

Access to Information Advisory Stakeholders Committee
Submission to Parliamentary Select Committee
Conducting the Review of the Access to Information Act 2002

The Access to Information Advisory Stakeholders Committee came together on the invitation of the Access to Information Unit of the Ministry of Information in January 2004. Our formation coincided with the phased implementation of the Act. The Committee is comprised of representatives of the Private Sector Organization of Jamaica, the Media Association of Jamaica, the Caribbean Examinations Council, the Jamaican Bar Association, the Jamaica Civil Service Association, Jamaicans For Justice, the Joint Committee for Tertiary Education, the Press Association of Jamaica, CARIMAC, Farquharson Institute of Public Affairs, the Independent Jamaica Council for Human Rights and others. All the representatives contribute time and effort on a voluntary basis to work on the issues arising from the Terms of Reference of the Committee (which were approved by the Minister of Information). These Terms of Reference are:

1. Monitoring and evaluating the implementation and administration of the ATI Act.
2. Interacting with the Minister responsible for Information and the ATI Unit on matters pertaining to the administration of the Access to Information Act.
3. Liaising with the Executive at the ATI Association of Administrators, as necessary, on matters pertaining to the administration of the Access to Information Act.
4. Receiving information on and assessing the administration of the ATI Act.
5. The identification of such aspects of the administration of the ATI Act as may be in need of strengthening and/or modification and the making of recommendations in respect thereof to the responsible Minister.
6. The provision of recommendations on/and support for an Access to Information Public Education Programme.
7. Providing continuing recommendations to the ATI Unit on the improvement of the ATI Guidelines.
8. Making Proposals on new and existing areas on the ATI Act requiring enactment/amendment.

It is in keeping with that mandate that we appear before you today.

The Access to Information Advisory Stakeholders Committee wishes at the outset to congratulate the Government for the political courage and democratic commitment, which resulted in the enactment of the Access to Information legislation in 2004.

This review process affords an opportunity to take stock of the achievements, examine the perceived shortcomings and fine tune and correct such deficiencies as are identified. It also presents an opportunity to build on what now exists in order to strengthen the legislation in keeping with the commitment to deepen the democratic process.

In the opinion of the Advisory Committee a great deal has been accomplished since the legislation was enacted, and such difficulties as have arisen, have been mainly due to procedural shortcomings and issues of interpretation.

Initially we would like to offer an opinion on two issues that have been raised by others in the Review Process.

The Name/Title of the Act

The first relates to the proposal to change the name of the Act. Any confusion that might have arisen about the Act is as a result of the lack of public education to acquaint citizens about the scope of the legislation. Changing the name and narrowing the definition to “government information” would create more difficulties than it would resolve. For example, would the general public interpret that definition to include constitutional bodies such as the Public Services Commission and statutory bodies like Executive Agencies?

The position of the Access to Information Association of Administrators, (ATIAA), that the word information in international legislation, has come to be accepted globally as a right to access government documents is correct and supports the objectives of the law.

The Question of ‘Reasonableness’

The second issue relates to the grant of access. While we understand the concerns of the ATIAA about the man hours spent in finding information to respond to requests, the label of “reasonableness” should not be attached to a request and any attempt to do so would be highly subjective. Access to information is a right and this issue should not arise.

Neither are we persuaded by what applies in other jurisdictions. It would be encouraging to think that this represents an instance in which Jamaica leads, and therefore our thrust should be to widen access in the interest of democracy rather than attempt to narrow or restrict it.

Achievements

Among the achievements under the implementation of the Act are: (1) the response record has been quite good, especially when viewed in the context of the significant cultural shift that the right to access to information represents. 468 requests have been received and 165 granted full-access in the first year of operation of the Act.

(2) Some Government ministries and departments have been exceptional in terms of their willingness to ferret out information in response to requests. While this does not apply across the board, what is required with some urgency is a greater degree of uniformity and application across all Ministries and departments. The best practices in a Ministry should be shared with other Ministries and agencies.

