

**REPORT OF THE JOINT SELECT COMMITTEE  
ON THE BILL SHORTLY ENTITLED  
"THE ACCESS TO INFORMATION ACT, 2002"**

Members of the Honourable House are reminded that on the 4<sup>th</sup> day of December, 2001 on a motion moved by the Leader of the House, on behalf of the Minister of Information, the House of Representatives passed the following resolution:

BE IT RESOLVED that a Bill entitled, "The Access to Information Act, 2002" be referred to a Special Select Committee comprising: -

Hon. Collington Campbell

Hon. Fitz Jackson

Mrs. Sharon Hay-Webster

Rev. Ronald Thwaites

Mr. Canute Brown

Mr. Lester "Mike" Henry

Mr. Delroy Chuck

Ms. Olivia Grange

to sit jointly with a committee to be appointed by the Senate to consider and report on the Bill.

On December 7, 2001 on a motion moved by the Leader of Government Business in the Senate, the Senate passed a similar resolution and appointed a Special Select Committee comprising: -

Sen. Hon. Alfred Rattray, O.J.

Sen. Frederick Hamafcy, Q.C.

Sen. Prof. Trevor Munroe

Sen. Ryan G.S Peralto

Sen. Anthony S. Johnson

to sit jointly with a similar Committee appointed by the House of Representatives to consider and report on the Bill entitled, "The Access to Information Act, 2002."

In its consideration of the Bill, the Joint Select Committee held twelve (12) meetings, the first of which took place on December 11, 2001. The Committee received submissions from the

Farquharson Institute for Public Affairs; the Jamaicans for Justice; Transparency International; the Carter Centre; the Library and Information Association of Jamaica; the National Environment and Planning Agency; the Norman Manley Law School Students Association; the Jamaican Bar Association; the Bank of Jamaica;

the Statistical Institute of Jamaica; Mr. Leroy Brown; the Contractor General's Office; the Ministry of National Security; the Cabinet Office; the Press Association of Jamaica; the Media Association of Jamaica; the Jamaica Public Service Company Limited; the Jamaica Bauxite Institute; the Media Association of Jamaica; the Jamaica Civil Service Association; the Jamaica National Heritage Trust; the CARIMAC Centre, UWI; and the Private Sector Organization of Jamaica. The Committee also drew from the experiences of other jurisdictions which have legislation in place to deal with access to information. These included the United Kingdom, Australia, Canada, the United States, South Africa, Belize, New Zealand, among others.

The Joint Select Committee has the honour to present its findings and recommendations with respect to the Bill entitled, "The Access to Information Act, 2002."

• **Overview**

The Committee was informed that the Bill shortly entitled "The Access to Information Act, 2002" seeks to implement the recommendations contained in a report entitled "Freedom of Information: a Door to Open Government" which was tabled in Parliament in June 1996. The Bill provides members of the public with a general right of access to official documents that are not exempt and also provides for the grant of access in certain circumstances to categories of documents which would otherwise be exempt from disclosure. The Bill also seeks to preserve certain fundamental principles underlying the system of constitutional democracy, namely:-

- governmental accountability;
- transparency; and
- public participation in national decision-making.

The Committee was further informed that the public sector in Jamaica has been characterized by a tradition of secrecy, primarily

because of the Official Secrets Act, and therefore, access to information represents a movement away from secrecy to open government. It was recognized that this proposed paradigm shift towards availability of information will render the retention of the Official Secrets Act an anachronism and therefore, it is proposed that in time, that Act will be repealed and replaced, and provision would be put in place for the criminalization of restricted categories of information, where disclosure would be inimical to the public interest.

Committee members recognized that concomitant with this Access to Information legislation is the need for education to ensure that the public sector liberates itself from the existing culture and accept the fact that the principles of accountability and openness are important elements in government of the people, by the people and for the people.

The Committee reinforced the point that the spirit of the Act is to encourage cooperation between the public and the public authority. They also made the point that the Access to Information Act is part of a package of Acts dealing with information management and control.

## a Findings

### **1.0 SHORT TITLE**

1.1 Some interest groups felt that the title "Access to Information Act" suggested that members of the public were being allowed access to information rather than the fact that they had a right of access to information. Suggestions were made for the original title of the Bill, "Freedom of Information Act" to be adopted once more because it conveyed that the people had an inherent right to the information. The Committee felt however that the present title of the Act should remain unchanged.

### **2.0 ELECTRONIC DOCUMENTS**

2.1 Committee members felt that provisions should be made in the Act to deal with electronically generated or electronically stored documents as well as the electronic retrieval of such documents. They agreed that the definition of 'documents' would have to be

amended to deal with this concern. Provisions would also be made in the Regulations to deal with electronically stored or retrieved publications.

### **3.0 APPLICATION OF THE ACT**

3.1 Concerns were expressed about the provision that the Act would apply to documents created or held by the public authority not earlier than seven years immediately preceding the appointed day. It was felt that this seven year period was too short and would lead to a significant gap between that time and the thirty period when the records were turned over to the Jamaica Archives and Records Department. The Committee agreed that this period should be extended to thirty years.

3.2 The Committee also felt that the Act was excessively restrictive in terms of the persons to whom it would not apply. They proposed and agreed that the Act would in fact apply to the administrative matters of the Court and of the Governor General. Conversely, due to the sensitive nature of these information, it was agreed that the Act should not apply to the strategic and operational intelligence gathering activities of the security or intelligence services.

