want to use in furtherance of exercise of some other personal or individual right that they need the access to information for that. A public authority in particular would be able to appeal against our decision to release that information by going to the tribunal and that could lead to some considerable delay which will significantly reduce the value of that information to the individual even if ultimately the tribunal upholds the commissioner's decision.

Chairperson: Thank you very much for that Graham. Ladies and gentlemen I am slowly moving into authoritarian mode I am disclosing right at the beginning. So I will ask you to take a coffee break now but be back by 11:00. Just a moment thanks. Tseliso you have got a draft declaration there. You will just be standing there and handing it out to those who would like to read it. What I am concerned about, Bernadette, are you dealing with the departures and the names out there? Thanks a lot for doing that. We have to be on time for boats. We have to be on time for planes today and I do not want you to blame me.

Chairperson: I want to talk as people come in and I speak for the benefit of those who are here. There is an old expression, which has taken on a very politically incorrect meaning in South Africa about time. Now I will try and paraphrase it and make it politically correct and I will try and take it out of the context of Africa and anybody who is present. That would be to say, I am paraphrasing. Somebody is saying to a Swiss person you have the watches but we have the time. So unfortunately I cannot quite operate like that. I still have the time. Let me proceed from the basis of consensus. There is agreement and there is a result, the outcome being after discussions and talks that Mexico will be so kind to host this conference next year and we are indebted to our colleagues, our colleague from Mexico and thank you so much for hosting us, Mr Lopez. I think he deserves a round of applause. I have a list and I have just had a look at it for the first time and it was not exactly what I was looking for but people are still working on it and that is to ensure that by the time we leave one another and we part we have available addresses, contact details, *et cetera*. Just before the adjournment, a document was made available to read and have sight of over tea. Now that document is a non-document. It is a non-document because it has no status for anybody who believed it has status. It has no status. It is a non-document, it is a document just to peruse and remain in our files as a non-document, the idea of people. And I think based on what I heard over tea and coffee is really to withdraw the document. And I look across the hall and I see many, many faces that agree with that. Either the one that spoke with me directly or the ones that did not speak with me directly, And the reason why it is withdrawn is simply because the principles contained in that document are not compatible with the jurisdictions under which many commissioners who are present here today operate. So it may be a document for political leaders to say, well, this is how we would like the world to be and this is what we would like to achieve. But the commissioners who are here are mandated in terms of a set of rules in their jurisdictions and they cannot go beyond that. That is the general thing.

There is a short version, which tries to capture what was said in Berlin last year. Now even that document some of the colleagues around the table believe goes one or two steps further than what their jurisdictions allow and permit them to go, and clearly we do not have the jurisdiction to question how people interpret their own peculiar responsibilities, mandates and jurisdictions. Now we have two options at our disposal. The one option would be to try and amend this declaration now in the available time, which is very limited, and continue to work on it as we proceed to Robben Island and sign it at Robben Island. There could be another option and that that is simply to say that we table the document for a proper discussion at the next conference. I mean it is there, it stands over and that is the spirit and the idea and people could have a discussion and a real considered debate around the document giving the limitations of their various jurisdictions. That could be an option but I am clearly in the hands of the conference and people who have participated.

Somebody reminded me by saying well the gist of what we want to achieve is to share experiences, you take the experiences with you home and what you can incorporate in your national law and your national activities is taken abroad but it is not the objective to really persuade one another which is the better of the various models and jurisdictions and mandates. These are the themes and the thrusts, which I picked, up over coffee and if I completely misheard you or misrepresented your pleas, be so kind to tell me that now. The floor is open. Does silence mean agreement? Does silence mean yes. Kevin.