The Role and Staffing of the Access to Information Unit

The Advisory Stakeholders Committee has grave concerns about the role and staffing of the Access to Information Unit of the Ministry of Information. Before the implementation of the Act actually began the staff complement of three officers appeared adequate, if stretched, to accommodate a mandate of preparing Ministries and Agencies for the implementation: including identifying deficiencies and making recommendations for improvements in Government record keeping systems; sensitizing each Ministry and Agency as to what would be required of them with the advent of the Act; training responsible officers identified by agencies and Ministries in their roles and responsibilities under the Act; and undertaking education activities around the Act, both for the General Public as well as for the Ministries and Agencies.

With the onset of the implementation in January 2004 and the addition of monitoring and reporting responsibilities, as well as the responsibility of serving as the Secretariat for the Tribunal and overall responsibility for implementation activities and sorting out any difficulties arising with the implementation, the staff complement proved inadequate. Opportunities, for public education for example, were lost to the Unit simply because of not having enough hands to do the work. Other duties and responsibilities ran into difficulties. The issues came to a head in July 2005 when both the Executive Officer and the Public Relations Officer resigned and the remaining staff member was completely unable to cope with the demands imposed by the large mandate of the Unit.

The ATI Advisory Stakeholders Committee would wish to list for this Committee the many roles that a functioning ATI Unit could and should play in the implementation and monitoring of the ATI Act 2003. The Unit could and should play the major role in:

- Helping Applicants to:
 - ❖ know their rights under the Act
 - ❖ make requests
 - ❖ know where to direct their requests
 - ❖ know how to phrase their requests
 - ❖ Know their recourses for non-compliance by Ministries and Agencies under the Act
 - ❖ Mediate any difficulties in interactions with Responsible Officers
- Helping Access Officers to:
 - ❖ Understand their role as cultural change agents
 - ❖ Understand their responsibilities under the Act
 - ❖ Develop better customer relations skills
 - ❖ Resolve questions of interpretation of requests and of sections of the Act
 - ❖ Mediate any difficulties in interactions with the General Public
- Helping the General Public by:
 - ❖ Data gathering and monitoring the implementation of the Act across Ministries and Agencies
 - ❖ Ensuring uniformity of understanding and application of the Act across Ministries and Agencies
 - ❖ Public Education
 - ❖ Resolving questions of interpretation (in consultation with the Attorney General's Department where appropriate)
 - ❖ Dissemination of relevant information to the Public and to the Responsible Officers (such as, for example, decisions made by the Appeals Tribunal)
 - ❖ Continuous evaluation and re-evaluation of the processes of implementation to identify problems and make recommendations for solutions

This vital role has been missing from the process for the last 6 months, and before that was being performed inadequately. It is recommended to the Committee that, as a matter of urgency, the staff complement of the Unit be expanded and the posts be filled if the gains to this point, in democracy and accountable governance are not to be allowed to falter.

More than that, however, the ATI Advisory Stakeholders Committee would strongly urge this Parliamentary Review Committee to recommend amendments to the Act to include the establishment of an ATI Unit (or specifically give the existing Unit powers) for monitoring and implementation as a clause of the Act.

Public Education

A major weakness in the implementation of the Act is the absence of a sustained and consistent programme of public education.

Access to information represents a significant cultural shift, moving as it does from a context of a great divide between the governors and the governed, reinforced by an Official Secrets Act, to one where the public has a right to know and public authorities the duty to disclose.

This is a new experience both for civil servants and the members of the public. Public education is therefore essential for both groups. The ATI Advisory Stakeholders Committee believes that many of the procedural difficulties that have been experienced to date in the implementation of the Act could have been easily resolved if everyone had been better informed.

The ATI Advisory Stakeholders Committee submits that following this review process a concerted public education programme should be introduced and maintained on an ongoing basis.

