

Opening the door to improved accountability and governance

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Some years ago, a powerful piece of legislation made its way into the Jamaican political landscape. Its long journey began years before in the mid-1990s and neared its end with the passage in 2002 of an Act of tremendous importance to the relationship between Jamaican citizens and their government.

Three years afterward, all governmental ministries and agencies became subject to its provisions. Unfortunately, little is known of this promising Act among the general public.

Its promise to bring to light what government was allowed to conduct in darkness will go unrealised if the public at large remains unaware of its significance. This legislation, the "Access to Information Act", is Jamaica's own freedom of information legislation. It promises to promote accountability, transparency, and increased public participation in national decision making. Forget old thinking. The widely held view that the government's internal operations, correspondence, and documents are confidential and off-limits to the public has been thrown out.

The notion that the State must, as a matter of course, keep official information hidden from its citizens is a long discredited one. Following the promulgation of the Universal Declaration of Human Rights in 1948, freedom of information has come to be accepted as a fundamental human right.

The common principle of freedom of information legislations worldwide is that the requester need not give an explanation for wanting to have the information but the State, on the other hand, must give a valid reason for not disclosing the information. Access to information deepens democracy and enhances personal liberties. The State serves the public interest best when it fully discloses how it goes about its affairs and subjects itself to scrutiny.

Prior to the passage of the Act, the Jamaican state's approach to the public having access to the information that it generated was to hold most information close and secret, believing that for the most part the functionaries of the state were the only ones who had a right to see this information. Civil servants were made to abide by the provisions of the Official Secrets Act (1904) which forbade them to release any information to the public on pain of sanction and possible dismissal.

The government's decision, by the passage of the ATI Act, to change that culture of secrecy and withholding information from the public into a culture of openness in which the citizen was given an enforceable right to get information from the government without having to give a reason is a brave one and is to be saluted.

This right is limited only by very narrowly focused exemptions to protect sensitive information such as that dealing with security and economic issues. The Official Secrets Act, however, has not been repealed and represents an impediment to the Jamaican citizens' achieving full enjoyment of the right of access to records kept by the government.

Despite this impediment, the Access to Information Act makes the process of obtaining government-held information uncomplicated, less expensive, faster, and - importantly - accessible to all Jamaican citizens as opposed to only certain classes of individuals such as journalists. Previously, getting information entailed soliciting it surreptitiously through unofficial channels or making use of the courts, which, needless to say, was a drawn-out and costly route.

The Contribution of Civil Society

Civil society began making its contribution to bringing about a strong Access to Information Act in November of 2001. Since then Jamaicans for Justice has collaborated with a number of organisations, including the Jamaica chapter of Transparency International, the Farquharson Institute of Public Affairs, and the Carter Centre, Community-Based Organisations (CBOs) and other non-governmental organisations (NGOs). A result of our collaboration was the creation of an Access to Information users' consortium.

Jamaicans for Justice undertook a public education campaign through the mass media to inform the public about access to information and how it relates to you. We ought not to view it as some special law only to be used by journalists or special interest groups for research and investigations of government practices.

Instead, citizens are urged to use it actively to gather information, which has bearing on their day-to-day lives. What about the new clinic, which was approved for construction in your community? When will it be built? Have the funds been allocated by the government? Using the Act, one will get answers to these questions. Remember that road that looks like the surface of the moon which your member of parliament promised to have repaired? Will he make good on his promise?

Has money been allocated for it? Is work scheduled to begin in the near future? Again, these questions can be answered by making a request under the Access to Information Act. As a concerned citizen, you might also have wondered about the trips of officials overseas at government's expense. You could do your own bit of investigation to ascertain how many were in their entourage, in which hotels they stayed, and their total expenses.

Help Desk

Jamaicans for Justice has established a help desk to assist with access to information requests. Our custom database management system tracks

requests, monitors responses to requests, and produces performance reports of the various ministries and agencies.

We are happy to assist members of the public with exercising their right of freedom of information. Our help desk will also help to make a request for Internal Review and Appeals to the Appeals Tribunal in those circumstances where requests are denied or ignored.

Changing a culture of secrecy to a culture of openness

The passage of any piece of legislation is always the beginning of a process leading to full enjoyment of a right, and the passage of the ATI Act was in fact just the beginning of a process of changing a culture of secrecy into a culture of openness and transparency. The road to freedom of information in Jamaica has not been without its obstacles.