Kevin: Leon, I want to say that I appreciate the work, which has gone into this initiative, and I think it is incumbent on us to think how we can make full use of having gathered together. I think it is unlikely that no matter what we do with this current text that we can do very much before we leave here in SouthAfrica but I do not want to lose the momentum that is given to us. And what I would suggest for Mexico next year is three things. First of all that we do agree to have a closing statement from the meeting, that the statement should contain within it a summary of the current situation worldwide. I think it is important that we survey the progress towards extending freedom of information as we heard this morning in Shanghai and simply note that. Secondly, that we note any international declarations or discussions which are pertinent. Thirdly, that we have an element, and this would be where the debate would be, where there is any expression of aspiration or hope. Any expression that we collectively have, and I would mean by that, we simply note with some concern rather than propose to do anything about it. And finally end with any agreements or any co-operation that we decide that we expected to come out of the conference. Now to do even that I would suggest there would be a task for the organiser, Mexico, and perhaps with the agreement with one or two other countries to at least draft a draft text of that statement and to circulate it before we meet in Mexico. Because I do think it is very difficult to take these things on board before they arrive or to make any input to it. So this is my proposal: that we welcome the initiative from here and we build upon that. We cannot probably do very much with it here but we try in Mexico to come to some agreement; to come to some agreement that by gathering us together we do not waste the opportunity to come to a common view where that is possible.

Chairperson: I have an acknowledgement with a nod of the head from Commissioner Presa on my left. Would you like to maybe voice what that meant to you?

Mr Presa: Well I support Kevin's proposal. I believe it is a proposal that would lead us to more comprehensive agreement and we will be more than happy to draft that proposal ahead of time and distribute it to you months before the conference in Mexico actually takes place. So as one of the elements in that meeting is the formal discussion of that document and the approval of whatever the outcome from that meeting results.

Dr Swanström: I am not entirely impartial in this discussion since I am one of the authors of the shorter version of the two non-documents. However since my term of office will expire at the end of May and I may not be among you next year, I definitely support what Kevin has said and I think it is vital that conferences such as these come up with some written result and therefore I would be very happy to have this declaration in one form or other be adopted in Mexico City.

Mr Presa You put so much effort into this and your term finishes in May. May I ask your participation with me in putting the first draft that we can circulate?

Dr Reid: I suggest that as soon as there is a version that we circulate it by Internet as quickly as possible. The second thing that I would suggest is that we give some careful consideration to the scope that we have to issue opinions based on the nature of the mandates that people have from their legislatures and from their governments. In my case it would be a Parliamentary Committee that I would have to check with first before I could because that is to whom I report. So I think we want to be very careful about what we can do in our own right and what we can do as representatives of our legislatures.

Chairperson: Thank you so much. I guess what is developing is an understanding of what we would like to achieve with such a document, such a declaration. As Kevin put it to us there are specific requirements. There is an outline, the status of information, the legislative framework under which we all operate and then the more ambitious part of it would be when we venture into our hopes and our concerns. I guess what we have achieved over the last two days has been the fact that the legislative developments, concerns, interpretations are documented either through the papers which were tabled and/or the discussions as they would be recorded and be passed on to Mexico and to others. So the history of the last few days is captured and there is therefore further digestion. And the notion of different jurisdictions, different cultures operating, different histories are completely supplementary at one level and also controversial and different in another level and we are not there to be solely in agreement with one another that it renders our own jurisdictions inefficient or it renders us in controversy with whoever we have to report to and our own jurisdictions. I guess that is the thrust and theme of what we are saying in closing here today. So what we can say publicly is exactly that. It is that we had met for the second time. We had the objective to learn from one another, to share experiences, to encourage those who are present and do not have information regimes in their countries and to see what are the most transplantable lessons possible from the various experiences which we have listened to.

On the other hand we have also noted the regional and national peculiarities and that is what we have achieved over these two years. We were not here to hold one another accountable. We are placing under the magnifying glass within and from our jurisdictions the various public and private bodies that may or may not be under our magnifying glass and I guess that is what we have concluded.

MrPresa: Very briefly. I would like to propose, if you agree on that of course, that we put together two task forces. One for the declaration of next year and another would be to help in this case the next hosting country, Mexico, put together also a nice conference. So I would very much like if we can draw from your experience in South African the know-how and the know-who to put together this new conference.

Chairperson: I think that support you will have. Thank you so much. We are together in this.

