

Review of Legislative Framework of Freedom of Information and Access to Information Legislation in the English-speaking Caribbean



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The Media Institute of the Caribbean thanks all other individuals who offered their opinions and insights and who worked on this project.

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About Media Institute of the Caribbean

The Caribbean Media Institute is a non-profit organization formed in 2015 and headquartered in Jamaica since 2017.

Our Vision is to be the cornerstone of journalistic excellence in the Caribbean, where every media professional is equipped with the knowledge, skills, and ethical foundation necessary to navigate and shape the future of media. Our vision is for a Caribbean media landscape that is diverse, free, and thriving, setting a global standard for integrity, innovation, and impact in journalism. We envision a future where journalism strengthens democracy and unites our communities and region. We support an innovative and independent Media Industry.

The Media Institute of the Caribbean is dedicated to empowering journalists and media professionals across the Caribbean region through comprehensive training, mentorship, research and resources. Our mission is to enhance the quality, integrity, and diversity of journalism in the Caribbean, fostering a media landscape that is vibrant, inclusive, and capable of addressing the unique challenges and opportunities in our region. We commit to promoting freedom of expression, ethical journalism, and innovation in media practices, contributing to the development of informed, engaged, and resilient societies.

We are committed to

- Strengthening the investigative techniques of journalists and improving the standards of journalists throughout the Caribbean
- Providing a safe place for journalists to discuss issues important to them, specifically issues that impact their ability to do their jobs effectively
- Evaluating current Caribbean media policies, strategies and initiatives, providing media resources and training for journalists, media managers, media practitioners
- Suggesting alternatives to regional media challenges including educate practitioners and develop journalists' skills to reach their audiences more effectively
- Building capacity to adapt to the evolving industry
- Developing leadership skills of media practitioners
- Conducting research and analysis relevant to the Caribbean media industry
- Actively contribute to the regional media landscape by contributing via hosting seminars, conducting research related to the media, presenting recommendations towards strengthening the right to information, media viability and press freedom.
- Bringing together key stakeholders to discuss the role of the media and to better understand and address the changing media landscape and societal norms.
- Focusing on developing reporting using the SDG's presented by UNESCO which address the major social issues that impact growth and development of nations.
- Utilizing our alumni and network of investigative journalists throughout the region to tell their stories without fear or favour.

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Foreword

Toby Mendel
Executive Director
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The right to access information held by public authorities, often referred to as the “right to information”, “access to information” or “freedom of information”, has been recognised under international law and many national constitutions as a basic human right. It delivers numerous benefits to society including greater public accountability, enhanced ability for citizens to participate in decision-making, reduced levels of corruption and better development outcomes.

The right to information belongs to everyone but it is of particular importance to journalists, who serve to disseminate information of public interest to the wider societies in which they work. Despite this, in many countries journalists have failed to take full advantage of the opportunities the right to information offers. This Final Report by the Media Institute of the Caribbean on its Freedom of Information and Access to Information Advocacy Campaign highlights clearly some of the key reasons for this.

Too many countries across the Caribbean have still failed to adopt right to information legislation and, without this, the right remains largely theoretical. Even for those States which do have legislation, the Report identifies three reasons why journalists and civil society activists are failing to use these laws, namely: 1) lack of awareness about the laws and what they can deliver; 2) uncertainty as to how to use the laws (i.e. how to make requests and then appeals); and 3) frustration at not receiving the information sought, perhaps both because many laws are in their early, “teething” days and because many applicants do not know how to use their appeals systems effectively. There are also serious concerns about the reluctance of State entities to comply with their legal obligations to disseminate information upon request.

The Campaign has undertaken effective actions to address all of these problems. MIC conducted a survey to assess needs, hosted a series of awareness-raising workshops and set up a Help Desk to provide legal support to applicants. These are all important and needed initiatives in the Caribbean and they will undoubtedly have had a significant impact on the uptake of right to information laws in the region. Promoting strong demand for information is essential to the successful implementation of right to information laws, among other things because it is only in the face of such demand that public authorities actually learn about their responsibilities and put in place mechanisms to discharge them.



To help address the problem of several Caribbean countries still not having enacted the relevant laws, the Campaign developed an FOI/ATI Advocacy Tool Kit, comprising advice and various specific tools to be used in an advocacy campaign. Such support, along with raising awareness about the need for such legislation can be invaluable in improving the quality of lobbying efforts. This Final Report also contains recommendations to improve FOI/ATI legislation in the countries of the English-speaking Caribbean which already have such laws in place.

At the same time, as the experience of countries and regions around the world demonstrates, promoting effective implementation of right to information laws is a long-term effort and that is even more so when the focus is on an entire region as opposed to just one country. As such, it will be important for the Media Institute of the Caribbean to keep up its focus on this issue and hopefully continue to promote both the adoption and better implementation of right to information laws across the Caribbean.



Introduction

The Media Institute of the Caribbean (MIC) is committed to training media workers across the Caribbean and equipping them with the tools to better carry out the important work of investigative journalism. During its series of training seminars, it has repeatedly emerged that journalists are, to varying extents, unfamiliar with Freedom of Information/Access to Information (FOI/ATI) legislation in their various territories, unclear how to use it effectively or have given up using it, citing its ineffectiveness.

MIC therefore embarked on a multi-faceted project to ascertain the needs of journalists in relation to FOI/ATI legislation, and to assist them in using it.

FOI/ATI Webinars

At the beginning of 2023, MIC hosted four webinars on different aspects of FOI/ATI.

The topics were:

- January 9, 2023 - Understanding FOI/ATI Legislation in the Region (29 attendees)
- January 16, 2023 - How to Draft an FOI/ATI Request/Launching the MIC FOI/ATI Help Desk (registration numbers unavailable)
- January 23, 2023 - The Human Rights Perspective of FOI/ATI - 50 attendees
- January 30, 2023 - The Reality of FOI/ATI-The Way Forward - 48 attendees

The webinars attracted participants from across the region. They were very successful and generated lively discussion and a wide variety of comments and questions. The webinars were significant in awareness-raising and as part of the on-going process of FOI/ATI training which MIC conducts across the region.

FOI/ATI Advocacy Tool Kit

This toolkit was created and now exists to assist advocacy groups and media organisations who wish to lobby for FOI/ATI legislation in their countries. It is a complete “starter kit” that walks interested parties through a number of steps that will be useful in undertaking any such lobbying effort. It also contains sample letters/material that can be adapted for use in the lobbying effort.



The Advocacy Toolkit consists of:

1. Op-ed on the need for FOI/ATI
2. Steps in lobbying for FOI/ATI legislation
3. FAQs
4. Template for letter to build a coalition
5. Template for letter to international partners
6. Template for letter to Parliamentarians
7. Talking points for lobbying
8. Suggested list of regional and international partners
9. Suggested list of local partners

This advocacy toolkit remains permanently available for use for media workers and/or civic society groups who wish to lobby for FOI/ATI laws. It is an invaluable way to help smooth the path for those interested in the issue, but who are unsure how to begin.

Recommendations:

1. The advocacy toolkit should be promoted on an on-going basis at seminars/panel discussions.
2. It should be proactively sent out to the civic groups and media houses across the region.

FOI/ATI Help Desk

The Help Desk was an exciting innovation for the region. When the Jamaican ATI Act 2002 was first enacted, a “Volunteer Attorneys Panel” was established in 2004 with the assistance of the United States-based Carter Center and the Jamaican Bar Association. The attorneys assisted applicants *pro bono* with applications under what was then a very new law and process. The Panel is not now in operation and has not been for years, but was a forward-thinking step to initially help the media, civic society and the general public become familiar with the new law and how to use it.

The MIC Help Desk was designed to accomplish a similar aim, to encourage journalists across the region to use FOI/ATI legislation, to help them understand their rights under the legislation, and how to initiate and follow up a request for information.

The initial response to the Help Desk was disappointing, despite it being heavily promoted at all MIC training workshops and information about the operation of the desk shared with journalists in various territories.



