

SUBMISSION TO THE JOINT SELECT COMMITTEE REVIEWING THE OPERATIONS OF THE ACCESS TO INFORMATION ACT, 2002

By The Access to Information Association of Administrators (AITAA)

January 20, 2006

The Joint Select Committee of Parliament is being asked to consider these recommendations presented by the Access to Information Association of Administrators (AITAA) relative to the Association's review of the "Access to Information Act 2002." This Association consists of the officers in ministries and other government entities who are responsible for administering the process of access to information and whose duties are specified in Section 4 of the ATI Regulations.

BACKGROUND

The Committee will recall that the Act was implemented on a phased basis based on the deemed state of readiness of selected Public Authorities. From the onset it was recognized that none of the Public Authorities was fully prepared to take on the responsibilities needed to administer this landmark piece of legislation. However, in the spirit of the Act the Authorities assumed the formidable task of implementing the Act resolving to make it an instant success.

At the end of the first year of the implementation of the Act, December 2004, four hundred and twenty eight (428) applications for access were received by the twenty seven (27) Public Authorities that had implemented the Act. The overall treatment of these applications is tabulated below:

Year	Category of Responses	Numbers	% of overall figures
2004	Full Access	165	38.6
	Transferred	106	24.8
	Denied	6	1.4
	Deferred	21	4.9
	Partial Grant of Access	8	1.9
	Could not be found	1	0.02
	Documents do not exist	17	4
	Treated informally	29	6.8
	Abandoned	24	5.6
	Carried forward to 2005	51	12
	Total		428

The first quarter of 2005 saw a continued increase in the number of applications received. An overall figure of 135 inclusive of the applications carried forward from 2004 were dealt with

within the 1st quarter. Of this figure 55% was satisfied, 28% were abandoned, treated informally or the documents did not exist. The remaining 17% were either pending, transferred or partial grant given.

Among the number not satisfied were frivolous requests and request for documents that were never created by the Authorities.

While the AATIA membership worked assiduously to facilitate access to members of the public a number of issues have arisen over the period since the implementation of the Act that warrants a review. Consequent on this review AATIA is proposing several changes and hence put forward the recommendations set out below. Some recommendations focus on amendments, while others focus on improvement in the administration of the Act.

ISSUES AND RECOMMENDATIONS

Name Change of the Act

While the Association recognizes that the name "Access to Information" is a misnomer (evidence of which is revealed in some of the requests) it supports its continued usage for the following reasons:

- The word information is presently contained in similar international legislation and is accepted globally to refer to the right to access government documents.
- The Act is explicit in its introduction "AN ACT to Provide members of the public with a right to **access to official documents** and for connected matters".

The Association is of the view that this issue can be addressed by effective public education.

Definition of the word Document

The word "document" as defined in section 3 (a)(b)(c)(d) is comprehensive, embracing all records (in their varied formats and media) therefore the need for further expansion may be unnecessary at this time. As practitioners in the records management field we are aware that Jamaica like many other countries lacks e-readiness and is not in a position to facilitate access to all records in electronic format apart. This point is borne out by the referenced article that found in the case of the USA that the lack of e-readiness has been an inhibitor to the access to many government records: *The article noted that, "In 1966 the Freedom of Information Act gave Americans legal access to government documents but only with new archival, search and retrieval technologies has it become easy to get them"*.

(Costa, Dan. "Government". PC Magazine, Vol. 21, no. 5, March 2002: p122)

Section13 - Grant of Access

The Committee is being asked to consider the grant of access in the context of reasonableness. In other words when is a request "a reasonable request" and when would Responsible Officers have met their obligations of granting access to documents.

It has been the collective experience of the Association receiving applications that require extensive research that at times results in over 2,000 documents or pages of documents being retrieved for reproduction. This invariably ties up several officers in the public authority rendering them incapable of performing their regular duties including how they are able to

treat with other requests. In some instances overtime cost have had to be paid to these officers who are required to work beyond 5:00 p.m. and on weekends to meet the deadline for the fulfillment of these requests. To date voluminous and unreasonable requests received have not been met in the required timeframe as stipulated by the Act.

Treatment of this issue of reasonableness in the grant of access in other jurisdictions

Section 24(1) of the Australian Freedom of Information (FOI) Act provides as follows:

“.....The agency or Minister dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the agency or Minister, is satisfied that the work involved in processing the request:

- (a) in the case of an agency-would substantially and unreasonably divert the resources of the agency from its other operations; or*
- (b) in the case of a Minister-would substantially and unreasonably interfere with the performance of the Minister’s functions.”*

A similar provision is to be found in the Trinidad and Tobago Legislation. Section 21 (1) of the Trinidad and Tobago FOI Act states:

“A public authority dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations and if before refusing to provide information on these grounds the authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.”