You know, I have been tempted to say a few things, which will be foreign to outsiders but is not foreign to South Africans. So I have to say to you in South African terms 'an injury to one is an injury to all.' We will not let you go on your own. So we will be there. We will be together one-way or the other. Colleagues, I wonder if I can just turn to the watches, which the Swiss have and the time, which we have, and what I said outside, take your time, but do not waste time. So may I take this opportunity to just finally say a few words in conclusion and really try to do justice to your travels to South Africa by saying that how much we value your presence, how much we enjoyed your company, how much

we are looking forward to continuing this relationship and to continue the discussions which we may have on the bus and on the boat. It has been a wonderful, wonderful experience. Certainly for me and I hope I echo the sentiments of all the South Africans and of all the international participants.

The amazing thing for me is that, and I say this with a lot of affection to our friend Dr Swanström from Sweden. There we have Sweden 200 years of experience and we have the announcement from the USA that the province of Shanghai will have a freedom of information dispensation in three months' time and that is I presume where the north and the south and the east and the west meet in Cape Town, Signal Hill and Robben Island which in itself is a significant statement to make and we have our highs and our downs. We have our ups about Shanghai, we have our downs about Dublin now charging excessive fees for people to just to demand the right, which we try to say, which belongs to everybody and I guess this is the nature of our work. On the one hand our friend from Estonia tells us that five days are enough to supply and supplement documents, and we have this incredible statement from Kevin and Graham who more or less say you know documents should be accessed regardless when they were created, and I look at Sello Hatang¹ and I can just see him smiling when he hears these kind of statements and how he wishes that it was part of our regime. And I can see South Africans who have always appreciated and admired, and I do not come from that particular struggle grouping who was on the supporting side or who were receiving support from Sweden but I have very close friends who told me many stories of their visits to Sweden and how they admired the society, *et cetera, et cetera*, and how during negotiations they were telling me a story about incredible experiences and encouragement from Sweden. And here we have a representative of Sweden standing on the podium-saying guys, if only we had that clause in our jurisdiction which you have in your constitution how much we would have appreciated that.

And the one comment which I would like to repeat, and once again I draw from the inspiration from Sweden where Dr Swanström says that you know what does the right of access to documents mean if you do not create documents anymore. And you end up posing the question by saying that we are in many ways over a period of time not only correcting the wrongs and correcting the imperfects but we are perfecting the imperfects. And those are the challenges. We draw from one another. We begin to know one another. We begin to understand our inspirations and our jurisdictions and I certainly do believe that when you part from our shores in South Africa further than Robben Island but when you move home and you leave us on our own we will also consider what we have listened to. There was a moment when I thought I could not absorb all the information which you had placed on the table and some of my colleagues were referring to specific jurisdictions how inspired they felt when they heard what was happening under those jurisdictions and we consider our efforts here and we realise how much we still have to do. There is no finish line to all of this in other words and we simply press ahead. We simply press ahead. Now it is not the final parting shot but it certainly is the final comment from behind this microphone. There is something which I often say to my fellow South Africans and which I would like to repeat to you. When those of you who are friendly disposed towards South Africa and the South African Human Rights Commission and the access to information dispensation in this country and internationally I say to you *bon voyage*. I wish you safe travels. I wish you safe journeys as you go home.

¹ South African delegate, represents South African History Archives

To those of you who are not so friendly disposed towards South Africa, the South African Human Rights Commission access to information regimes in this country and globally: who am I tell you how to travel? So when I say *bon voyage* it is not the end of it. It means I invite you to lunch and I urge you to be punctual so that we do not miss the bus and the boat. Graham?

Mr Graham: Leon you said that that was the last word from behind that microphone. So as not to suggest that you have given us inaccurate information I have to grab this one. Just finally and very briefly on behalf of all the commissioners here today and represented and our equivalent colleagues in other jurisdictions I am sure I also speak for all the delegates here today. This has been a magnificent conference. We congratulate you on such splendid programmes. I said earlier by the social and in terms of the business. I think I can also speak certainly for myself and I am sure for most visitors here to South Africa to say that not only do we have tremendous admiration for the work that the South African Human Rights Commission has done and continues to do and the progress that South Africa has made as we are here at the start of the tenth anniversary of democracy in South Africa. Not only are we impressed and we have had enormous pleasure in being here and helping you to celebrate this marvellous event. But it has also been a very humbling and a tremendous privilege to be here and to share that experience with you and I am sure that it is something that we will all take away with us and remember and cherish for the rest of our lives. Thank you very much.