Education of both the public and the Access Officers should be aimed at informing them about the Act but more than that should help to ensure that both the public and the Access Officers understand that the relationship between the public and the responsible officers is not an adversarial one. The Act operates in the interests of both sets of persons. It is important to understand that this is a major cultural shift for both Government and citizens and education and training is a vital component for ensuring that this shift occurs as smoothly as possible. In some cases help and training is needed to build customer service skills, in keeping with the Public Sector Modernization programme, in other cases there is a need for Access Officers to see that part of their duties under the Act are to ensure requestors are helped to find the information they need.

The Role of the Appeal Tribunal

The Access to Information Advisory Stakeholders Committee understood the role of the ATI Appeal Tribunal to be one of ensuring accountability in the application of law. By serving as an accessible intermediary body between the citizen and the Public Authority, the Tribunal can assist in the cultural shift envisioned by the Act. This Committee has seen first hand many of the difficulties faced both by requestors who have appealed to the Tribunal and by the Tribunal in carrying out its function.

Problems faced by requestors have included: lengthy delays in receiving responses from the Tribunal (in one case an appellant waited four (4) months before getting an acknowledgement of the lodging of an appeal); lengthy delays in getting dates set for hearings before the Tribunal; excessively formalistic, onerous and legalistic procedures (including the submission of proscribed forms which only lawyers have any hope of understanding) which are off-putting to even the most determined requestor; short notice periods for hearings; and onerous other requirements, such as service of documents.

Difficulties faced by the Tribunal have included: (1) all the members currently serving are employed elsewhere, most in busy full-time occupations leading to; severe scheduling difficulties for meetings; severe scheduling difficulties for sittings of the Tribunal; (2) difficulty

getting draft regulations amended in a timely fashion as per their instructions; (3) lack of a designated Secretariat.

The difficulties faced by the Tribunal have resulted in it not being able to fulfil the role envisioned for it in a timely fashion. The difficulties faced by appellants may have resulted in less appeals being made, they certainly will in the future limit the willingness and capability of 'Jane Public' taking an appeal, unsupported by a legal team and a functioning office, to the Tribunal.

Proposed Amendments re Appeals Tribunal

The ATI Advisory Stakeholders Committee submits that the Act be amended to ensure the appointment of at least one full-time Tribunal member supported by an adequate staff (initially a lawyer and an administrative assistant). Alternatively, an ATI Unit (such as envisioned earlier in our submission), should be established outside the Office of the Prime Minister and designated the Secretariat for the Tribunal. A separate Secretariat is preferable as there is an inherent conflict in an ATI Unit which is serving as advisor to Government Ministries and Agencies also making decisions, including denial of documents (which could then be subject to appeals to the Tribunal) and is also serving as Secretariat to the Tribunal and advising the Tribunal and the Public about appeals. This conflict could be minimised if the ATI Unit is removed from under the control of any individual ministry or agency and answered directly to Parliament. The ATI Advisory Stakeholders committee would like to strongly suggest to this Joint Parliamentary Review Committee that a simpler and far more preferable solution would be to give the Tribunal its own secretariat with defined responsibilities limited to serving the Tribunal.

We urge the Tribunal to look again at its rules and see if they could be re-drafted in a more people- friendly form. We urge this Committee to insist that they are given the resources necessary to do an effective job.

Procedural Difficulties

The ATI Advisory Stakeholders Committee has seen a number of procedural difficulties with the implementation on the Act. Many have or will be brought to the attention of the Parliamentary Committee in other submissions from other organizations and individuals. The ATI Advisory Stakeholders must mention and ask for the assistance of this Parliamentary Review committee on a particular matter.

The ATI Association of Administrators has complained about requests for documents being made and then when the documents are found the requestor does not come and collect them. Attention is drawn to the fact that there is absolutely no system for persons outside of Kingston to pay for and collect the documents they have requested. There have been several cases where requests made out of Montego Bay could not be collected, simply for that reason. In one case the information requested was contained on two sheets of paper, which photocopied would have cost the requestor \$20.00. Unfortunately he would have had to find the fare to come to Kingston to pay the \$20.00 in order to obtain the information he needed. There is an urgent need for a system to allow payment for photocopies, or diskettes or whatever form the information is being supplied outside of a specific agency or Ministry. Similarly there is an urgent need for the Access Officers to be able to collect extra fees (with the agreement of the requestor) to mail the information to the requestor.

