

**The Implementation Of
The Access To Information Act:
*The Jamaican Experience –
Challenges & Successes***

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Effective Implementation:
Preparing to Operationalise the New India
Right to Information Law

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1. The Access to Information Act

The Jamaican Access to Information Act was promulgated in July 2002. Its key provisions include:

a. Part 1 - S. 2-13

The Objects of the Act, as set out at S. 2, are to promote transparency, accountability and increased public participation in national decision making by granting to the public a general right of access to official documents held by public authorities.

A public authority must publish within 12 months of the commencement of the Act, its establishment or the date of the Order bringing it under the Act, whichever is later, information on its organization and functions. **(S. 4)**

The Act is made to apply to all public authorities **(S. 5)** and official documents which are up to 30 years old **(S. 6)**

The Act does not apply to the Governor General, judicial functions of a court, the holder of a judicial office or other office connected with a court, the security or intelligence services in relation to their strategic or operational intelligence gathering activities

Notwithstanding these exclusions, the Act does apply to official documents relating to administrative matters held in a registry or other office of a court

By Order of the Minister, the Act may be made to apply to any body or organisation which provides services of a public nature essential to the welfare of the Jamaican Society.

b. Part II - S. 6 – 13

The right of Access – Every person shall have right of access to an official document. No reason is required to be give and applications may be made in writing or transmitted by telephone or other electronic means (letter, email, fax) **(S. 7)** Deferral of access may only be done under stipulated conditions and the deletion of exempt matter is subject to conditions

Fees are payable only for the reproduction of documents. **(S.12)**

c. Part III S. 14-23

The Act provides for 9 Categories of Exemption. These include:

- Cabinet documents
- Documents affecting security, defence or international relations
- Documents relating to law enforcement
- Documents subject to legal privilege
- Documents affecting National Economy
- Documents revealing Government's deliberative processes
- Documents revealing trade secrets
- Documents relating to Heritage sites
- Documents affecting personal privacy

Exemptions, however, cease to apply 20 years after the creation of the Document.

d. Part IV - S. 24-28

Amendment and Annotation of Personal Records

e. Part V — S. 29-32

Review and Appeal: The Act provides for two avenues of redress (**S. 29-32**):

- Internal Review where the entity making the original decision denying access is asked by the Applicant to review that decision
- Appeal to Appeal Tribunal where the Applicant may seek to overturn the decision taken at Internal Review or where Internal Review is not applicable,

f. Part VI – Miscellaneous – S. 33-38

- It is an Offence to do acts to prevent disclosure (**S. 34**)
- A Penalty of a fine of up to 500,000.00 or imprisonment of up to 6 months or both is stipulated
- The non - application of Official Secrets Act to disclosure of information under ATI Act is provided for at **S. 35**
- The Minister must report to Parliament on the operation of Act at the end of each year
- Review of Act must take place not later than 2 years after appointed day. (**S. 38**)

Schedules

- First Schedule combines with S. 4 to detail the Information required to be published by Public Authorities
- Second Schedule sets out the Constitution of the Appeal Tribunal

2. Supporting Effective Implementation

The Access To Information Unit

The ATI Unit was established in July 2002 to drive the implementation and proper administration of the Act. It is headed by a Director and its staff structure is proposed to comprise a Public Education Team and Monitoring Team. Currently, a Public Education Manager and administrative support (Executive and Senior Secretaries) make up the staff complement. This is recognized as being inadequate and efforts have now commenced in earnest engage additional staff.

Implementation Strategy

Jamaica's implementation strategy is, of course, manifold. Primary components include:

1. PHASED IMPLEMENTATION

Based on assessments of the Entities, carried out by the Unit regarding the state of their records and their ability to retrieve information easily, it was evident that there were varying degrees of preparedness and the need to focus on stronger records management practices

The Decision was taken in May, 2003 to apply the Act to groups of government bodies rather than apply to all Entities at once in order to ensure a measurable degree of success and minimal chaos upon commencement of the Act

This proposal was taken to both Houses of Parliament and the Act consequently amended in December, 2003

Statutory Features:

- Pursuant to the Amendments, the Act would apply to such entities as would be stipulated by the Minister of Information by Order within 18 months of commencement of the Act. The Act was made to commence on January 5, 2004
- The Act would apply to all Government Entities automatically upon expiration of 18 months.