Workshop

As a result of the initially disappointing response, although not part of the initial project proposal, a free online workshop on “How to Use the ATI Act” was organized and held with Jamaican journalists on August 17, 2023. Twenty-five people attended in a very interactive session. The majority of the issues raised had to do with confusion about what to do when initial applications for information were made and refused or ignored. Many of the participants were also unfamiliar with how the legislation worked and how it could enhance their reporting. Participants were invited to ask for guidance on any ATI requests they had previously made or wished to make.

Several requests for assistance came in after the workshop. This experience indicated several things:

1. Many journalists are not actively using the ATI Act in Jamaica, and therefore would not have felt the need to reach out to the Help Desk.
2. On-going education about the ATI Act is critical, along with on-going training about how to use the Act, and its importance in journalism.
3. This emphasizes the importance of the MIC model of routinely including FOI/ATI training as part of its training workshops.

Following is a summary of the requests for assistance. The names of applicants have been anonymized to protect their privacy.

Requests for Help

1. Applicant 1: no response to application
2. Applicant 1: how to appeal
3. Applicant 2: no response to application
4. Applicant 2: significant delay in provision of the documents requested
5. Applicant 3: how to make a series of complicated requests
6. Applicant 4: how to make 2 requests
7. Applicant 5: how to make a request
8. Applicant 6: how to make a request
9. Applicant 7: no response to application

Since two of the major issues raised were how to proceed following non-response to an ATI application, and how to make an ATI request, two applicants with those issues were contacted and interviewed for more detailed information.



Journalist 1

Facts: This journalist had sent ATI requests to four government agencies. He received no response within the statutory time limits and had not followed up any further. On learning of the MIC help desk, he emailed with details of his request. The Help Desk responded with advice on the legislative procedure in his jurisdiction and drafted a suggested response letter for him to send to the agencies in question, as follows:

Dear ,

Thanks for reaching out to Media Institute of the Caribbean. We are routing your request through the Freedom of Expression/Access to Information Help Desk.

Under the Access to Information (ATI) Act, your request for information should have been first acknowledged, and then answered within 30 days. The agency in question is empowered by law to ask for an additional 30 days to respond to your request. The lack of a response is unacceptable, but is provided for by law. We are therefore enclosing for you a draft letter we suggest you send to the ...Ministry.

The letter is to be sent to the Permanent Secretary in the ... Ministry. This is because the ATI Act provides that a failure to respond to an application for information can be treated as a denial of the request. This allows you to proceed to the next level, which is a request for an Internal Review. This review is carried out by the Permanent Secretary.

Please note that in the event that there is no response to your request for an Internal Review, or a refusal of your request, you can then appeal to the ATI Appeal Tribunal for an independent review of your application.

Please let us know what happens.

The Permanent Secretary
Ministry of

Dear:

Re: Application for Internal Review of Access to information Request from ... re ...

This is an application for internal review of my Access to Information request made on 10 July, 2023 as provided for by section 30 (3) of the Access to Information Act, which states that “a failure to give a decision ...within the time required by this Act shall be regarded as a refusal to do so.”

I still have received neither an acknowledgement of my request for information, nor the information requested. At this stage, I am therefore forced to treat the failure to produce the documents as a refusal to supply them, as provided for by the ATI Act. Please therefore review my application and let me have a response as soon as possible.

I await your response.

Sincerely,

Update

When interviewed, Journalist 1 stated that he had received the MIC response, but that he had not followed up with the agencies in question due to other work commitments. He said he intended to do so soon. He stated that he found the MIC response “helpful” as it gave him “another alternative,” and would allow him to be “more proactive’ in dealing with ATI requests.

He admitted that after receiving no response from the government entities in question, that he initially did not know what to do next. He said that since receiving the response from MIC that he intended to make more use of the ATI Act in the future, and would use the template which had been provided by MIC to assist with other requests as needed.

Recommendation: He said he would welcome more assistance and training in using ATI legislation, especially for media workers outside of traditional hard news areas.

Journalist 2

Facts: This journalist was interested in making an ATI request and asked for information on how to begin. She was sent the following response and draft letter.

Dear ...:

Thanks for reaching out to us. I apologise for the late response which is because of an unfortunate administrative glitch that occurred in our systems.

Cell phone bills are documents, and you can therefore just ask for the bills themselves. A suggested response is below. Each Ministry is supposed to have an officer assigned to handle ATI requests but this is not always the case. You should therefore try to find out who is the assigned officer and send the request to them. If you’re having trouble, however, I suggest you send the request to the Permanent Secretary.

Dear:

I am making a request under the Access to Information Act for the cell phone bills of Minister and State Minister in relation to all their government-issued cell phones for the period July 2022 to July 2023.

I am reminding you of the provision of the Access to Information Act which requires in section 7 (3) (b) that my request is acknowledged, and further requires as per section 7 (4) (b) that I should receive a response within 30 days.

I await your response.

Sincerely



Update

When interviewed subsequently, she explained that she had wanted advice on how to frame an ATI request of this nature, and said the MIC response had been helpful.

“It gave me a template that I can use for all of the Ministries to contact, now I just need the email for the Ministries, who to address it to, and I’m good, so it was a great help.”

This journalist explained that her main problem with the ATI process was usually not the initial request, but the subsequent steps.

“That’s the real deterrent to doing the ATIs, how you manage the process after you make the request. I haven’t had too many issues making the request, it’s the follow-up process after.”

Recommendation:

This journalist recommended educating journalists on how to better track requests, and suggested that MIC develop Frequently Asked Questions (FAQs) on the ATI Act and appropriate responses.

FOI/ATI Survey

The survey of journalists that was conducted by MIC and appended here contains valuable information that dovetails with the work done by the Help Desk, and highlights issues that emerged from that project. The following are pulled out as important for discussion.

- Nearly 6% of respondents said they did not know if their country had FOI/ATI legislation.
- Nearly 26% said they did not know if their country had laws guaranteeing access to government records and information.
- Nearly 26% said they were not able to conduct a FOI/ATI request. This did, however, include journalists from countries without FOI/ATI laws.
- Most respondents reporting not using FOI/ATI legislation for a variety of reasons, including feeling it was a waste of time, getting the information they needed through back channels, and not seeing the relevance of FOI/ATI legislation to their work.
- Thirty-four percent of respondents had their requests for information denied.
- Eighty-six percent of respondents reported not receiving responses to requests.
- Forty-nine percent said they received no clear explanations for information being restricted.
- Seventy-seven percent said they have wanted to file a request and did not so do.
- Nine percent said they had not filed a request because they did not know how.
- Fifty-six percent said they didn’t think it would make a difference in getting information.
- Six percent said they did not have the resources.
- Thirty-four percent said they believed filing a request would have consequences such as victimization.



- All respondents believed there should be a common Caribbean legislative framework for FOI/ATI legislation.

Discussion

Many journalists are not filing FOI/ATI requests at all because:

- they are frustrated from previous failures;
- they believe it is a waste of time based on their or colleagues' experiences;
- they don't know how to use the legislation.

Journalists who do use the legislation are not proceeding past an initial refusal to respond or an outright denial either because they do not know how to proceed or because they give up in frustration. As stated before, this gives credence to the importance of the MIC model of incorporating FOI/ATI training into the Institute's journalism training. In those training workshops, journalists are also actively encouraged to use the legislation.

Recommendation:

Perhaps a way could be found to link every workshop with a limited Help Desk say for one or two weeks immediately after a workshop for journalists who wish to try making FOI/ATI requests or to follow up on previously made requests given the interest in using FOI/ATI that the training seminars inevitably evoke.

This would help address the fact that it is not possible to have a Help Desk as a permanent programme, but could also help to encourage journalists to use the FOI/ATI following a training seminar.



Legislative Review of FOI/ATI Laws in the English-Speaking Caribbean



Overview

[UNESCO defines Access to Information](#) as “the right to seek, receive and impart information held by public bodies.” Freedom of Information (FOI) or Access to Information (ATI) legislation therefore provides a statutory basis for applications for information held by public authorities, and in some cases, private agencies which carry out public functions.