### **4.0 EXEMPTIONS and EXCLUSIONS**

4.1 Concerns were expressed that no time frame was provided for in the Act to allow documents that were once exempt to come into the public domain. Members feared that as a result of this, the public authority could continue to treat the document as exempt in perpetuity, unless the exemption has been lifted or unless the document has been turned over to the Jamaica Archives and Records Department. It was agreed that provision should be made for the exemption to be lifted after 50 years or after such longer or shorter time as the Minister may decide, subject to affirmative resolution. Some members had reservations about the discretionary power given to the Minister to lift the exemption before or after the 20-year period. They were reassured however, that this was the most appropriate route to take given the fact that they were not aware of all the international treaty obligations and matters of national defence that would require a longer or shorter period of exemption.

4.2 The Committee recognized that there were a number of other Acts which may be affected by this change for example, the Archives Act which made a reference to thirty years. The Committee therefore recommended that the amendments to the Archives Act, which were currently in progress, should take effect simultaneously with the Access to Information Act to ensure that they were not in conflict. It was further recommended that all the other related Acts should be reviewed as early as possible to ensure that there was uniformity.

4.3 Cabinet Documents - Committee members were of the view that the Act should specifically outline the Cabinet documents that would be exempt. These would include: (a) a cabinet submission, cabinet note or other document created for the purpose of submission to the Cabinet for its consideration or has been or is intended to be so submitted; or (b) a Cabinet Decision, or other official record of any deliberation of the Cabinet.

Committee members felt that while cabinet documents should be exempt, any documents appended to a cabinet document should not be exempt. Specific reference was made to documents concerning the contracts awards process and submissions from the National Contracts Commission, which should be made available to the public. It was therefore agreed that a provision should be inserted in the Act to exclude these appendices and other factual reports, studies, tests or surveys of a scientific or technical nature from exemption.

It was argued further that while the Cabinet Decision would be exempt, any document which contained the substance of the decision would not be exempt. It was agreed that a provision would be added to incorporate this concern.

4.4 Documents subject to legal privilege etc. - Concerns were expressed that the wording of Clause 17 (b)(i) did not clearly convey the intent of the provision which was that it would not apply in cases where the disclosure was made in the public interest. It was therefore agreed that Clause 17(b)(i) should be reformulated to provide: "would constitute an actionable breach of confidence".

4.5 Documents affecting national economy - Representations were made that Clause 18 as presently drafted was very wide and could cause the public to have limited access to important documents that were not secret. It was also stated this provision prevented persons from accessing pertinent information which would be of Interest for the national good. The example was given that the documents may be needed as proof or verification of corruption or mismanagement which may affect the economy. The Committee decided to amend this provision to make it applicable to disclosure that would have a substantial adverse effect on the Jamaican economy or the Government's ability to manage the Jamaican economy.

4.8.1 The Bank of Jamaica made a proposal to include a new provision to make specific reference to the exemption from premature disclosure of the official documents of the Bank of Jamaica that relate to or affect its conduct of monetary and exchange rate policy. The concern was that the premature disclosure of certain information could cause unnecessary panic and adversely affect certain variables in the economy such as monetary policy, price stability, among other things. Members argued however that the Bank of Jamaica, under the various legislation that governed its operations, had the power to refuse to release certain documents that should be protected. They also would have the power, under the Access to Information Act, to refuse to confirm or deny the existence of such documents. After extensive debate, the Committee decided that these concerns would be adequately met by amending Clause 18 to include "monetary policy and exchange rate policy".

4.6 Documents revealing Government's deliberative processes -

Submissions were made that the documents containing the opinions, advice or recommendations of public servants and the deliberative process should not be exempt as these should be open to public scrutiny, and therefore, Clause 19 should be deleted in its entirety. It was felt that in order to facilitate public participation in decision-making, the public must be aware of the decisions to be made. Representation was made further, that the Clause did not conform to Government's objective of transparency and that this blanket exemption gave the impression that all official documents which formed part of Government's deliberative process would be exempt from public disclosure. It was proposed by some persons however, that while these documents could be made public, the

names of the officers who gave the advice etc. should be deleted before disclosure. Other interest groups proposed that the deliberative process exemption should be narrowed to include a link with specific harm, that is, the candid exchange of views within Government during the policy-decision period. Some Committee members felt that while the documents containing the decisions themselves could be made public, the deliberative process which went into arriving at the decisions should be exempt. Reference was made to the fact that other jurisdictions such as the United Kingdom, the United States, Canada and Australia have seen it fit to exclude the deliberative process. It was argued that some of these documents may have been prepared for public consumption and not solely for the government process. It was also felt that care should be taken to ensure that, in developing government policy, the process of candor was not frustrated by creating a situation where public servants felt that they needed to be less than open in giving their advice. It was therefore agreed that the Clause should be preserved and that it should be clearly understood that the exemption would only apply in cases where people have given their professional advice rather than any general work which they have done in the normal course of their duties.

Although some members of the Committee pointed to the fact that provision was in place in this Clause to disclose the documents upon application of the public interest test, concerns were expressed that this provision vested too much discretionary power in the public authority and could lead either to: (i) the discriminatory release of information or (ii) the situation where in most cases the public authority would prevent disclosure of the information on the grounds that disclosure was not in the public's interest.