Administrative Features:

- Commencement of Phasing of main bodies (Ministries) in 4 Phases over 1 year
- Agencies and Departments to follow
- Developed and Issued Action Plan Templates to Government Bodies for completion indicating state of readiness regarding eg. efficiency of records management systems, staffing and resource needs

2. ADOPTION OF A POLICY OF INCLUSION

Under the direction of the Access to Information Unit from the outset, it was resolved to include, at critical points in the ATI Programme, key stakeholder groups. For instance, amendments to the Act and the development of Regulations saw both government, opposition members and representatives from civil society around the discussion table and finally arriving at decisions favourable in large part, to all.

Similarly, civil society, including representatives from lobby and media groups, were enjoined in the general monitoring of the Programme and invited to inform the government, through Reports and intermittent meetings, of favourable or negative developments as encountered in their own experience.

3. DEVELOPMENT OF AN INITIAL IMPLEMENTATION PLAN

4. COMMISSIONING OF TASK FORCE TO CARRY OUT PLAN AND DRIVE INITIAL IMPLEMENTATION

5. INITIATION AND PROMOTION OF CRITICAL PARTNERSHIPS AND THE ENGAGEMENT OF CIVIL SOCIETY

6. INTENSIVE, CONTINUOUS TRAINING OF PUBLIC OFFICIALS

7. DEVELOPMENT AND WIDE DISSEMINATION OF SIMPLE-USER FRIENDLY INFORMATIONAL MATERIALS

3. A Contextual Breakdown Of The Unit's Initial And Continuing Activities

During the 1 year and 6 months leading up to the commencement of the Act, the Unit embarked upon activities designed to honour the above components of the Strategy and which would be critical to buy - in from all government and non- government stakeholders:

Encouraging Buy In

As part of the Inclusion Policy, Letters of Introduction inviting the collaboration and involvement of key individuals and groups, were sent by the Unit to:

- The Leader of the Opposition and key Opposition members. Subsequent to that, all reports, etc. emanating from the Unit have been supplied to them
- All Permanent Secretaries, the heads of Ministries and Agencies, who were required to identify Officers who would carry out the daily tasks involved in the grant of access
- Civil Society Groups
- Private Sector Groups

Attorney General's Chambers

Contact was made with the Attorney-General's Chambers (the Government's official advisors) to identify key persons who would be responsible for responding to requests received from Government entities for advice on ATI applications.

Task Force

The Task Force visited all Ministries to view Registries and meetings with Permanent secretaries to discuss deficiencies in Staff complements and records management concerns.

Records Management Practices

Effective Practices on Records Management were encouraged and implemented through collaborative Training with the Government Archivist's office and a Team of Records Analysts. Attention to this area continues through regular monthly meetings of the Government Records and Information Management Body (GRIM), which comprise most information managers in government. It should be noted that most of the Responsible Officers mandated to administer the Act are trained as records/information managers and were employed as such before taking on the role of Responsible Officers.

Forming Critical Partnerships

Strategic partnerships have been formed/encouraged with the following persons/bodies:

- The Minister responsible for the Act
- Chief Policy Development Entity (Cabinet Office)
- Government Opposition
- The Civil Service Association
- Agencies of Government with island - wide social impact eg:
 - Libraries & Universities
 - Consumer Education Groups
 - Local Government
- Civil Society Groups, eg:
 - Lobby groups (Human Rights, Environmental)
 - Religious & Educational Bodies
 - Media
- Consular Corps
- Jamaica Bar Association

Formation Of The Access To Information Association Of Administrators (ATIAA)

This body comprises all Responsible Officers of Government and is mandated to meet every 2nd Wednesday of each month to share experiences arising from requests for information. This body meets with the Advisory Committee of Stakeholders (see below) to discuss their own recommendations, criticisms of the management of the Programme in each entity.

Formation Of The Advisory Committee Of Stakeholders

The Terms of Reference as agreed include the non governmental monitoring of the ATI Programme, the provision of recommendations to the government on best practices and assistance with such aspects of the programme as its individual members may be able to render.

It comprises representatives from Civil Society, Private Sector of Jamaica and the media. The Committee meets every 3rd Wednesday of each month at which the Director and representatives of ATIAA are frequently present.

