

Govt clamps down on freedom of information

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By Andre Bagoo

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EVERY YEAR, a list of scholarship winners for the 'A' Level examinations are released by the Ministry of Education and published in the press. The winners' names, the subjects they studied, and the schools they attended are made public. Yet this week, as the names, scores and schools attended by the top 200 students in the Secondary Entrance Assessment (SEA) were published in the press, the Government declined to tell us who had benefitted from \$45million worth of scholarships from the Ministry of Community Development, Culture and Gender Affairs.

The Government's trend of using the supposed letter of the law to block scrutiny of how it is spending taxpayers' monies started on June 3 when Bridgid Annisette-George, the Attorney General, used the Constitution as well as the Freedom of Information Act in Parliament to support her decision to block inquires over how much money a private attorney had been paid for state briefs.

This week, that trend continued with Marlene McDonald, the Culture Minister, also citing the Freedom of Information (FOI) Act, as she blocked a Parliamentary question that had been deferred for 18 weeks over just who had received scholarships, how much they got, which institutions they went on to study at, or for what purpose was the award given.

But can the Freedom of Information Act, an act that was passed explicitly to provide the public with information, be used to deny the public that very information?

In responding to Senator Wade Mark's question, Mc Donald outlined how the scholarship programme in her ministry came about. She said "a spate" of requests had been made from non-governmental organisations (NGO's) as well as community-based organisations to have the youths of communities exposed to training and development in both "traditional andnon-traditional" areas.

As a result, a technical team was established in the ministry which recommended the establishment of a scholarship programme "not tied to or restricted by the traditional criteria." The programme, she said, would be a catalyst in the various communities for improving and developing our communities as viable and sustainable units for family and family life. All very noble sounding ideals.

But while acknowledging that ministers had a duty to Parliament to account, the minister argued that disclosure of who was getting scholarship funds would be contrary to the public interest.

She cited Section 30 of the FOI Act, which provides that, "a (requested) document is an exempt document if its disclosure under this Act would involve unreasonable disclosure of personal information of any individual..."

To bolster her argument, she noted that “personal information” was defined by Section 4 of the Act as including, “information relating to the education or the medical, psychiatric, psychological, criminal, or employment history of the individual or information relating to the financial transactions in which the individual has been involved.”

Yet, telling us who won a scholarship does not tell us that person’s education history.

Apparently sensing this, the Minister further argued that the entire process of the awarding of assistance for financial studies was “a transaction of a financial nature” in which the individual is involved “by virtue of his receipt of ...financial assistance.” Therefore, in her eyes, the names of scholarship awardees were “personal information” under the Act. But the minister was totally wrong on all counts and displays ignorance of interpreting acts of Parliament.

As a result of flawed interpretation, Mc Donald was able to slot scholarships into the category of personal information and, blend it with the exemption clause, and come to the conclusion that she was unable to answer the question because personal information “may include...educational records or...current educational status and the financial transaction within the Ministry.”

As such, the Minister did not get the law right. This latest shutdown of public scrutiny is yet another in a long line of measures the Government has employed to shield itself from accountability.

Many are all too aware of the Government’s repeated refusals to answer Parliamentary questions, the AG’s refusal to reveal the legal fees paid to Senior Counsel Douglas Mendes for state briefs, as well as the use of the establishment of special purpose enterprise corporations (SPECs) for avoiding the Central Tenders Board. Taken together, all these actions place the country on a march to secret government.

One such person who believes this to be the case is Reginald Dumas a retired head of the public service.

“It strikes me that this is yet another step in the Government’s march towards secrecy; to keep the citizenry in the dark while using the citizens’ funds,” he told Newsday one day after the AG’s controversial decision to block the revelation of legal fees.

Now, Dumas thinks McDonald has clearly misinterpreted the “letter and intent” of the law, arguing that by her reasoning, the announcement of SEA and secondary school exam results would have to be censored as “private”.

“That will be considered education and therefore logically private, but that’s crazy!” he told Sunday Newsday this week. “On the face of it, (the FOI) Act does not cover what she alleged because it’s not private information,” Dumas adds, pointing out that transactions such as borrowing money from a bank is private but not getting a government scholarship.

“The question of the award of scholarships has to logically fall within the overall plan for development of the country which is clearly not private. In other words, if as it has been said, the country should go in this or that direction...then you want scholarships in that context.

“These scholarships were given by the Government of Trinidad and Tobago. If a government is giving scholarships it must give those scholarships within a particular developmental framework. Otherwise, it will be felt that you just giving your friend and family and political

colleagues scholarships to go and do as you like,” Dumas says.

“It is logical to assume that if you are going to use public money in order to give scholarships to people who are going to come back and work for Trinidad and Tobago, then you have to say what the scholarships were and to whom you gave them. This is not private information. This is taxpayer’s money for, presumably, the development of the country. If it is for the development of the country in a public way how can it become private”

“So the refusal is a misinterpretation of the letter and intent of the legislation. It therefore leads to the suspicion that you have something to hide.”

Lawyers, too, are baffled by McDonald’s use of the FOI. Noted constitutional lawyer and retired head of the Public Service Commission, Kenneth Lalla SC, notes that the FOI was ironically first passed to compel governments to give information, not withhold it.

The government does not run a private fiefdom. The passing of the FOI Act became necessary because governments were too autocratic, and failed to understand their role and function. It became necessary to pass legislation to compel the government to respond to the people’s request for information.”

In addition to personal information the FOI has several other explicit exceptions to its general rule of promoting freedom of information. They include: Cabinet documents, defence and security documents, and trade secrets. The granting of scholarships at the public expense clearly does not fall within these types of exceptions.

“The Government seems not to understand the role and function of government.

The government is the servant of the people, they are paid by the people, they are answerable to the people. The question about secrecy of the names of scholars is a complete violation of the rights of the people,” Lalla says.

The Government cannot get away with its current practice of trying to conceal matter after matter involving public funds.

Taxpayers are entitled to know who are the beneficiaries of all awards and scholarships. To withhold this information is to convince the public that it is engaged in a cover-up or has something to hide.

THE FREEDOM OF INFORMATION ACT 1999 AN ACT to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto.

PART 1 PRELIMINARY

3. (1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by –

(a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorizations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorizations, policies, rules and practices; and

(b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities...

Interpretation

4. In this Act –

“exempt document” means a document referred to in Part IV;

“personal information” means information about an individual, including –

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, telephone number, fingerprints or blood type of the individual...

PART IV EXEMPT DOCUMENTS

Documents affecting personal privacy

30. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual)...

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