4.7 Documents relating to business affairs etc. - It was

brought to the Committee's attention that if the present wording of Clause 20 was preserved, then the entitlement of the public to information on the financial affairs of the public authority which presently existed would be taken away. It was felt that the provision should preserve this current practice, as there was need to encourage openness. It was therefore suggested that information on the financial affairs of the public authority should not be concealed, rather, it was information concerning the commercial interest, of the company that should be protected. The view was expressed however that in fact, the commercial interest of a

company should be challenged because that would result in competition. It was proposed and accepted that the real intent of the provision was to ensure that if someone had information that was proprietary but it was lodged with the Government, then the Government should not be able to disclose that information. It was therefore agreed that an appropriate amendment would be made to protect proprietary information held by a public authority and also to protect information which was proprietary to the public authority itself.

4.8 Representations were made by some organizations such as the Statistical Institute of Jamaica, the Jamaica Public Service Company and the Jamaica Bauxite Institute for information which they hold to be exempt from disclosure under this Act. The Jamaica Public Service felt that having to provide this information to the public in addition to the present obligation to supply the same information to their regulator, the Office of Utilities Regulation, would be an onerous responsibility on the company. They suggested that the public should simply request the information from the Office of Utilities Regulation. The Committee informed them that they would not be excluded from the application of the Act because the public had a right to request the information directly from the company.

4.9 The Statistical Institute of Jamaica felt that the information they collected was confidential and should therefore be protected under this Act. The Committee suggested however that this concern would be better addressed under the Statistics Act.

4.10 The Jamaica Bauxite Institute proposed that information concerning the location of mineral deposits should be exempt from disclosure because public awareness of such information often resulted in the company having to spend additional funds to relocate persons who encroached on the properties in question. This affected the viability of the company and also affected their ability to carry out their mining plans within the set timeframe. The Jamaica Bauxite Institute was informed that it appeared to be the mining plan which should be protected and in this case, the provisions of Clause 80 adequately covered this concern. The Committee further recognized that the problems highlighted by the company were associated with the issue of 'squatting' which was not unique to that industry. Members suggested that where the company came into information that an area had bauxite deposits,



they could ask the relevant authorities to declare the area as a reserve area for such purposes.

4.11 Documents relating to heritage sites etc. - Some persons expressed the view that keeping information secret about heritage sites and endangered species would not in fact protect them from being exploited by unscrupulous members of the public. The proposal was also made for Clause 21 to be deleted as heritage sites and endangered species could not be protected through exemptions. It was stated that the word 'heritage' meant that it belonged to the people by inheritance and these documents should not be kept secret. The Committee felt however that the Clause should not be deleted because documents relating to certain aspects of heritage sites and endangered species should in fact be exempt from disclosure.

4.11.1 The Committee was convinced that documents containing information on: (i) any historical, archaeological, or anthropological resources; and (ii) anything declared to be a national monument, designated to be protected national heritage, or protected by a Preservation Notice under the Jamaica National Heritage Trust Act should be protected under Clause 81 (a). It was further stated that there might be other things of value which had the potential to be declared or designated as national monuments by the Jamaica National Heritage Trust and which, if destroyed, would be forever lost to the country. Therefore, it was proposed and accepted that these categories of things would also be protected under Clause 21(1)(a).

4.12 Refusal to, confirm or deny existence of exempt documents -

Strong objections were raised to the inclusion of this provision in the Act. Some felt that this Clause would legitimize and institutionalize lying and deception by the Government to the Jamaican public and would foster corruption. Concerns were also raised that this provision departed from the intent of the Access to Information Act because it did not encourage openness and transparency. It was felt that in the few instances where a confirmation or denial of the existence of the document would likely have the same effect as a disclosure, there were other mechanisms in the Act to protect such documents from disclosure. It was therefore agreed that Clause 23 should be deleted.

4.13 Issue of Certificate of Exemption- The Committee agreed that the Minister should have the power to issue a certificate of exemption for documents relating to Clauses 14, 15, 16 and 18.

4.13.1 Questions were raised as to the necessity of Clause 24(3), and it was stated that the provision was needed to ensure that the appeal tribunal could not have the power to overturn a decision of the Cabinet. Concerns were also expressed that the term "conclusive evidence" suggested that even if the applicant could prove that the certificate was granted negligently or that the certificate was granted for the wrong document, he could not challenge that certificate at all because even if the matter was taken to the court, the court would be bound by Clause S4 because subsection (5) stated that it was "conclusive evidence". This meant that the effect of going to court would be a nullity because the court would only say that the certificate was conclusive evidence and they could not inquire into it.

A clarification was made that subsection (3) was intended to specifically provide that the certificate was conclusive in the sense that once it was issued, the applicant could no longer challenge it through the internal review process. However, the applicant would still have the right to challenge the issue of the certificate in the court, that is, the certificate was subject to judicial review. In other words, subsection (3) was providing that the certificate shall be conclusive that the document was exempt. It was therefore agreed that the word "evidence" should be deleted from Clause 24(3).

4.14 The question was raised as to how the public would be aware that a certificate has been issued by a Minister. It was agreed that this was a procedural matter which would be dealt with in the regulations.

## **5.0 FEES FOR ACCESS**

5.1 Strong representation was made by various special interest groups and by Committee members that no fee should be charged for the application to access an official document, rather, persons should only be required to pay for the cost of reproducing the documents. It was therefore agreed that the Act should be amended accordingly.