Intensive Training Of Government Officers

Training of over 400 - 500 Public Officers was undertaken for 5 months, from January – May 2003. Sessions were held 3 days/week, every week with each weekly session commencing with an address by representatives from all walks of society:

Public and Private sector (eg. Head of Press Association of Jamaica, Media Association of Jamaica and the Private Sector Organisation of Jamaica), the Opposition, the Cabinet Secretary, the Attorney General, Carter Center representatives, Cabinet, Consular Corps, Human Rights Groups, Jamaica Bar Association and Human Rights Groups, Principal Officers, Record/Information Managers, Registry staff, Human Resource Managers, Librarians, Lawyers and front line personnel in each entity were targeted.

Course Content included:

- An Interpretation of the Provisions of Act
- Records Management;
- Change Management
- Case Studies

A Training Manual has also been commissioned so that continued in-house training at this level might be facilitated.

Informal sensitization sessions have been carried out by the Unit since that time with emphasis on general staff at one end and middle to upper managers at the other. Additional training continues to be offered per year incorporating issues arising from interpretation of the Act and areas where difficulty is experienced. A recent training session with responsible Officers and government Lawyers focused on general principles of Copyright Law and general Intellectual Property Rights with a subsequent on scheduled for June and treating with Crown Copyright. Presentations are made by experts in the field.

Development Of Informational Publications For Government Officers, Stakeholder Groups And The General Public

These include:

- **Guidelines for the Discharge of Functions by Public Officers**
 - Disseminated to all Government Entities as well as to Stakeholder groups (hard copies, Unit's website). Details recommended procedures and practices for Public Officers under following circumstances:
 - Receipt of Applications
 - Clarification of Applications
 - Computation of Time lines for responding to requests (eg, counting of time to meet 30 day period, acknowledgement and transfer of applications)
 - Application of Exemption provisions (the do's and don'ts)
 - The Public Interest Test and how to apply
 - Handling Requests for fee waivers
 - Response Form Letters (9 Form Letters A – I providing precedents re responses in various scenarios.
 - Names, location, contact numbers (tel. & fax) and email addresses for all Responsible Officers
- **Training Manual**
- **Road Map** – A Master List of all Government Entities, their functions and portfolio responsibilities, Principal Officers, Responsible Officers, location and contact information was developed and disseminated to government officers themselves (it is believed that in any jurisdiction, it will come as no surprise that many government entities have no idea as to what other entities do, where they are, the names of key personnel and contact information). This was done primarily to create a community of sorts and also to facilitate the transfer process and the related timelines.
- **Users' Guide** – Containing guidance and strategies on the writing of requests for applicants and includes a breakdown of the legislation, portions of the Road Map, what to expect and what should not happen upon making a request.

- **Newsletters, Pamphlets (FAQ's) and Posters**

4. Public Education/Awareness Campaign

The implementation of a finely tuned, broad-spectrum educational campaign has been one of the greatest challenges to date. This has been largely due to the inadequacy of funds and staff at the Unit.

While the Jamaica Information Service has been greatly utilized, innovative, broader approaches are now being taken to extend the ATI message further across Jamaica and particularly to rural areas. Assistance from sister Government agencies with established information dissemination networks and extensive community reach has been sought and received and the Programme is expected to begin in earnest by the end of June, 2005.

Agencies so utilised include:

- Social Development Commission
- Local Government Bodies (Parish Councils)
- Consumer Affairs Commission
- Social Policy Evaluation Unit
- Jamaica Library Service
- Banks
- Post offices

Assistance from the Media has also been enlisted anew and they have now begun, in recent times, to attribute stories to disclosures made under ATI whenever this is the case.

Again, the inclusion of ATI on Curricula of Secondary and Tertiary Educational Institutions has also helped. Other strategies that have been employed to create greater awareness of the Act include:

- The inclusion of the names, telephone, fax numbers and email addresses of Responsible Officers in the National Telephone Directory
- The Publication of the Users' Guide on the websites of the Unit and Government Entities
- The annual holding of Open Days on ATI at all Ministries and some Agencies, where an entire day is devoted to ATI requests and highlighted in the media
- Holding of Public Fora
- Mounting of ATI exhibitions/displays at all the Ministries and highlighting it in the media.
- Observance of International Right to Know Day each year involving activities with Civil Society along with Parliamentary Recognition of the day
- Establishment of an ATI Help Center (now underway)

Financial Sponsorship from Corporate Entities has been sought and it is proposed that a part of each government's entity's Public Education Funding in their respective Budgets be allocated for ATI purposes. The latter is expected to potentially come on stream in 2006. Additionally, an ATI lunchtime lecture series has been planned with the University of the West Indies and will get underway in June.