Following the passage of the Act, the minister of information established an Access to Information Unit headquartered in the Office of the Prime Minister to direct, monitor, and steer the implementation process.

The unit was given the responsibility for educating governmental and quasi-governmental departments about the requirements of the Act and the need for improved record management and preparing ministries and agencies and the general public for the coming into force of the Act in 2004.

After the Act came into force, the unit was responsible for ongoing public government and public education, and monitoring the implementation process, problem solving and giving advice to the responsible access officers in the various ministries and agencies. Sadly, the unit was crippled by the resignations of the executive officer and public relations officer. It was left with a staff complement of one administrative officer. This has proven deleterious to the implementation and monitoring of the Act.

The unit's inability to carry out its normal role meant that the public and government ministries and agencies were left without a source of assistance, education and guidance, and the performance of various ministries and agencies in abiding by the provisions of the Act was left unmonitored and problems uncorrected.

Parliamentary review

One of the best features of the Jamaican Access to Information Act was a provision for a review of the Act by Parliament to take place two years after its enactment. Jamaicans for Justice along with other interested groups - the Jamaica Environmental Trust (JET), the Carter Centre, the Association of Access to Information Administrators (AAIA), the Independent Jamaica Council for Human Rights (IJCHR), the Commonwealth Human Rights Initiative (CHRI), and the Bank of Jamaica (BOJ) - made submissions to the Joint Select Committee of Parliament charged with reviewing the Access to Information Act.

A number of issues were raised and matters were brought to attention in the submissions made by the various groups to the parliamentary committee. These submissions were based on the experiences of the various groups in using the Act over the past two years.

All the civil society groups spoke of the usefulness of the Act and how important they felt it was to improve weaknesses and build on the strengths of the legislation. Among the issues raised with the parliamentary committee were:

- . The need for the Access to Information unit to be made a part of the Act

- . The need for a review and strengthening of the enforcement mechanisms of the Act

- . The need for the inclusion of a general public interest test in the Act

- . The need for a number of administrative issues to be dealt with

- . The need for there to be sanctions to ensure compliance and limit breaches of the provisions of the Act

The committee was alarmed by Jamaicans For Justice's revelation that requests made to some government agencies had been denied or simply dismissed and called for an investigation into the matter. Senator Trevor Munroe proposed that the law should make provisions for penalties against access officers who fail to respond to requests intentionally as regards information that could be of significance to public health or safety.

All the civil society groups were concerned that in its final sitting before dissolution, while they accepted a few of the recommendations of civil society, the committee's deliberations seemed to veer away from strengthening the Act.

Rather, it took positions supporting submissions, which appeared to contradict the very objects of the Act and the expressed government policy of opening up its operations to public scrutiny as a way of building public confidence in the integrity of governance. Also of grave concern was the weakness of the parliamentary debate on the issues and the strong impression conveyed that many members of the Joint Select Committee had not even read the Act and certainly had no experience of using it.

A subsequent meeting with the newly reappointed Minister of Information Colin Campbell has given cause for hope that the government will remain steadfast in its policy of openness and transparency.

Hope for transparency and accountability

It is Jamaicans For Justice's hope that the Access to Information Act will be further strengthened so that the culture of governmental secrecy will be

replaced by transparency. This transparency, we hope, will lead to accountability and better governance for the Jamaican people.

Our own monitoring of the performance of the various ministries and agencies under the Act lead us to believe it has been working to a certain extent. A strong Access to Information Unit is needed to manage the implementation process.

We hope that it will be given statutory status by being included in the Act and being staffed to a sufficient extent to carry out its mandate. Also, the Appeals Tribunal has been trying to function without a full-time member of staff or a secretariat, and we would like this problem addressed.

Although our freedom of information legislation will help greatly to reveal instances of government corruption and reduce them, we should not make the mistake of not fully exploiting this addition to our arsenal of tools to keep our government in check. An unused Access to Information Act can do nothing to bring about transparency and accountability. As always, we - the citizens - are the sole guarantors of better governance.

An active citizenry demanding and expecting better of its government is needed to put an end to corrupt practices and ensure accountability. It will not happen automatically, but it will happen if we get involved.

The opinions expressed in guest columns are not necessarily the opinions of the Farquharson Institute of Public Affairs.

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