## **6.0 REASONS FOR REQUESTING DOCUMENTS**

6.1 Committee members strongly supported the argument that the applicant should not be asked to state the reason for requesting a document and agreed that provision should be made in the Act to ensure that this would not be done. It was felt that such a provision would eliminate the possibility of officers in the public authority arbitrarily denying persons access to certain documents because they believed that the information in these documents were not relevant to those applicants. They further agreed that the provisions in the Act which made reference to irrelevant matter should also be deleted.

## **7.0 MEDIUM FOR ACCESSING INFORMATION**

7.1 Committee members were of the view that persons should be able to submit their application for access to documents and information through the various available media such as the telephone, e-mail, letter, in person, etc. It was agreed that the Act should specifically set out the manner in which the application could be made. Consequent on this change however, the Committee recognized that some mechanism would have to be put in place to keep a record of the applications received via the various channels. It was therefore agreed that provisions would be made in the Regulations requiring the public authority to keep a book in which all the requests are recorded, persons would given a receipt or a reference number etc.

## **8.0 REQUIREMENTS FOR RESPONDING TO APPLICATION FOR ACCESS**

8.1 Committee members were of the view that the public authority must be required to respond immediately to requests for access to information so that there would be no delay. It was also felt that since requests for access could be made via various communications media, the procedure for responding to applications would be set out in detail in the Regulations.

## **9.0 TRANSFER OF APPLICATION FOR ACCESS**

9.1 It was brought to the Committee's attention that the request of an applicant could be transferred somewhere else simply because the access to information officer did not want to deal with that application. It was suggested that provision should be made in the appropriate part of Act to ensure that the persons responsible for providing information must discharge that obligation and should not be able to transfer that responsibility. It was suggested further that the decision to transfer the request should be one against which the applicant could appeal so that the decision would be subject to review. The Committee did not accept this proposal.

## **10.0 CERTIFICATION OF COPY DOCUMENTS**

10.1 The Committee carefully examined the proposal to include provision for certification of any copy document generated under the Act. It was agreed that provision should be made in the Act for authentication of these copy documents in the prescribed, and the details would be dealt with in the regulations.

## **11.0 CONDITIONS FOR REFUSAL TO GRANT ACCESS**

11.1 Objections were raised to the fact that the applicant could be refused access to official documents because the request would substantially and unreasonably interfere with the operations of the public authority and because of difficulties in providing the number and volume of documents requested as well difficulties in identifying, locating or collating the documents. Members argued that the emphasis should be placed on the duty of the public authority to assist the applicant and therefore, instead of making it a ground for refusal, the public authority should give the applicant the opportunity to be more specific in terms of identifying the document. It was stated further that the applicant should simply be asked to fulfill the requirements of Clause 7(2) Ca). It was agreed that the relevant provisions should be redrafted to achieve the objective of providing access.

11.5 Committee members also supported the argument that a provision should be included to ensure that if a document which was prepared for presentation in Parliament was not presented in Parliament within a reasonable time, that it would still be made available to the public.

## **12.0 AMENDMENT OF RECORDS**

12.1 The Committee agreed that the provisions of this Clause which dealt with administrative matters that would be better dealt with in the Regulations. They would therefore be deleted from the Act and placed in the Regulations.

IS. 2 Concerns were also expressed that the wording of Clause 26(5) suggested that one could add the new information but could not change the old information which was incorrect, that is, the error must remain with the correction. It was suggested and agreed that this could be addressed by putting a note at the side of the document to say that it was amended. This however, would be dealt with in the Regulations.

## **15.0 ANNOTATION OF PERSONAL RECORDS**

13.1 Committee members questioned the relevance of Clause 27(2) given that: (i) it relates to the person trying to change information about himself; (ii) the public authority may refuse to take action if the applicant did not satisfy the requirements in Clause 85(1) and;

(iii) the provisions in Clause 26(4) more than adequately covered this concern. It was therefore agreed that this provision should be deleted.

13.2 The Committee supported the argument that if there exists the power to make annotations to the personal records, there should be a corresponding power to refuse to make annotation if the applicant has not been able to justify that the information needed an annotation. It was agreed that an amendment would be made to incorporate this concern.

13.3 The question was also raised as to whether 'person' included a corporate firm. It was suggested that provision should be made in the Act for firms to be able to apply for an annotation to their records if there are errors to be corrected. It was recognized that this issue related to the matter of data collection and that this Access to Information legislation would not be able to meet all concerns that might arise because it was part of a package of legislation that relates to information management and control. The Access to Information Act was intended to deal specifically

with information relating to individuals and not to companies. There would be data protection legislation and there was also the obligation on the public authority to collect such information as was relevant to its purpose. It was agreed that no provision would be made in this Act to deal with the amendment of company records as this should best be done at the source where the information was generated rather than at the public authority where the records were accessed.

#### **14.0 NOTICE OF AMENDMENTS OR ANNOTATIONS**

14.1 The suggestion was made that where corrections have been made to the personal records of an applicant, then any other person who had access to the documents must also be informed that the corrections have been made. It was agreed that the Clause would be amended to include this change.

14.2 It was brought to the Committee's attention that Clause 28 made no express obligation to notify the applicant as to whether or not the amendment or annotation has been made. It was therefore agreed that provision should also be made for notification to the applicant. It was also observed that Clause 28 needed to be extended to include the power to refuse to amend. It was agreed that an amendment would be made to include such a provision.