5. Breaking Down The Culture Of Secrecy

This has been attempted through the execution of a number of strategies. These include:

- a. Training and continued scheduled sensitisations
- b. Annual Principal Officers' Retreats at which are present the Minister of Information, Cabinet Secretary, and guests from other jurisdictions, who make Presentations on the benefits (environmental, human rights, economic and social) brought to bear on their societies through use of the Act
- c. Inclusion of ATI on Curricula at High Schools and Universities so that the next generation comes to regard the right to information as an actionable one and not a privilege extended by the government.
- d. Inclusion of ATI on Performance Management Evaluation exercises through out government
- e. Development of an Incentive programme (in collaboration with other bodies, eg, Carter Center) for those entities with the best compliance with the Act in different respects
- f. Regular involvement of experts, through information exchanges, from other jurisdictions to reinforce global trends
- g. Constant interaction between Unit and the Management and line staff of Gov't Entities
- h. Sales Pitch (benefit to all of us, even in respect of promotions etc, and not us (government) against them (public))
- i. Further, Carry out Policy of Inclusion by:
 - Encouraging recommendations from administrators (ATIAA) of the Act themselves regarding unclear/grey areas of Act
 - Involvement of Government Legal Officers through combined and separate training and the establishment of a Legal Officers' Task Force to provide recommendations to the Parliamentary Committee formed to review Act
- j. Quarterly Report Card on each Entity through publication of Director's Quarterly Report which is disseminated widely within and outside of government (published on - line)
- k. Strong enforcement measures by Appellate body

All told, the experience has been encouraging to date, in that, quite uniquely, most entities have come to terms with the idea of the additional duties with respect to ATI and realize its value and potential. There are of course, a few entities which have exhibit closed tendencies and have consequently found themselves before the Appeal Tribunal.

It is believed that the approach taken from the start (see above), and the critical support of the responsible Minister, the Cabinet Office and the Opposition, established the foundation and reinforced the critical part which Access to Information is expected to play in reducing corruption in government and the high expectations of the public and the outside world.

6. Monitoring & Evaluation

Monitoring and evaluation are carried out through a combination of exercises:

- Government Entities are required to complete Monthly & Quarterly Reports and submit to the Unit. This of course has become a more arduous exercise as the number of entities administering the Act grows and the Unit's staff complement remains the same.

The sourcing and eventual purchase of software used by other jurisdictions is now being considered with funding being sought through budgetary allocations and external aid.

- Customer Evaluation Surveys are carried out but not with the consistency and scientific application desired. Steps are now being taken to include Customer Service Evaluations on ATI on the Customer Service Programme run by a department of the Cabinet Office.
- Reports from various stakeholder groups, eg the ATI Advisory Committee of Stakeholders, local human rights groups, environmental lobby, are submitted to the Unit and the findings contained therein represented in the Quarterly Reports issued by the Unit which are then widely disseminated through websites etc.
- Findings on the efficacy of the Programme are then discussed and resolution sought at individual and joint ATIAA and Advisory Committee of Stakeholders meetings.
- Websites of the Entities are also monitored to ensure the proactive publication of information which is of public interest and/or which has already been disclosed through an ATI requests

7. Enforcement Measures

Enforcement of the Right to Information will be carried out through Internal Review and Appeals to the Appeal Tribunal.

The Appeal Tribunal, established for that purpose, has been much delayed in the development of their Rules of Procedure which will govern the conduct of appeals (there are currently 10 Appeals waiting to be heard) before it. These Rules are now being finalized.

This is most certainly not the best situation. However, Appellants are constantly updated and it is expected that the Appeals will finally be heard in June.

In 2004, the Volunteer Attorneys Panel (VAP) was established in collaboration with the Carter Center and the Jamaica Bar Association. This body comprises attorneys in private practice who have volunteered their services pro bono to Applicants wishing to Appeal.

8. Overall Impact Of ATI After One Year Of Operation – Successes & Challenges

Inadequate Resources both in terms of Staff and Finances continue to be obstacles.

Nonetheless, the Programme has, by all accounts, enjoyed measurable success. The broad spectrum of applications received and the constant use of the Act by lobby groups and the media is quite encouraging.

Of concern, on the other hand, is the limited use by the general public. This has been recognized and every effort now being made to strengthen the Public Education/Awareness programme.