FOI/ATI has been recognised as an aspect of the right of freedom of expression, as set out in Article 19 of the [Universal Declaration of Human Rights](#) (1948) and the [International Covenant on Civil and Political Rights](#) (1966) and where it is defined as the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and through any media. The right to freedom of expression is enshrined in the Constitutions of the countries that are the subject of this report and some of these instruments either define this right to include the right to receive ideas and information without interference or create a separate right to seek, receive, distribute or disseminate information through any media. The Special Rapporteur for Freedom of Expression at the Inter-American Commission for Human Rights has affirmed that FOI/ATI legislation is an important part of the [accountability and transparency framework of governance](#), and The Carter Center has noted its role in [enhancing democratic governance](#).

This legislative review then, set out to assess the FOI/ATI statutes that exist in the region for the extent with which they comply with established international standards, and to make recommendations for improvements, if necessary.

Not every country in the English-speaking Caribbean has FOI/ATI legislation.

The countries with laws in place are:

- Trinidad & Tobago – Freedom of Information Act (1999)
- Belize – Freedom of Information Act, Revised Edition (2000)
- Jamaica – Access to Information Act (2002)
- St. Vincent & Grenadines – Freedom of Information Act (2003) *passed but not in effect
- Antigua & Barbuda – Freedom of Information Act (2004)
- Guyana – Access to Information Act (2011)
- Bahamas – Freedom of Information Act (2017)
- Cayman Islands – Freedom of Information (2021) (revision)
- St. Kitts & Nevis – Freedom of Information Act 2018 (amended 2023)



St. Lucia drafted a Freedom of Information Act, but it was never enacted. The same is true of Barbados and Grenada. In recognition of the fact that not all states in the English-speaking Caribbean had enacted relevant legislation, in 2015 the General Assembly of the Association of Caribbean Media Workers (ACM) passed a resolution calling upon states in the region “to take prompt and credible steps towards ...advancing, passage and promulgation of Access to Information legislation and regulations.”

The laws that are in place have attracted various types of complaints from journalists, civil society advocates and other members of the public about their lack of effectiveness.

August 15, 2023 – Editorial in Jamaica’s Gleaner – [Strengthen the ATI Act](#)

August 12, 2023 - Jamaicans for Justice published [a Letter to the Editor in Jamaica’s Gleaner](#) publicising obstacles the organisation was facing in accessing information under the Act.

February 1, 2022 – [Access to Information requests often ignored](#) - Jamaica Gleaner

January 18, 2021 – [Damning assessment of Gov’t handling of the bauxite industry](#) - story included concerns about the difficulty in getting information using the ATI Act

October 3, 2019 – [“Withdraw it”](#)- Gov’t told to re-think 50-year increase in period of exemption from public access to Cabinet documents – Jamaica Gleaner

June 19, 2019 - [Public pressure forces Trinidad and Tobago government to drop amendment to Freedom of Information Act](#) (attempt to extend the allowable response time)

October 5, 2016 – [“Concerns raised about counterproductive nature of ATI Act”](#) – Jamaica Observer

The experiences of media workers with FOI/ATI laws in the region are explored in the survey which forms part of this report. In addition, the legislation that has been passed across the region is not uniform, with sometimes significant differences in provisions.

Aim of Legislative Review

This legislative review is therefore focused on assessing the statutes that exist with the aim of recommending useful amendments that will enhance democracy, participation and accountability in the states in which they exist, and will improve everyday life of the citizens of a country [as described by lobby group Article 19](#).



Two internationally accepted benchmarks were chosen to aid the assessment. They were:

- [The Public's Right to Know: Principles on Right to Information Legislation](#) by international advocacy group **Article 19**, published in 1999 and updated in 2005.
- The [Inter-American Model Law 2.0 on Access to Public Information](#) (the Model Law).

The **Article 19** guidelines are based on “best practice standards on freedom of information legislation” and “international and regional law and standards, and evolving State practice.” They have been endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression, and have been used by organisations like The Carter Center, which has done extensive work on FOI/ATI.

Article 19 Principles

In brief, the Article 19 principles are:

- **Principle 1 – Maximum Disclosure:** A presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.

- **Principle 2 – Obligation to Publish:** Public bodies should respond to requests for information but should also proactively publish and disseminate widely, information of significant public interest, subject only to reasonable limits based on resources and capacity.

- **Principle 3 – Promotion of Open Government:** Informing the public of their rights and promoting a culture of openness within government.

- **Principle 4 – Limited Scope of Exceptions:** Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.

- **Principle 5 – Processes to Facilitate Access:** Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

- **Principle 6 – Costs:** Individuals should not be deterred from obtaining public information because of cost.

- **Principle 7 – Open Meetings:** Meetings of public bodies should be open to the public;

- **Principle 8 – Disclosure Takes Precedence:** Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

- **Principle 9 – Protection for whistle-blowers:** Individuals who release information on wrongdoing – whistle-blowers – must be protected.



Inter-American Model Law 2.0 on Access to Public Information



The OAS recently reviewed its model legislation, and published the [Inter-American Model Law 2.0 on Access to Public Information](#) (the Model Law) in 2020. This Model Law contains the most recent and forward-thinking suggested inclusions in an FOI/ATI law and was therefore important to analyse. However, it is important to note that the Model Law is extremely detailed. The legislative review team felt it was very important not to make a slew of recommendations for statutes across the English-speaking Caribbean that would end up making the statutes overly complicated, unwieldy and even more difficult to use. The majority of the states in the English-speaking Caribbean are small states with limited resources and technical capacity, and this also had to be taken into account in assessing the practicality of recommendations.

The recommendations made in this report, therefore, are focused on the most important provisions and improvements necessary for the statutes across the region to become more useful to citizens of their respective countries. The recommendations will help fulfil a major goal of FOI/ATI laws which is to improve transparency and accountability in government.

General Comments

Those states which have enacted FOI/ATI laws are to be commended. Most of the statutes provide benefits to the public, although in many cases, legislative amendments would improve their usefulness.

However, special note has to be made of the Access to Information Act (2011) of Guyana. This law needs fundamental reform, as there are multiple deficiencies in its current form that make it impractical and unlikely that it will work well. We recommend a repeal of this statute and re-enactment according to internationally accepted standards.

Another special note needs to be made of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ([the Escazú Agreement](#)). This regional treaty creates benchmarks for FOI/ATI legislation. Some states in the region have signed the Agreement, while some have both signed and ratified the Agreement, thus creating obligations for themselves.

States that have signed:

Antigua and Barbuda
 Belize
 Dominica
 Grenada
 Guyana
 Jamaica
 St. Vincent and the Grenadines
 St. Kitts and Nevis
 St. Lucia

States that have ratified:

Antigua and Barbuda
 Belize
 Guyana
 St. Vincent and the Grenadines
 St. Kitts and Nevis
 St. Lucia



A coalition of 39 individuals and groups in Jamaica published [an open letter](#) to the government in October 2023, calling for ratification of the agreement.

An assessment of how well the statutes across the region accord to the requirements of the Escazu' Agreement is outside the scope of this legislative review. However, it should be noted that such an assessment should be done by states seeking to review and amend their national laws.

General Recommendations

The following provisions of the Model Law are recommended for inclusion in all statutes.

Access to Personal Information of Deceased Persons

The Model Law at Article 1 (h) defines personal information as information regarding a living person who is or may be identified through such information. Statutes across the region have varying provisions for accessing personal information, including refusing access to the information of deceased persons.

Recommendation: Blanket refusals to disclose information should be avoided. A suitable time period should be established after which personal information can be accessed e.g. 20 years, should be subject to a public interest test.

Maximum Disclosure

Article 2 (2) of the Model Law states that the law is based on the principle of maximum disclosure. This accords with Principle 1 (maximum disclosure) and establishes the presumption that the primary purpose of the legislation is to facilitate the disclosure of information held by the state. Whereas there is no such provision in any of the referenced statutes, the objects clause in some statutes serve a similar purpose. For example, the objects clause in the Freedom of Information Act of Trinidad and Tobago (1999) creates a general right of access limited only by necessary exceptions and exemptions, and provides that the statute should be interpreted to further that object. However, these provisions are not included in all statutes.