#### **15.0 INTERNAL REVIEW, APPEAL AND JUDICIAL REVIEW**

16.1 Committee members were of the view that the provisions for internal review and appeal should be dealt with in separate Clauses and recommended that this separation should be made in the Act.

15.2 Concerns were expressed by various interest groups that there was a gap in the Act concerning the link between internal review, appeal and judicial review. Recommendations were made that the relevant amendments should be made in the appropriate Sections of the Act to clarify that: (a) there would be a right of internal review only in circumstances where the initial decision to deny access was not taken by the Minister, the permanent secretary or the principal officer and that the Minister should only

review decisions on the documents relating to Clauses 14, 15, 16 and 18 for which he could issue a certificate of exemption; (b) where the permanent secretary or the principal officer upheld the decision of the junior officer to deny access, the applicant would have a right of appeal to the appeal tribunal which should have the power to reverse this decision; and (c) where there was no right of internal review, then the applicant would have the right to take the matter to the court for a judicial review. The Committee reinforced the point that the appeal tribunal must be able to reverse decisions made to deny access in all circumstances except those in which the Minister has issued a certificate of exemption.

15.3 The Committee observed that the Act did not make provision to ensure that the tribunal had the power to summon witnesses. It was agreed that this would be provided for in the schedule.

## **16.0 PROVISIONS re OTHER ACTS**

16.1 It was brought to the Committee's attention that provision should be made in the Act to ensure that where an officer released information that was not authorized (for example information on a document for which an exempt certificate has been issued), the penalties of the Official Secrets Act should be applied to that disclosure. It was therefore agreed that Clause 55 should be amended by providing that where the officer released information in an unauthorized way under this Act, the penalties of the Official Secrets Act would apply. This would be limited to the class of documents for which a certificate of exemption has been issued.

## **17.0 PENALTIES FOR BREACHES OF THE ACT**

17.1 Some Committee members observed that there were no penalties included for breaches of this Act. They were informed that since this was an Act to provide the public with information, a policy decision was taken that there should be no criminal sanctions for refusal to provide the public with information. This was why there was need to make a link to the Official Secrets Act in Clause 35.

Committee members strongly objected to the omission of penalties under this Act because it was felt that given the importance of the

ACT and also the objects of the Act, specific penalties should be in place to deal with breaches. After extensive debate, it was agreed that a new Clause would be inserted to provide for penalties in relation to acts of commission. That is, where persons would be guilty of an offence if they deliberately altered, defaced, blocked, erased, destroyed or concealed any records held by the public authority with the intention of preventing its disclosure.

## **18.0 REGULATIONS**

18.1 Committee members agreed that the Act should be amended to reflect that the power to make regulations would be subject to affirmative resolution.

## **19.0 SECOND SCHEDULE**

19.1 Constitution of tribunal- The Committee accepted the proposal that the number of members in the tribunal should be increased from three to five so that there would be a wider panel of persons to choose from.

19.2 Tenure of office - A submission was made that the period for tenure of office in this provision should be extended to seven years to ensure that it overlapped more than one governmental period. The Committee agreed however, that the number of years for which the members of the tribunal could hold office should be increased from three to five.

19.3 Remuneration of members - Questions were raised as to whether the public would be asked to finance the cost of the remuneration that would be paid to the tribunal members. The Committee was assured that no such cost would be passed on to the public. A submission was also made that tribunal members should be paid salary equal to that of a Judge of the Court of Appeal. This proposal was not accepted.

19.4 Power to summon witnesses - It was further agreed that the Second Schedule should be amended to give the tribunal the power to summon witnesses. Consequently, a penalty would have to be put in the Regulations.

## **20.0 PUBLIC INTEREST PROVISION**



20.1 Proposals were made that there was a deficiency in the Act in the sense that although it made provision for the public interest test to be in certain cases, it did not include a definition of the term 'public interest'. This left the interpretation entirely open to the subjective views of the public authority who may wish to exempt a document, if even temporarily, from public access. It was suggested that this problem could be solved by assuming that everything that Government or its agents did was in the public interest and therefore all the matters that needed to be exempt should only be defined in terms of national security, which should then be defined to be inclusive of physical security, economic security and political security. Other proposals were also made for the inclusion of a definition of national security. It was agreed however, that no such definition would be included.

Submissions were also made that the Act needs to strengthen the public interest provisions so that the appeal tribunal could use this test in their decisions. It was also proposed that the appeal tribunal must have the authority to use the public interest test to review whether a Minister has acted justly in awarding an exemption certificate based on deliberative process. The argument was put forward that the test should be based on a balancing test as to whether the benefit to the public of releasing the information was greater than the harm.

20.2 It was contemplated that a public interest provision should be placed in Clause 13 to provide for the release of certain exempt documents (in relation to Clause 19 and 21) where such disclosure was in the public interest. They were informed however that the public interest provisions were already in place in the relevant Clauses.

## **21.0 IMPLEMENTATION OF THE ACT**

21.1 Proposals were made that a date for the coming into force of the Act should be specified. It was suggested that if necessary, a phased introduction of the Act should be considered and the appropriate systems, training and resources need to be in place become the law comes into force. It was also felt that the Act should assist implementation where possible by providing a framework, for example in relation to request procedures and access to information officers. The Committee was also told that

the Act should be implemented in a manner that would enhance the image of the public service and should not be passed into law without the necessary prerequisites for implementation as this would severely tarnish the already battered negative image of the Service.