Chairperson: I just want to say that I am not doing it extensively but just an initial word of thanks to our staff from the South African Human Rights Commission. We still have activities tomorrow but I will make sure that I carry our appreciation to them at the appropriate moment. Thank you so much.

Annexure A: Programme

Second International Conference of Information Commissioners

Theme

Entrenching the Freedom of Information: International Dialogue.

Date: 02 & 03 February 2004

Place: Cape Town, South Africa

Venue: Mount Nelson Hotel

Session 1

Sunday, 01 February

17h:00-19h00 Informal Meeting

Venue: The Garden Room

Welcome: Mr Jody Kollapen

Chairperson South African Human Rights
Commission

Session 2

Monday, 2 February 2004

09h00-09h05 Opening and Welcome:
Mr Jody Kollapen
Chairperson,
South African Human Rights Commission

09h05-09h35 Commissioner's Presentation (South African experience)
Dr. Leon Wessels
Commissioner responsible for the right of access to information,
South African Human Rights Commission

09h30-10h00 Open Democracy Advise Centre (ODAC) Presentation (Findings of
ODAC's comparative analysis of the implementation of freedom of
information): Mr. Richard Calland & Ms Teboho Makhalemele

10h00-10h30 Discussions

10h30-11h00 TEA BREAKS

11h00-12h00

Commissioner's Presentation

The Americas:

Mr O Lopez Presa (Deputy Information Commissioner of Mexico)

Mr John Reid (Information Commissioner of Canada)

Mr Richard Huff (Director of Information and Privacy: Department of Justice USA)

Mr Eric Turner (Director for Freedom of Information Commission: Connecticut USA)

12h00-12h30 DISCUSSIONS

12h30-13h30 LUNCHESES

Session 3

13h30-15h00

Commissioner's Presentation

Europe

Ms M Puybasset (Commissioner for Access to Information: France)

Dr K Swanstrom (Chief of Staff: Parliamentary Ombudsman Sweden)

Mr Castro Martins Agostinho (Director for Data Protection Portugal)

15h00-15h30

TEA

15h30 17h00

DISCUSSION

Session 4

Welcoming Dinner

Time: 19h00

Place: Cape Town, South Africa

Venue: The Mount Nelson Hotel

Programme

Facilitator: Dr. Leon Wessels

19h00 Starters

- 19h15 Opening Remarks
Dr Wessels (SAHRC)
- 19h30 Intsika Ya Africa Marimba Band
(University of Cape Town)
Marimba Band
- 20h00 Welcoming address
Her Worship, Ms Nomaindia Mfeketho
The Executive Mayor
City of Cape Town,
South Africa
- 20h15 Intsika Ya Africa Marimba Band

21h00 End of Dinner

Session 5

Tuesday, 03 February 2004

08h30-10h00 Commissioner's Presentation

Facilitator: Dr. Leon Wessels

Dr A Dix (Commissioner for Freedom of Information: Germany)
Prof. H Garstka (Commissioner for Freedom of Information:
Germany)
Mr U Kukk (Commissioner for Freedom of Information: Estonia)

10h00-10h15 TEAS

- 10h15-11h15** Mr K Dunion (Information Commissioner: Scotland)
Mr G Smith (Deputy Information Commissioner: United Kingdom)
Mr A Peterfalvi (Commissioner for Freedom of Information:
Hungary)
- 11h15-11h45** Discussion
- 11h45-12h10** Way Forward
- 12h10-12h15** Closing Remarks

12h15-12h45 Lunch

- 12h45** Leave for Robben Island

Annexure B: List of Attendees



PARTICIPANTS- FOR 2nd INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS HELD IN CAPE TOWN SOUTH AFRICA ON 2-3 FEBRUARY 2004