Recommendation: A provision creating a presumption of maximum disclosure, or an objects clause to the same or similar effect should be included in all statutes.

Scope of the Law

Article 2 (3) (1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed.

The statutes across the region create various devices for including organisations that are not public bodies. Most, if not all, require a positive action to be taken by the relevant Minister. This is unnecessarily time-consuming and cumbersome. Indeed, there is no guarantee that any such action will be taken by a Minister,



even in circumstances which warrant it. Adopting this provision is in keeping with importance of accountability for public funds.

Recommendation: This provision should be incorporated into all statutes.

Reasons for Request

Article 3 (1) (e) of the Model Law expressly states that reasons do not need to be given for making a request. Some of the statutes include this provision, but some do not.

Recommendation: This provision should be adopted in all statutes where it is not currently included.

Freedom from Discrimination in Making a Request for Information

Article 3 (1) (f) of the Model Law provides that requesters shall be free from any discrimination based on the making of the request; and Article 3 (2) states that the requester shall not be sanctioned, punished or prosecuted for exercising the right of access to information.

Recommendation: These provisions should be adopted.

Interpretation

Article 4 (1) of the Model Law states that in interpreting the law or any other legislation or regulatory instrument that may affect the right to information, the interpretation to be adopted is that reasonable interpretation that ensures the most effective right to information.

Recommendation: This provision should be adopted in all statutes and is in accord with Principle 1 (maximum disclosure).

Active Transparency

In Articles 5, 6 and 8, the Model Law requires proactive dissemination of key information and the development of a publication scheme to make available other information without members of the public having to make a request. Some statutes do not have a similar provision. In other statutes, the categories of information subject to proactive publication are far less expansive than those in the model law.

Recommendation: This provision should be adopted where it does not exist, and broadened where it already exists. Expansion of the categories and a regime for proactive disclosure of documents (particularly those related to documents that are routinely generated such as those relating to the nature of services, budgets, work plans, laws, information on public officials). It is not recommended that this include personal information of public officials, such as declarations of assets as several jurisdictions have a separate legislative regime that governs how this type of information is treated. This recommendation would accord with Principle 2 (obligation to publish).



Other Laws and Mechanisms

Article 9 of the Model Law states that the law does not affect the operation of other laws requiring disclosure of information, and that such other requests shall be processed in as favourable a manner as under the FOI/ATI law.

Recommendation: This provision should be adopted.

Previously Disclosed Information

Article 10 of the Model Law states that entities shall guarantee access to previously disclosed information and makes provision for ease of subsequent access of that information. If the information is requested a second time, it is to be made available proactively on the entity's website.

Recommendation: This provision should be adopted where it does not exist and be broadened where necessary.

Application Process

Article 11 of the Model Law permits requests to be made by various means, such as in writing, by electronic means, verbally in person or "by any alternative means." Some statutes or the attendant regulations permit oral requests by persons who are illiterate or otherwise unable to make a written request and require the public authority to reduce the request to writing. Some statutes require requests to be made only in writing.

Recommendation: The provisions in the Model Law allowing applications by a wide variety of means should be adopted in any jurisdiction which currently accepts requests only in writing. However, if applications are made verbally, a duty should be placed on the relevant public servant to reduce the application to writing. This would accord with Principle 5 (processes to facilitate access).

Third Party Notification

Article 15 of the Model Law states that interested third parties are entitled to be informed of requests for information and permitted time to make representations either consenting to the disclosure or giving reasons why disclosure should not be made. This provision does not appear in all statutes across the region.

Recommendation: This provision should be adopted.

Costs

Article 16 of the Model Law states that requesters should only pay for the cost of reproduction, and the cost of shipping, if requested. Delivery of information electronically should be free. A similar provision does not exist in all statutes.



Recommendation: This provision should be incorporated into statutes where the provision does not already exist. This would accord with Principle 6 (costs).

Response Period

Articles 22 & 23 of the Model Law provide for a response period of 20 days and an extension of 20 days respectively. The response and extension periods vary across the region, but 30 days for a response, and 30 days for an extension is a common provision.

Recommendation: Given the restricted capacity and technical resources in the states of the English-speaking Caribbean, there is no recommendation to change the response periods provided. The exception is Guyana where the period allowed for a response is 60 days, with another 60 days allowed for an extension. These response periods are unreasonably long, completely out of line with international standards. If the statute is repealed and replaced as recommended, the re-enacted response period should be made to accord to international standards, or to the common 30-day stipulation across the region.

Notice to Requester

Article 24 of the Model Law states that the public entity should advise the requester where reproduction costs exceed the standards set, or where disclosure would take longer than 20 business days so the requester has the opportunity to modify the request. In addition, where information requested in electronic format is already on the Internet, the public authority may simply indicate the URL where the information can be found.

Recommendation: These provisions should be adopted.

Exemptions Regime and Public Interest Test

Although the statutes are dissimilar in many respects, the exemptions regimes are extremely broad in all cases. This is not in keeping with Principle 4 (limited scope of exemptions). The inclusion of a general public interest test which would apply to all documents, including those categorised as exempt from disclosure, alleviates this problem.

Article 26 of the Model Law establishes a public interest test for the disclosure of all information, including exempt material, in providing that no entity may refuse to indicate whether or not a document is in its power or refuse to disclose such document, unless the harm caused to the protected interest is greater than the public interest in disclosing the document.

Some statutes contain general public interest tests. Others contain tests that apply only to certain categories of information.



Recommendation: The decisions regarding disclosure of a document should be made on a case-by-case basis, with the use of a public interest test to aid all decision-making. A harm test is not recommended as a public interest test covers the necessary ground. This recommendation would accord with Principle 1 (maximum disclosure).

Maximum Duration of Refusal to Disclose

In Article 45, the Model Law sets a five-year period after which information that is withheld because it falls within one of the protected categories, loses that designation. There is also the possibility of extending the time period during which the exemption continues to apply, but the maximum period for withholding disclosure is ten years. The statutes across the region vary in the use of this provision.

Recommendation: The maximum period for withholding disclosure should not exceed 20 years.

Non-Existent Information

Article 46 of the Model Law states that an entity may not refuse to deliver information by unjustifiably declaring that it does not exist. The non-existence of information must be proved by a properly documented search.

Recommendation: This provision should be adopted.

Deemed Refusal

Article 48 of the Model Law provides for a requester to file a complaint if there has been no request to a response, and a process for resolving such a complaint.

Recommendation: The statutes should all provide for deemed refusal, that is, that a failure to respond be deemed a refusal of the request, thus allowing the applicant to appeal.

Right to Appeal

Article 50 of the Model Law provides for an internal appeal, and Article 51 provides for an external appeal. The provisions for appeals differ across jurisdictions.

Recommendation: There should be provision in all statutes for both an internal and external appeal. The external appeal may be to an independent Ombudsperson or tribunal.

Burden of Proof

Article 54 of the Model Law places the burden of proof on the public entity to show that a document should not be disclosed. The public entity must show that the exception is legitimate and strictly necessary in a democratic society, that disclosure would cause substantial harm to a protected interest, and that the likelihood and gravity of the harm outweighs the public interest in disclosing the information. This accords with principle 4.



Recommendation: This provision should be adopted where it does not exist.

Burden of proof

Article 54 of the Model Law states that the public body has burden of proving that a document should not be disclosed.

Recommendation: This provision should be adopted in statutes where it does not exist.

Open Data Format

The statutes should contain a provision making it mandatory that key information is increasingly disclosed in an open data format, as stated in Article 63 (7) of the Model Law.

FOI/ATI Administration

The statutes should provide for an independent secretariat, such independence to include funding. The appellate functions should be carried out by a separate office, e.g. that of an Ombudsperson or Tribunal.

Existence of Website

Technology has made it much easier for public officials to fulfil the requirements of FOI/ATI. However, far too many public entities across the region still lack this basic tool for providing information to the public.

Recommendation: It should now be obligatory for public entities to establish, maintain and update websites to facilitate proactive disclosure.