The Committee is being asked to consider the grant of approval for the Act to be amended to include a similar provision. (See appendix for examples of unreasonable/ voluminous requests)

Proposed Amendments to the Act:

1. **Section 7(4)** The inclusion of a sub-section to clearly state the computation of the thirty days period provided in section **7(4)**.
2. **Section 14(b)**. As currently worded, this Section appears to exempt documents containing information communicated in confidence to the Government by or on behalf of foreign Government or international organizations but does not exempt similar documents communicated in similar circumstances by/on behalf of the Jamaican Government
3. With respect to offences under the Act and with particularly **section 34** it is recommended that the Act be amended to impose a penalty on any applicant who with the grant of access to view or listen to documents held by Public Authorities commits any of the offences under **34(1) (a, b, c)**.

Proposed Amendments to the Regulations.

4. Regulation 10 A third paragraph be inserted to provide that where the applicant fails to respond after 30 days of being informed that his request has been granted he has abandoned the request.
5. The inclusion of a sub-section to prohibit applicants from soliciting the same document from several Public Authorities where the request has been satisfied by the first Public Authority. The matter being applied for is clearly known to be the subject of Public Authority one (1) and not residing in subsequent Public Authorities
6. The inclusion of a sub-section in regulation 8 to clearly state whether it is mandatory that all written application be signed by the applicants.

Recommendations regarding Administration of the Act

1. An aggressive public education to be undertaken on the path of government to sensitize the citizenry of all aspects of the Act and how they can individually utilize this Act to their benefit. The ATI Unit should be immediately strengthened to undertake this campaign.
2. That the Unit be staffed with the requisite personnel to ensure that the mandate of government under this said Act is efficiently executed.
3. A standardized set of procedures be developed for records management in government as this is the pillar on which the effective and efficient administration of the ATI Act resides.
4. Where it has been agreed with the applicant for payment of fees incurred for reproduction that no request should then be accommodated for the fees to be waived.
5. Special provision be made in the budget to provide the resources needed to facilitate ATI work in the Public Authorities.
6. The position of at least an Access Officer to assist the “Responsible Officers” who all have duties apart from ATI be mandatory filled in all Public Authorities.
7. A comprehensive programme for the training of records managers through scholarships, attachments, distance learning and otherwise be undertaken throughout government to build and strengthen the cadre of professionals operating in this field and to ensure continued success of the operations of the Act.
8. Sensitization programmes for Permanent Secretaries, other CEO’s and senior officials be carried out on a regular basis.
9. The development of an effective records management programme in government on which anchors the Act needs to be strengthened and promulgated.

General Comment on position of “Responsible Officer”

Although the duties of the “responsible officers” are listed clearly in the Regulations, it should be noted that this officer has to operate within the administrative guidelines of the public service. In the case of the public service this means that the officer signs letters on behalf of the Permanent Secretary, whether or not the P S was a party to the matter under consideration. This was a matter of concern to one of the stakeholder groups. This point is being made because the Association is concerned at the impression which might be conveyed in the Regulations that the ‘responsible officer’ is personally responsible for decisions regarding access. In fact, decisions are often taken on a collective basis in which the head of the entity may or may not be involved.

Helen Rumbolt (Miss)
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Appendix

Requests received by some Public Authorities

1. *“Correspondence on National Security issues, US/Jamaica relations between OPM and the US Embassy 1974-1980 with particular interest to the charge that the Central Intelligence Agency (CIA) was involved in undermining the country.”*
2. *“Copies of all correspondence and diplomatic notes exchanged between the Office of the Prime Minister and the United States Embassy during the period January 1, 1972 to December 31, 2003.”*
3. *“All documents, letters, images, e-mails, transcripts of telephone conversations, of official correspondence over the last 40 years between the Office of the Prime Minister and:
(a) other heads of government;
(b) the Leader of the Opposition or any other members of the Opposition and
(c) other opposition parties.”*
4. *“All documents in the possession or control of your office, including but not limited to Cabinet Submissions, Cabinet Notes and Minutes of Cabinet Meetings, pertaining to the decision of the Government of Jamaica to request on 1st November, 1980 that Cuban Ambassador Ulises Estrada be recalled from Jamaica.”*
5. *“Amount of monies spent for overseas travel in respect of Cabinet Ministers for the past 4 years and for their respective Ministries.”*