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3	The Hon Mr John M. Reid PC	Information Commissioner	Canada	+ 16 13 995 2410	+ 16 13 947 7294	Place de Ville, Tower B 112 Kent Street, 22 nd Floor Ottawa, Ontario K1A 1H3 CANADA jmreid@infocom.gc.ca

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5	Dr Attila Péterfalvi	Parliamentary Commissioner for Data Protection and Freedom of Information	Hungary			H-1051 Budapest, Nádor u. 22 HUNGARY adatved@obh.hu baka@obh.hu
6	Dr Alexander Dix	Commissioner for Data Protection and Access to Information	State of Brandenburg Germany	+ 49 03 3203 / 3560	+ 49 03 3203 / 35649	Stahnsdorfer Damm 77 14532 Kleinmachnow, GERMANY dix@lda.brandenburg.de www.lda.brandenburg.de
7	Prof. Dr. Hansjürgen Garstka	Commissioner for Data Protection and Freedom of Information	State of Berlin Germany	+ 49 30 138 89-0	+ 49 30 138 89-201	Pallasstr. 25/26 10781 Berlin, GERMANY Garstka@datenschutz-berlin.de vecchi@datenschutz-berlin.de
8	Mr Philip Fischer	Ph. D Student: Researching; Freedom of Information Legislation	Berlin Germany	+ 49 30 536 980 95		phil@comts.de
9	Mr Agostinho Castro Martins	President of the Commission of Access to Administrative Documents (CADA)	Portugal	+ 35 1 213 933 570		Rua de Sao Bento, 148-2 12hoo-821 Lisbon PORTUGAL cada@mail.telepac.pt

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10	Mr Urmus Kukk	Director General of Estonian Data Protection Inspectorate	ESTONIA			Aarelaid Hillar Estonian Data Protection Inspectorate Väike-Ameerika 19 Tallinn 10129 ESTONIA info@gov.ee
11	Mr Richard L. Huff	Co-Director Office of Information and Privacy United States Department of Justice	United States of America	+202-514-4233	+202 514 1009	Richard.L.Huff@usdoj.gov
12	Mr Kevin Dunion OBE	Information Commissioner	Scotland	013 34 46 46 10		Kiburn Castle, doubledykes Road St Andrews, Fife, KY16 9DS enquiries@itspublicknowledge.info www.itspublicknowledge.info
13	Ms Charmaine Rodriguez	Director Commonwealth Human Rights Initiative	New Delhi India	+ 91 11 268 646 78/268 5052.3 + 91 11 265 357 68		B117, First Floor Sarvodaya Enclave New Delhi 110017 prasad@humanrightsinitiative.org majadhun@vsnl.com
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17	Mr José Octavio López Presa	Deputy Information Commissioner	Mexico	+55 306 7 2400 ext. 2501		Insurgentes Sur 1971, Torre III Piso 8 Guadalupe Inn, 01020 MEXICO, D. f Jorgina.gaxiola@ifai.org.mx Lia.limon@ifai.org.mx
17	Justice Emile Francis Short	Commissioner Human Rights Commission and Administrative of Justice	Ghana	+ 09 233 21 662 567	+ 09 233 21 660 020	P.P. Box AC 489 ACCRA GHANA kwameshort@hotmail.com
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19	Mr Prabhu Singh	Assistant Financial Adviser	India	+ 27 12 342 5392	+ 27 12 430 5106	dhc@hicomid.co.za
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	Dr Leon Wessels	Commissioner in charge of Promotion of Access to Information Act South African Human Rights Commission	South Africa	* 27 11 484 8300	+ 27 11 484 8304	29 Princess of Wales Parktown Private Bag 2700, Houghton 2401 South Africa lwessels@sahrc.org.za
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26	Mr Sello Hatang	South African History Archives	South Africa	+27 11-717-1941		sahas@library.wits.ac.za
27	Adv. David Porogo	Deputy Information Officer (PAIA) Dept. Of Justice and Constitutional Development	South Africa	+27 12-315-1020	+27 12-323-3595	dporogo@justice.gov.za
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