21.2 Others held the view that the Act should take full force once it becomes law. It was stated that gradualism was not the approach to take as this would invite doubt, ambiguity and ambivalence. This proposal further highlighted the need however, for the requisite support to be in place for providing persons with information when they requested it so that they would not be frustrated. The Committee was informed that there would not be a perfect environment for the implementation of the Act but that the various ministries and departments were being prepared administratively to deal with its implementation and the process of preparedness would be ongoing. They were also told that provision has been made in the current budget for financing the various activities, including the setting up of the Access to Information Unit which is to be fully staffed. They were further informed that there is to be some amount of funding within the public authorities themselves to deal with the provision of information to the public. Each public authority should also have an access to information officer in place to deal with requests for access.

- Recommendations

The Committee has the honour to recommend the amendments to the Bill which are attached at Appendix I.

- Thanks

The Committee wishes to thank all those members of the public who sent in written submissions or who made oral presentations, the staff of the Ministry of Information, the staff of the Legal Reform Unit, the staff of the Constitutional Reform Unit, the staff of the Jamaica Archives and Records Department, representatives of the Attorney General's Department, the Chief Parliamentary Counsel and staff, and the Clerk to the Houses and staff for their invaluable assistance.

*Houses of Parliament, March, 02*

ATTENDANCE

(12 MEETINGS)

	Present	Absent	Apology
Hon. Collington Campbell	12	0	0
Hon. Fitz Jackson	10	2	0
Mrs. Sharon Hay-Webster	10	2	2
Rev. Ronald Thwaites	3	9	5
Mr. Delroy Chuck	8	4	2
Mr. Canute Brown	12	0	0
Mr. Lester 'Mike' Henry	4	8	0
Ms. Olivia 'Babsy' Grange	8	4	2
Sen. Hon. Alfred Ratcraay, O.J.	4	8	2
Sen. Frederick Hamaty, Q.C.	4	8	7
Sen. Prof. Trevor Munroe	3	9	4
Sen. Ryan G.Q. Peralto	2	10	0
Sen. Anthony S. Johnson	8	4	1

Hon. Collington Campbell (signed)

Hon. Fitz Jackson (signed)

Mrs. Sharon Hay-Webster (signed)

Rev. Ronald Thwaites (signed)

Mr. Canute Brown

Mr. Lester 'Mike' Henry

Mr. Delroy Chuck

Ms. Olivia 'Babsy' Grange

Sen. Hon. Alfred Rattray, O.J.

Sen. Frederick C. Hamaty, Q.C.

Sen. Prof. Trevor Munroe

Sen. Ryan G.S. Peralto

Sen. Anthony S. Johnson

APPENDIX 1  
**AMENDMENTS TO THE ACCESS TO INFORMATION BILL  
RECOMMENDED BY THE JOINT SELECT COMMITTEE**

**LONG TITLE**

Delete the word " records" and substitute therefor the word " documents".

**CLAUSE 1**

Delete the numerals " 2001" and substitute therefor the numerals "2002".

**CLAUSE 3**

1. In the definition of "document", insert next after the word "embodied" wherever it appears in paragraphs (c) and (d) the words ", whether electronically or otherwise,".
2. Delete the definition of "exempt matter" and substitute therefor the following -

"exempt matter" means any matter the inclusion of which in a document causes that part of the document to be exempt from disclosure;"

3. Delete paragraph (a) of the definition of "public authority" and substitute therefor the following -

"(a) a Ministry, department, Executive Agency or other agency of Government;"

**CLAUSE 4**

Insert immediately after subsection (3) the following -

" (4) The Minister may amend the First Schedule by order subject to affirmative resolution."

**CLAUSE 5**

1. In subsection (1), delete from paragraph (b) the word "seven" and substitute therefor the word "thirty".
2. In subsection (2), delete the word "seven" and substitute therefor the word "thirty".
3. Delete subsection (3)(b) and substitute therefor the following -

"(b) any other body or organization which provides services of a public nature which are essential to the of the Jamaican society,".

4. In subsection (6) -
- (a) delete from paragraph (a) the words "and the staff of the Governor-General" and substitute therefor the words ", unless the document relates to matters of an administrative nature";
  - (b) delete paragraph (c);
  - (c) renumber paragraphs (d) and (e) as paragraphs (c) and (d) , respectively.
  - (d) in paragraph (c) as renumbered insert next after the words "to their" the words "strategic or operational".

5. Renumber subsection (7) as subsection (8) and insert immediately after subsection (6) the following as subsection (7) -

" (7) This Act applies to official documents held in a registry or other office of a court, being documents that relate only to matters of an administrative nature."

6. In subsection (8) as renumbered delete the word "[includes]" and substitute the word "means".

#### **CLAUSE 6**

Renumber subsection (2) as subsection (4) and insert the following as subsections (2) and (3) -

" (2) The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Minister may specify by order, subject to affirmative resolution.

(3) An applicant for access to an official document shall not be required to give any reason for requesting access to that document".

#### **CLAUSE 7**

Delete the section and substitute therefor the following -

""Application for access. 7. - (1) A person who wishes to obtain access to an official document shall make an application to the public authority which holds that document.

(2) An application under subsection

(1) -

(a) may be made in writing or transmitted by telephone or other electronic means ;

(b) shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify it.