The ATI Advisory Stakeholders Committee submits that an amendment to the Act (or regulations) to allow for payment for copies of documents/information requested to be made at the nearest Post Office, Postal Agency or Tax Collectorate. Our preference would be for a system which allowed payment at the Post Office or Postal Agency as there are many more Postal Agencies and Post Offices across the island and thus more people such as Miss Mattie in Mocho would be facilitated in their quest to use the Act. We could be reconciled to the use of Tax Collectorates if this would facilitate a speedier amendment.

A similar amendment to the Act (or regulations) should be made to allow Access Officers to charge costs for postage (if desired by requestor as a means of collecting the information) as a sensible facility under the Act.

Companion Legal Reforms

It would be remiss of this Committee to conclude our submission without highlighting for this Parliamentary Committee the need for companion legal reforms to be made to ensure the smoothest possible transition from a culture of secrecy and disconnect between the people and the government, to a culture of openness, accountability and increased citizen participation in the decision making processes of government. Urgently needed is the long promised repeal of the Official Secrets Act. This was a commitment given by the Administration prior to the passage of the Access to Information Act which remains outstanding. It is important that the government which has been so much in the fore front of opening opportunities for increased citizen participation in governance, been such a leader locally and regionally in the world wide process of providing enforceable mechanisms for citizens enjoying their right to receive and impart information should complete the process by honouring their commitment to repeal the anachronistic relic of colonialism that is the Official Secrets Act.

The repeal of the Official Secrets Act should be accompanied by the enactment of 'whistleblower' legislation, generally acknowledged internationally to be the third, necessary leg of the stool of modern Governmental transparency, accountability and commitment to empowered informed citizenry upholding a vibrant democracy.

Reaction to BOJ Submission

Finally, the ATI Advisory Stakeholders Committee wishes to quickly respond to an article carried in the media re the submissions of the Bank of Jamaica to this Committee. If the media reports are correct, the BOJ is requesting that it be given protection from the provisions of the ATI Act. That information would only be released by it with the special permission of the Governor or the Minister of Finance, and that minutes of its Board meetings be "exempted from disclosure for 20 years". We disagree vehemently with this submission by the Bank. As the central bank, the Bank of Jamaica must operate with independence and must be subjected to the transparency and accountability. Increasingly in the global economy, the views of central banks in formulating monetary policies crucially depend on public and market participants understanding these policy decisions

Any sensitive information held by the Bank which may "include but are not limited to, documents relating to taxes, duties or rates, interest rates, monetary policy, and exchange rate policy or currency or exchange rates" are already exempt under section 18 of the Act which says:

An official document... is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Jamaican economy, or the Government's ability to manage the Jamaican economy.

The ATI Advisory Stakeholders Committee would like to further point out that, having done research on how central banks are treated under other ATI laws in the Commonwealth, including the laws in Antigua and Barbuda, Australia, Belize, Canada, Pakistan, South Africa, Trinidad and Tobago and the United Kingdom, it can be established that all gave access to the documents and information possessed by the Central Banks of those countries. In the case of the United Kingdom Act, the Bank of England is listed in the schedule as an entity to which the FOIA applies in the following terms - "The Bank of England, in respect of information held for purposes other than those of its functions with respect to- (a) monetary policy, (b) financial operations intended to support financial institutions for the purposes of maintaining stability, and (c) the provision of private banking services and related services".

The ATI Advisory Stakeholders Committee submits that sensitive information is adequately protected by the Act and the exemptions contained therein and urges this Committee to resist all attempts by some public authorities to designate themselves as more special than other public authorities, bearing in mind at all times the objectives of the Act as set out in section 2.