Training of Public Officials

Most statutes provide for the designation of Information Officers in public entities who are to be specially tasked with responding to requests from the public. Many statutes also include a statutory requirement for training public officials in the use of ATI/FOI legislation. However, the complaints from media workers and members of the public more broadly seem to indicate that such training is not on-going. Far too many public officers appear to be ignorant about the requirements of ATI/FOI legislation and their legal obligations to applicants.

Recommendation: The requirement for public entities to carry out training of officers in the use of FOI/ATI statutes should be included in legislation where it does not exist. The provision also needs to be acted on as a matter of urgency.





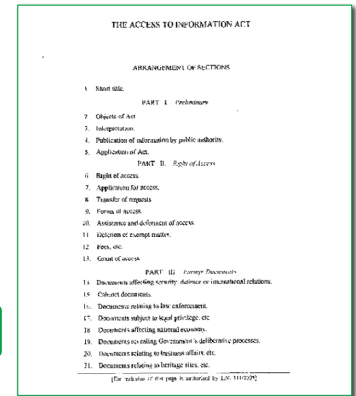
Assessment of Individual Statutes

FOI/ATI legislation from Jamaica, St. Kitts and Nevis, Belize, Trinidad and Tobago, Cayman Islands, Bahamas, Guyana, St. Vincent and the Grenadines, and Antigua and Barbuda was assessed, to allow for recommendations to be made that are country-specific.





Assessment of Access to Information Act (2002), Jamaica



Scope of the Law

Article 2 (3.1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed.

The Jamaican Act at s. 5 (3) allows the Minister by order subject to affirmative resolution to declare that the law applies to “any other body or organization which provides services of a public nature which are essential to the welfare of the Jamaican society.” This requires action by the Minister and approval by Parliament.

Recommendation: It is proposed that the Act be amended in line with the Model Law.

Bodies Exempt from the Act

Article 2 (4) of the Model Law provides that “no public body shall be exempt (from the law) including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof.”

The Jamaican law exempts in s. 5 (6) the Governor General, the judicial functions of a Court, the holder of a judicial office or other office connected with a court, the security or intelligence services in relation to their strategic or operational intelligence gathering activities, or any statutory body as the Minister may specify by order, subject to affirmative resolution.

Recommendation: The formulation of the Model Law should be adopted. The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with the rationale for a public interest test. This recommendation is in keeping with Principle 1 (maximum disclosure).

Active Transparency

In the Model Law at Article 5-7, agencies are required to proactively disseminate key information established under law without the need for any request.

The Jamaican law provides for proactive disclosure in section 4 and the First Schedule but the categories for disclosure are very limited.



Recommendation: This provision in the Model Law should be adopted to provide for an expansion of the categories for proactive disclosure of documents especially those that are routinely generated such as those relating to the nature of services, budgets, work plans, laws, information on public officials). It is not recommended that this include personal information of public officials, such as declarations of assets. This recommendation would accord with Principle 2 (obligation to publish).

Response Period and Extension

Articles 22 and 23 of the Model Law provide for a response period of 20 days and provide 20 days for an extension. The Jamaican law provides at s. 7 (4) (a) for 30 days for a response and at s. 7 (4) (b) for 30 days for an extension.

Recommendation: No change is recommended.

Information if Request Refused

Article 24 (6) of the Model Law requires that specific information be provided to the requester in the event of information being withheld because it is exempt. Section 11 of the Act requires the requester be informed of the provision relied upon to delete exempt matters from a document but does not require information concerning the volume of material being withheld.

Recommendation: Information concerning the volume of information withheld should be included in the response to the individual whose request involves matter that is to be deleted.

Exemptions Regime and Public Interest Test

Article 26 of the Model Law establishes a public interest test for the disclosure of all information, including exempt material. It states that no entity may refuse to indicate whether or not a document is in its power or refuse to disclose such document, unless the harm caused to the protected interest is greater than the public interest in disclosing the document.

Jamaica has an extensive exemptions regime at sections 14 – 23 that provides for documents to be withheld from disclosure. The Jamaican Act has a limited public interest test as per s. 19 (3) in relation to documents about the government's deliberative processes and in s. 21 (2) in relation to ecological, historical, and heritage resources.

Recommendation: The decisions regarding disclosure of all documents should be made on a case by case basis, with the use of a public interest test to aid decision-making. This recommendation would accord with Principle 1 (maximum disclosure) and Principle 4 (limited scope of exceptions). The public interest test in the Jamaican Act should therefore be made generally applicable to all categories of exempt documents.



Certificate of Exemption

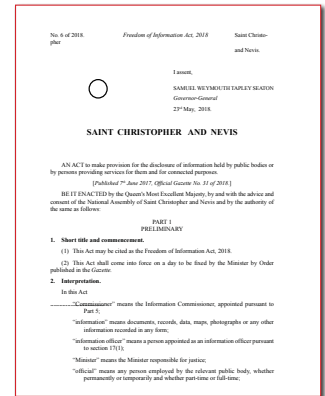
The Jamaican Act contains a provision in s. 23 allowing the Prime Minister or other Minister to issue a certificate of exemption, which is unassailable proof a document is exempt and cannot be challenged. The Model Law has no equivalent provision. This is inimical to accountability and transparency.

Recommendation: This section should be deleted from the Act. This would be in accordance with Principle 1 (maximum disclosure).





Assessment of Freedom of Information Act, 2018 St. Christopher and Nevis



Interpretation

The Act defines “vexatious” in the context of requests for information, which requests can be refused. The Model Law does not contemplate vexatious requests because no provision is made to refuse any such requests.

Recommendation: Delete the definition of vexatious in connection with removing provisions empowering public officials to refuse to process requests. This would accord with Principle 5 (processes to facilitate access).

Scope of the Law

The definition of “public authority” in s. 7 accords with Article 1 (c) of the Model Law in encompassing a wide number of entities exercising governmental authority. However, unlike the Model Law, the definitions do not extend to private entities that receive government funding in relation to those funds.

Recommendation: The Act should apply to any governmental authority, but also to any non-state entities that receive public funds, but only in relation to the public funds received.

Records

Section 8 accords with the definition of “information” in Article 1(g) of the Model Law, save for the reference in the Model Law to political parties, unions, and non-profit organizations, and save for the Act’s reference to documents held by the public authority on behalf of another person not being considered to be held by that public authority.

Recommendation: The exemption for documents held by the public authority on behalf of another person should be removed. The regime for exemption can adequately protect any third party interest. This would accord with Principle 1 (maximum disclosure).

Application Process

Section 9 of the Act accords with Article 13 of the Model Law in imposing a duty to assist the requester. The Act requires requests to be in sufficient detail to enable an experienced official to identify whether the public authority holds the document. The Model Law does not set a standard of experienced official.



Article 11 of the Model Law permits multiple methods for making requests, such as verbally in person. However, the Act requires requests to be made in writing. The Act imposes a duty in s. 9 (4) to identify the right that the person making the request is seeking to exercise or protect, and the reasons the information is required to protect the right. Article 3 (1) (e) of the Model Law does not require reasons to be given for making requests.

Recommendations:

- The methods by which information may be requested should be expanded to include requests not made in writing.
- There should be an obligation on the public authority to record the request that is not made in writing.
- The reference to “experienced” in relation to the officer should be removed.
- Any requirement to give reasons should be removed.

Time Limits

The Act in s. 10 imposes a duty to inform applicants of approval or refusal as soon as practicable but in any case not later than thirty days after the request is made. The Model sets twenty working days as the outer limit for a response. However, the Act creates an exception for information which reasonably appears to be necessary to safeguard the life or liberty of a person, in which case the response must be provided within three working days.

Article 23 of the Model permits extensions of the response time but the extension time under the Model is shorter (twenty days) than in the Act (forty working days).

Recommendation: There is no recommendation for change for the 30-day response period. The period allowed for extensions should be reduced from 40 days to 30 days.

Notice of Response

Section 11 accords with Article 24 of the Model Law in requiring reasons to be given for refusal, information on the right of appeal and for the applicant to be informed of any applicable fees. The Act refers to “adequate” reasons for refusing a request.