- (3) A public authority to which an application is made shall -
- (a) upon request, assist the applicant in identifying the documents to which the application relates;
  - (b) acknowledge receipt of every application in the prescribed manner;
  - (c) grant to the applicant, access to the document specified in the application if it is not an exempt document.
- (4) A public authority shall respond to an application as soon as practicable but not later than -
- (a) thirty days after the date of receipt of the application; or
  - (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty days after the date of the receipt by that authority,

so, however, that an authority may extend the period of thirty days for a further period, not exceeding thirty days, in any case where there is reasonable cause for such extension.

(5) The response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty days, it shall state the reasons therefor, and the options available to an aggrieved applicant."

#### **CLAUSE 8**

In subsection (1) insert immediately after the word "applicant" the word "immediately".

#### **CLAUSE 9**

Delete subsection (3) and substitute therefor the following -

" (3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would -

- (a) be detrimental to the preservation of the document, or be inappropriate, having regard to its physical state;
- (b) constitute an infringement of copyright subsisting in any matter contained in the document.

(4) Copies of documents to which access is granted shall be authenticated in the prescribed manner."

**CLAUSE 10**

Delete and substitute therefor the following

"Assistance and deferment of access. 10. - (1) Where the information provided by the applicant in relation to the document is not such as is reasonably necessary to enable the public authority to identify it, the

authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the document can be identified.

(2) A public authority may defer the grant of access to an official document -  
(a) if publication of the document within a particular period is required under the provisions of any enactment, until the expiration of that period;  
(b) if the document was prepared for presentation to Parliament or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to the person or body;  
(c) if the premature release of the document would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the document would not be contrary to the public interest.

(3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen days of its decision, inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate." .

**CLAUSE 11**

Delete subsection (1) and substitute therefor the following

(1) Where an application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom."

**CLAUSE 12**

1. Delete subsection (1) and renumber subsections (2) and (3) as subsections (1) and (2), respectively.
2. In subsection (2) as renumbered, delete the words "prescribed fee paid or payable in respect of an application" and substitute therefor the words "cost specified in subsection (1)".



**CLAUSE 13**

1. Delete the numeral "(1)" and subsection (2).
2. Delete from paragraph (b) of the section the words "prescribed fee" and substitute therefor the words "cost incurred by the public authority in granting access".

**CLAUSE 14**

Delete paragraph (a) and substitute therefor the following -  
"(a) the disclosure thereof would prejudice the security, defence or international relations of Jamaica;"

**CLAUSE 15**

Delete and substitute therefor the following -  
"Cabinet documents. 15. - (1) An official document is exempt from disclosure if it is a Cabinet document, that is to say -

(a) it is a Cabinet Submission, Cabinet

Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted;

(b) it is a Cabinet Decision, or other

official record of any deliberation of the Cabinet.

(2) Subsection (1) does not apply, to -

(a) any document appended to a Cabinet

document that contains material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature; or

(b) a document by which a decision of the Cabinet has been officially published."

**CLAUSE 16**

Delete from paragraph (c) the words "or the non-existence of such a source".

**CLAUSE 17**

Delete from paragraph (b)(i) the words "could found an action for breach of confidence" and substitute the words "would constitute an actionable breach of confidence".

**CLAUSE 18**

1. In subsection (1), insert immediately before the word "Government's" the words "Jamaican economy, or the".

2. In subsection (2), insert immediately after the words

"interest rates," the words "monetary policy and exchange rate policy".

**CLAUSE 19**

Delete subsection (1) and substitute therefor the following -

" (1) Subject to subsection (3), an official document is exempt from disclosure if it contains -

(a) opinions, advice or recommendations;

(b) a record of consultations or deliberations,

prepared in the course of or for the purpose of discharging government functions."

**CLAUSE 20**

1. Delete subsection (1) and substitute therefor the following -

" (1) Subject to subsection (2), an official document is exempt from disclosure if -

(a) its disclosure would reveal -

(i) trade secrets;

(ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;

(b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests." .

2. Delete subsection (3).

**CLAUSE 21**

In subsection (1) -

(a) insert immediately after the words "result in" the words "the destruction of,";

(b) renumber paragraphs (b) and (c) as paragraphs (c) and (d), respectively.

(c) delete paragraph (a) and insert therefor the following as paragraphs (a) and (b) –

"(a) any historical, archaeological or anthropological resources;

(b) anything declared to be a national monument, designated as protected national heritage or protected by a preservation notice under the Jamaica National Heritage Trust Act;"

#### **CLAUSE 22**

Delete subsections (3) and (4)

#### **CLAUSE 23**

Delete.

#### **EXISTING CLAUSE 24**

1. Renumber as clause 23.

2. In subsection (1) -

(a) delete from paragraph (a) the numerals "15" and substitute therefor the numerals "15{1}";

(b) insert in paragraph (b) immediately after the numerals "14" the numerals ", 16".

3. In subsection (2) -

(i) delete "virture" and substitute therefor the word "virtue".

(ii) delete the word "particular" where it second appears.

4. In subsection (3), delete the words "evidence of the matters stated therein" and substitute therefor the words "that the document is exempt".

#### **EXISTING CLAUSE 25**

1. Renumber as clause 24.

2. In subsection (2)(a)(ii) delete the words "reasons for making" and substitute therefor the words "basis for".

#### **EXISTING CLAUSE 26.**

1. Renumber as clause 25.

2. Delete subsection (1) and substitute therefor the following -

" (1) Where, in relation to any application under section 24, a public authority is satisfied as to the truth of the matters stated in the application, it

shall amend the document concerned in the prescribed manner."