Recommendation: The Model prescribes specific information that should be included in the reasons and the Act should also do so.

Costs

Section 12 of the Act accords with the intention of Article 16 of the Model Law in providing that no fees may be charged if the request is in the public interest. Payment of fees is not required under the Act for personal information.



Article 16 of the Model Law limits the fees chargeable to the cost of reproduction which should not exceed the actual cost of the material. On the other hand, the Act permits additional factors in calculating the cost, namely, searching for, preparing and communicating the information.

Recommendation: Cost to the applicant should be limited to the cost of reproduction which should not exceed the actual cost of the material used. This accords with Principle 6 (costs).

Means of Communicating Information

Section 13 of the Act accords with Article 24 (2) of the Model Law in guaranteeing access in the form requested unless specified circumstances exist. However, one of those circumstances is where the form requested would unreasonably interfere with the effective operation of the body. The Model does not have that latter criteria.

Recommendation: The grounds on which access in the form requested may be denied should be limited to those specified in Article 24 of the Model Law, namely, if this would damage the document, infringe copyright or be impractical because of the need to delete or redact information.

Vexatious, Repetitive or Unreasonable Requests

There is no provision in the Model Law for refusing requests. However, s. 15 of the Act permits non-compliance with a request in particular circumstances.

Recommendation: Remove the provisions empowering public officials to refuse to process requests.

Information Officers

Section 17 of the Act is consistent with the intent of Article 18 of the Model Law in having a liaison person within the public authority, however, the Model Law provides for more functions to be performed.

Recommendation: Include the functions listed in Article 18 of the Model Law, namely, promoting best practices in maintaining, archiving and disposal of documents, and serving as a central contact for information requests. This accords with Principle 5 (processes to facilitate access).

Active Transparency

The Model Law requires proactive disclosure of information that falls within the classes described in Article 6 (classes of key information subject to proactive disclosure). Section 18 of the Act also requires proactive disclosure of documents, however, the Model Law prescribes a more comprehensive list.

Recommendation: A more comprehensive regime for proactive disclosure of documents should be adopted, particularly in relation to information that is routinely generated such as services, work plans, laws, information on public officials. This accords with Principle 2 (obligation to publish).



Exemption Regime and Public Interest Test

Sections 26 - 32 of the Act cover the exemptions regime which is very broad and contrary to Principle 4 (limited scope of exceptions). The Model Law sets a higher standard for exemption under Article 32 and provides for the application of a public interest test under Article 36.

Section 23 of the Act accords with the Model Law in providing a public interest override for the various exemptions. The Act permits the public authority to refuse to indicate if it has a document to which the exception applies. The Model does not.

Recommendations:

- Expressly describe the considerations that go into determining the public interest as done by the Model Law.
- The exemptions regime in the Model Law should be adopted.
- The provision for the public authority to refuse to indicate if it has the relevant document should be removed.

Time Limits

Article 45 of the Model Law prescribes a five year period after which exceptions no longer apply with the possibility for an extension of a maximum of five years. Section 34 of the Act has a thirty year period after which the exemptions do not apply.

Recommendation: Reduce the duration of the exemption period to 20 years. This would better accord with Principle 4 (limited scope of exceptions).

Appointment of Commissioner

Section 35 of the Act which provides for appointment of an Information Commissioner is similar to Articles 55-66 of the Model Law which create a Guarantor Body to promote, implement and interpret the law, and provide for its operation. However, there are significant differences in composition, appointment and removal between the Act and the Model Law.

Recommendations:

- The procedure for appointment should be independent of direct involvement of political executive.
- The procedure for removal should mirror that of judges.

Functions of Commissioner

The functions of the Commissioner as set out in s. 37 are similar to those of the Guarantor Body under the Model Law, however, the functions set out Model Law are more detailed and comprehensive.



Recommendation: Expand the functions to be performed by the Commissioner to mirror those of Article 63 of the Model Law.

Complaints

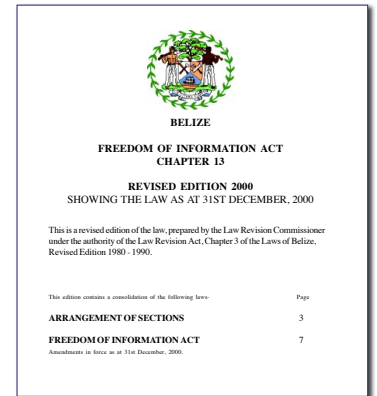
Section 43 of the Act prescribes a thirty day period within which appeals are to be decided. Article 60 of the Model Law prescribes a longer time period (60 days).

Recommendation: Amend the Act to accord to the longer period as set out in the Model Law.





Assessment of Freedom of Information Act of Belize, 2000 (Revised)



Interpretation

Section 3 of the Act refers to Ministries as defined in the Act and prescribed authorities as defined in the Act. The Model Law uses a wider formulation by referring to entities exercising governmental authority. The definition of “prescribed authority” includes a body corporate or an unincorporated body established for a public purpose prescribed by Ministerial Order. The Model Law does not require a public official to designate such an entity.

The definition of “prescribed authority” does not include bodies that are not established for a public purpose and therefore excludes private entities that receive public funds as contemplated by the Model Law.

Recommendation: The Act should apply to any governmental authority and non-state entities that receive public funds, but only in relation to the public funds received.

Bodies Exempt from the Act

Sections 4-5 of the Act exclude from the scope of application of the Act, courts, judicial office holders or other officers pertaining to the courts, as well as a registry or other office of a court and its staff, and the Office of the Governor General.

Article 2 (4) of the Model Law provides that “no public body shall be exempt including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof.”

Recommendation: The formulation of the Model Law should be adopted. The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with recommendations to establish a public interest test. This would be in keeping with the Principle 1 (maximum disclosure).



Active Transparency

The Model Law requires proactive disclosure of information that falls within the classes described in Article 6 (classes of key information subject to proactive disclosure). On the other hand, section 6 of the Act requires publication of a statement informing the public of particulars of the organization and functions of Ministries and prescribed authorities, and a statement of the categories of information maintained. There is therefore no obligation to make the information itself available, just an obligation to provide information on what is available. The information to be included in the statement is less than that required for proactive disclosure.

Recommendation: A regime for proactive disclosure of documents (particularly those related to information that is routinely generated such as work plans, laws, information on public officials) should be adopted. This would accord with Principle 2 (obligation to publish).

Procedure for Obtaining Access to Certain Documents

Article 9 (2) of the Model Law requires requests made under other laws or administrative acts to be treated in an equally favourable manner as if it had been made under the Model Law. On the other hand, section 10 of the Act excludes particular types of documents from its operation if those documents fall within the categories described in this section. The Act is excluded because the requester has to obtain those documents in accordance with the law or arrangement that applies to those documents.

Recommendation: The Freedom of Information Act should be the primary law regulating access to information so that any requests for information made under another law should be processed in an equally favourable manner as if it had been made under this law.

Application Process

Section 12 of the Act accords with Article 13 of the Model Law in imposing a duty to assist the requester. Article 11 of the Model Law permits multiple methods for making requests, such as verbally in person. However, the Act requires requests be made in writing. There is no requirement for requests to be registered and given a tracking number. There is no provision in the Model Law for refusing to process requests. However, the Act permits this in particular circumstances.

Recommendations:

- The methods by which information may be requested should be expanded to include requests not made in writing.
- There should be an obligation on the public authority to record requests not made in writing.
- Remove provisions empowering public officials to refuse to process requests.

Access to Documents to be Given on Request

Article 16 of the Model Law limits the fees chargeable to the cost of reproduction, which should not exceed the actual cost of the material. On the other hand, s. 15 of the Act refers to “any charge” and is therefore not limited to cost of reproduction.



Recommendation: Cost of access should be limited to the cost of reproduction which should not exceed the actual cost of the material used. This would accord with Principle 6 (costs).

Information if Request Refused

Article 24 (6) of the Model Law requires that specific information be provided to the requester in the event of information being withheld because it is exempt. The Act requires the requester to be informed of the provision relied upon to exempt particular matters from a document but does not require information concerning the volume of material being withheld.

Recommendation: Information concerning the volume of information withheld should be included in the response to the applicant.

Exemption Regime and Public Interest Test

Sections 22 - 34 of the Act cover the exemptions regime which is very broad and contrary to Principle 4 (limited scope of exceptions). The Model Law sets a higher standard for exemption under Article 32 and provides for the application of a public interest test under Article 36.

Recommendation: The exceptions regime in the Model Law should be adopted. A public interest test should be applied to requests for any exempt document.

Certificate of Exemption

Section 22 (2) of the Act allows the Minister, once satisfied that disclosure of a document would be contrary to the public interest, to issue a certificate which is conclusive proof that the document is exempt. The Model Law has no such provision.

Recommendation: Certificates of exemptions permit blanket exclusions from disclosure and this provision of the Act should be repealed. This would accord with Principle 1 (maximum disclosure).

Supremacy of Law

Article 2 (5) of the Model Law requires the Model to prevail over any other law. The Act does the opposite.

Recommendation: The Freedom of Information Act should prevail over other legislation if there is an inconsistency. This accords with Principle 8 (disclosure takes precedence).

Time Allowed for Application to Ombudsman

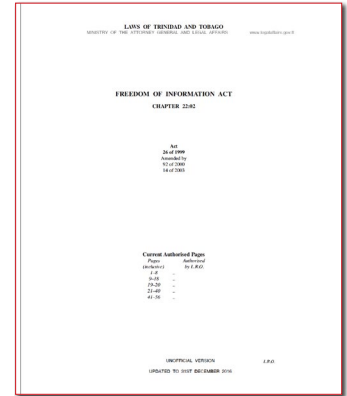
Section 37 of the Act provides for the time permitted for application to the Ombudsman which is shorter than the Model Law.

Recommendation: Increase the time allowable for making this application.





Assessment of Freedom of Information Act 1999, Trinidad and Tobago



Interpretation

The definition of document in section 4 of the Act accords with Article 1 (d) of the Model Law in providing a wide definition. However, the Model Law extends application to political parties and unions, and non-profit organizations. Similarly, the definition of “official document” accords with the definition of “information” in Article 1(g) of the Model Law, save for the scope of application to the named entities.

The definition of “public authority” accords with Article 1(c) of the Model in encompassing a wide number of entities exercising governmental authority. However, in providing a list of such entities, the Act risks excluding any entities not specifically named.

Recommendation: The Act should apply to any governmental authority and non-state entities that receive public funds, but only in relation to the public funds received.

Bodies Exempt from the Act

Article 2 (4) of the Model Law provides that “no public body shall be exempt including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof.” However, Section 5 of the Act creates a blanket exclusion of documents by excluding particular public officials or functions performed by those officials from the scope of application of the Act.

Recommendation: The formulation of the Model Law should be adopted. The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with recommendations to establish a public interest test. This would be in keeping with the Principle 1 (maximum disclosure).

Active Transparency

The Model Law requires proactive disclosure of information that falls within the classes described in Article 6 (classes of key information subject to proactive disclosure). On the other hand, section 7 of the Act requires publication of a statement informing the public of specific types of information. There is therefore no obligation



to make the information itself available, just an obligation to inform the public what is available. The information to be included in the statement is less than that required for proactive disclosure.

Recommendation: A regime for proactive disclosure of documents (particularly those related to information that is routinely generated such as work plans, laws, information on public officials) should be adopted. It is not recommended that this include personal information of public officials, such as declarations of assets.

Access Procedure Not to Apply to Certain Documents

Article 9.2 of the Model Law requires requests made under other laws or administrative acts to be treated in an equally favourable manner as if it had been made under the Model. On the other hand, section 12 of the Act excludes particular types of documents from its operation if those documents fall within the categories described in this section. The Act is excluded because the requester has to obtain those documents in accordance with the law or arrangement that applies to those documents.

Recommendation: The Freedom of Information Act should be the primary law regulating access to information so that any requests for information made under another law should be processed in an equally favourable manner as if it had been made under this law.

Application Process

Article 11 of the Model permits multiple methods for making requests, such as verbally in person. However, the Act in section 13 requires requests to be made using a prescribed form.

Recommendation: The methods by which information may be requested should be expanded to include requests not made in writing. There should also be an obligation on the public authority to record the request that is not made in writing.

Deletion of Exempt Information

Article 24 (6) of the Model Law requires specific information to be provided to the requester in the event of information being withheld because it is exempt. No similar duty exists under the Act.

Recommendation: The Act should describe the estimated volume of information being withheld.

Costs

Section 17 of the Act accords with Article 11 (3) of the Model Law in prohibiting the charging of fees for making a request. Article 16 limits the fees chargeable to the cost of reproduction which should not exceed the actual cost of the material, while the Act simply states that fees are commensurate with the cost incurred in making the documents available.



The Model Law expressly states that electronic delivery is free of charge and makes provision for free access to low-income persons. Regulations made under the Act give the public authority discretion in determining whether to impose charges if those charges would impose hardship on an applicant who receives prescribed benefits (such as pension, allowance etc). Regulations under the Act permit charges for time spent in: searching for or retrieving the document; ascertaining whether a document should be accessible; but exempted are personal documents. There are also charges for supervised inspection of documents and to access documents that are articles or things from which sounds or visual images are capable of being produced.

Recommendation: The cost of access should be limited to the cost of reproduction which should not exceed the actual cost of the material used. This accords with Principle 6 (costs).

Refusal of Requests

There are no provisions in the Model Law for refusing requests.

Recommendation: Remove provisions at s. 20-21 of the Act empowering public officials to refuse to process requests. This accords with Principle 1 (maximum disclosure).

Exemption Regime and Public Interest Test

Sections 24 – 35 of the Act cover the exemptions regime which is very broad and contrary to Principle 4 (limited scope of exceptions). The Model Law sets a higher standard for exemption under Article 32 and provides for the application of a public interest test under Article 36. Blanket exclusions should be replaced with an analysis of whether the particular document satisfies one of the exceptions in the legislation.

Recommendation: The exemptions regime in the Model Law should be adopted. A public interest test should be applied to requests for any exempt document.

Disclosure of Exempt Document in the Public Interest

Section 35 of the Act permits consideration of the benefits of disclosure to the harm of disclosure if there is reasonable evidence of this fact. Other specific circumstances are mentioned. This is not the same as the public interest test under the Model Law which applies to confidential information as defined in the Model Law.

Recommendation: The exemption regime and the public interest test in the Model Law should be adopted.

Certificate of Exemption

Section 25 (3) of the Act allows conclusive Ministerial certificates to be issued that a document meets the exemption standard. The Model Law does not have such a provision.



Recommendation: The exceptions regime in the Model Law should be adopted. The section of the Act granting the power to issue a certificate of exemption should be repealed. This accords with Principle 1 (maximum disclosure).

Review by the Ombudsman

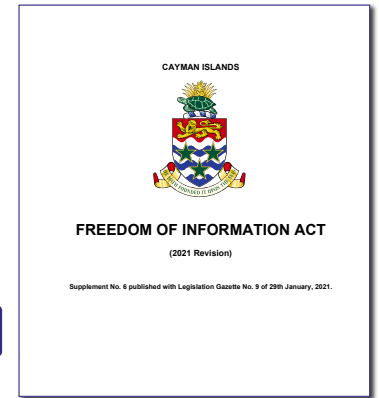
Section 38A gives similar powers for appeal to the Ombudsman as those given to the Guarantor Body under the Model Law, but the Model Law permits 60 days for an appeal compared to the 21 days provided for an appeal in the Act.

Recommendation: The time limits in the Model Law should be adopted.





Assessment of Freedom of Information Act (2021), Cayman Islands



Interpretation

The Act empowers Cabinet to designate as public authorities to which the law applies, entities which receive government appropriations on a regular basis, however, the Model Law uses a wider classification than “receives government appropriations on a regular basis.” The Model Law speaks to receipt of public funds without reference to the frequency of receipt and extends application of the law to political parties and unions, and non-profit organizations.