3. Delete subsections (2), (3) and (4) and insert immediately after subsection (1) the following as subsection (2) -

" (2) Where a public authority decides not to amend an official document it shall -

(a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 24(2)(b); and

(b) annotate the document by adding thereto the statement referred to in paragraph (a)."

**EXISTING CLAUSES 27 AND 28**

Delete and insert therefor the following numbered as sections 26 and 27 respectively -

"Annotation of personal records. 26. Where, in relation to an application for annotation of an official document containing personal information, the public authority -

(a) is satisfied as to the truth of the matters specified in that application, the authority shall annotate the document in the prescribed manner;

(b) is not so satisfied, it may refuse to annotate the document.

Notice of amendments or annotation . 27 . A public authority which amends or annotates an official document pursuant to section 25 or 26, or, as the case may be, decides not to do so, shall take reasonable steps to inform -

(a) the applicant; and

(b) any other public authority which it is satisfied has made prior use of the document,

of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision."

**EXISTING CLAUSE 29**

Re-number as section 28.

**EXISTING CLAUSE 30**

1. Re-number as section 29.

2. Delete the numerals "31" and substitute therefor the numerals "30".

### **EXISTING CLAUSE 31**

1. Renumber as section 30.
2. In subsection (1) -
  - (a) delete from the opening words, the words "a review" and substitute therefor the words "an internal review";
  - (b) delete paragraph (d) and renumber paragraph (e) as paragraph (d).
3. In subsection (3) delete "(d)" and substitute therefor "(c)".
4. Delete subsections (4) and (5) and substitute therefor the following -

" (4) An application under subsection (1) or (2) may only be made where the decision to which the application relates was taken by a person other than the responsible Minister, a permanent secretary or the principal officer of the public authority concerned."

#### ***Editorial***

*In subsection (2) delete the word "Applicant" and substitute therefor the word "applicant";*

### **EXISTING CLAUSE 32**

1. Renumber as section 31.
2. Delete subsection (1) and substitute therefor the following -

" (1) An internal review shall be conducted -

  - (a) by the responsible Minister in relation to documents referred to in sections 14, 15, 16, and 18;
  - (b) in any other case, by the Permanent Secretary in the relevant Ministry of the principal officer of the public authority whose decision is subject to review."
  3. In subsection (2)(a) insert immediately after the word "date" the word "of";
  4. In subsection (2)(b) -
    - (a) insert immediately after the word "days" the word "after";
    - (b) delete the words "pursuant to paragraph (a)".

**EXISTING CLAUSE 33**

1. Renumber as section 32.
2. Delete subsections (1) and (2) and substitute therefor the following -
  - " (1) An appeal shall lie pursuant to subsections (2) and (3), to the tribunal established for that purpose, constituted in accordance with the Second Schedule.
  - (2) A person may lodge an appeal -
    - (a) where internal review under section 30 is applicable -
      - (i) against a decision taken on such review;
      - (ii) if the time specified in section 31(2) (b) has expired without the applicant being notified of a decision;
    - (b) in any other case, against a relevant decision in relation to any of the matters referred to in paragraphs (a) to (c) of section 30(1) or section 30(2), and accordingly section 30(3) shall apply with necessary modifications to an appeal under this paragraph.
  - (3) An appeal shall be made -
    - (a) by the lodgement of a document within sixty days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
    - (b) where no notification has been given within the period required by this Act, within sixty days after the expiration of that period."
3. Renumber subsections (3), (4), (5) and (6) as subsections (4), (5), (6) and (7), respectively.
4. In subsection (6) as renumbered -
  - (a) delete from paragraph (a) the words "except in relation to matters referred to in" and substitute therefor the word "subject to";
  - (b) delete paragraph (b) and substitute therefor the following -
    - " (b) shall not nullify a certificate issued under section 23."

#### **EXISTING CLAUSE 34**

Renumber as section 33.

#### **NEW CLAUSE 34**

Insert the following as new section 34 -

"Offence 34. - (1) A person commits an offence, if in relation to an official document to which a right of access is conferred under this Act he -

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the document with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."

#### **CLAUSE 35**

1. In subsection (2), delete the words ", other than the Official Secrets Act,".
2. Insert immediately after subsection (2) the following as subsection (3) -  
  
(3) The Official Secrets Act shall apply in relation to the disclosure of any document to which a certificate issued under section 23 applies."

#### **CLAUSE 37**

Insert immediately after the word "Act" the words "and such regulations shall be subject to affirmative resolution".

#### **FIRST SCHEDULE**

1. In paragraph 1(d) and (e), delete the word "subparagraph" and substitute therefor the word "sub-paragraph".
2. Delete paragraphs 4 and 5 and renumber paragraphs 6 and 7 as 4 and 5, respectively.

## **SECOND SCHEDULE**

1. In paragraph 1 delete the words "Tribunal" and "three" and substitute therefor respectively the words "The tribunal" and "five".
1. In paragraph 2, delete the word "of" and substitute therefor the word "if".
2. -In paragraph 3, delete the words "schedule" and "three" and substitute therefor respectively the word "Schedule" and "five".
5. In paragraph 6(2) insert immediately after the word "may" the word "at".

(In the original document the pages of Appendix 1 are numbered 1 –12, instead of 21 – 32.)