Recommendation: The Act should apply to any governmental authority and also to non-state entities that receive public funds but only in relation to the public funds received.

Bodies Exempt from the Act

Section 3 (5) of the Act excludes a list of entities or specific types of documents from its scope of application. The Model Law does not exclude specific persons or authorities and only excludes documents based on individual assessment, not categorical exclusions.

Recommendation: Blanket exclusions should be replaced with an analysis of whether the particular document satisfies one of the exceptions in the legislation.

Active Transparency

The Model Law requires proactive disclosure of information that falls within the classes described in Article 6 (classes of key information subject to proactive disclosure). On the other hand, section 5 of the Act and the Schedule to the Act require publication of a statement informing the public of specific types of information. There is therefore no obligation to make the information itself available, just an obligation to give information on what is available. The information to be included in the statement is less than that required for proactive disclosure.

Recommendation: A regime for proactive disclosure of documents (particularly those related to information that is already publicly available such as services, structure, work plans, laws, information on public officials) should be adopted. This accords with Principle 2 (obligation to publish.)



General Right of Access

Section 6 of the Act prescribes a 20 year period after which exemptions do not apply unless the Ombudsman is satisfied that exemption continues to apply. Article 45 (1) of the Model Law prescribes a shorter time for exemptions to continue to apply, but only in relation to reserved documents with the possibility of extension.

Article 9 (2) of the Model Law requires requests made under other laws or administrative acts to be treated in an equally favourable manner as if it had been made under the Model Law.

On the other hand, section 6 (4) of the Act excludes particular types of documents from its operation if those documents fall within the categories described in this section. The Act is excluded because the requester has to obtain those documents in accordance with the law or arrangement that applies to those documents.

Recommendation: The Freedom of Information Act should be the primary law regulating access to information so that any requests for information made under another law should be processed in an equally favourable manner as if it had been made under this law.

Application Process

Article 11 of the Model Law permits multiple methods for making requests, such as verbally in person. However, section 7 (2) of the Act requires requests be made in writing or electronic means other than telephone.

Recommendations:

- The methods by which information may be requested should be expanded to include requests not made in writing.
- There should also be an obligation on the public authority to record the request that is not made in writing.

Vexatious, Repetitive or Unreasonable Requests

There are no provisions in the Model for refusing requests. However, section 9 of the Act permits non-compliance with a request in particular circumstances.

Recommendation: Remove provisions empowering public officials to refuse to process requests.

Partial Access

Article 24 (6) of the Model Law acknowledges that documents may be granted with exempt matter withheld. Section 12 of the Act has a similar mechanism. Article 24 (6) of the Model Law requires specific information be provided to the requester in the event of information being withheld because it is exempt, including the volume of information being withheld. The Act requires that the requester be informed of the provision relied upon to exempt particular matters from a document but does not require information concerning the volume of material being withheld.



Recommendation: Information concerning the volume of information withheld should be included in the response to the individual whose request involves matter that is to be deleted.

Costs

Section 13 of the Act accords with Article 11 (3) of the Model Law in prohibiting the charging of a fee for making a request. Article 16 of the Model Law limits the fees chargeable to the cost of reproduction which should not exceed the actual cost of the material. On the other hand, the Act permits additional factors in calculating the cost, namely, searching for, preparing and communicating the information.

Recommendation: The costs charged should be limited to the cost of reproduction which should not exceed the actual cost of the material used. This accords with Principle 6 (costs).

Exemption Regime and Public Interest Test

Sections 15-27 of the Act cover the exemptions regime which is very broad and contrary to Principle 4 (limited scope of exceptions). The Model Law sets a higher standard for exemption under Article 32 and provides for the application of a public interest test under Article 36.

Section 26 of the Act provides that access may be granted to documents exempted under particular provisions if doing so is in the public interest. The public interest is to be defined in regulations. The Model Law defines public interest in the Model Law itself.

Recommendation:

- The exemption regime in the Model Law should be adopted. Blanket exclusions should be replaced with an analysis of whether the particular document satisfies one of the exemptions in the legislation.
- A public interest test should be included in the primary Act and should be applied to requests for any exempt document.

Issuance of Certificate re Exempt Record

Section 25 of the Act gives a Minister the power to issue a certificate which serves as conclusive proof that a document is exempt. No such power exists under the Model Law.

Recommendation: This provision should be repealed. The exemptions regime in the Model Law should be adopted.

Appeal to Ombudsman

Section 42 of the Act gives similar powers for appeal as provided for appeals to the Guarantor Body under the Model Law, however, the time period for appeal under the Act (30 calendar days) is shorter than the 60 business days provided under Article 50 of the Model Law.



Recommendation: Increase the time period for appeal.

Judicial Review of Ombudsman's Decisions and Orders

Section 47 of the Act is similar to Article 53 in allowing for judicial review, save for the specification of 60 days within which to file the appeal under the Model Law, compared to the 45 days allowed under the Act.

Recommendation: Increase the periods allowed for appeal.

Information Managers

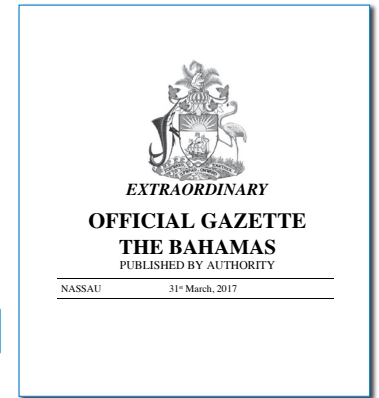
Section 49 of the Act accords with Article 7 of the Model Law in imposing a duty to appoint an Information Manager, though the specified duties are not similar.

Recommendation: The duties of the Information Manager should be expanded to include some of the functions listed in the Model law.





Assessment of Freedom of Information Act (2017), The Bahamas



Bodies Exempt Under the Act

Section 3 of the Act provides that the Act applies to bodies in receipt of public funds, however this is determined by the Minister after consultation with the Commissioner.

Section 3(6)(c) gives broad powers to the Minister in consultation with the Commissioner to exempt public bodies without any objective principles being applied. Article 2 (3) (1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed.

Recommendations:

- The Act should apply to any governmental authority and also to non-state entities that receive public funds, but only in relation to the public funds received.
- The provision allowing the exemption of public bodies should be repealed. Removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with the rationale for a public interest test. This recommendation is in keeping with Principle 1 (maximum disclosure).

Active Transparency

There is notable deviation on the classes of information to be published under the Act from those listed in Articles 5 & 6 of the Model Law.

Recommendation: Adopt the key classes of information listed in the Model Law, particularly as it relates to information that is routinely generated such as services, work plans, laws, information on public officials. This accords with Principle 2 (obligation to publish).

Application Process

Section 7 of the Act only allows for written applications. Article 11 of the Model Law permits multiple methods for making requests, such as verbally in person.



Recommendations:

- The methods by which information may be requested should be expanded to include requests not made in writing.
- There should also be an obligation on the public authority to record a request that is not made in writing.

Vexatious Requests

Section 9 of the Act allows authorities to deny requests in certain circumstances. No similar provision is found in the Model Law.

Recommendation: Remove provisions empowering public officials to refuse to process requests.

Costs

Section 13 of the Act states that access to a record is conditional upon payment of the prescribed fee for reproducing or preparing the record. Article 16 of the Model Law states that the requester shall only pay for the cost of reproduction, and the cost of shipping if so requested. The cost of reproduction is not to exceed the actual cost of the material.

Recommendation: Incorporate the provisions of the Model Law.

Exemption Regime and Public Interest Test

The public interest override in sections 15 & 16 does not apply to all exempt information. Notably it does not apply to national security, defence, international relations and other broad consultative and deliberative processes in Government. The Model Law sets a higher standard for exemption under Article 32 and provides for the application of a public interest test under Article 36.

Recommendations:

- The exceptions regime in the Model Law should be adopted. Blanket exclusions should be replaced with an analysis of whether the particular document satisfies one of the exceptions in the legislation.
- A general public interest test should be included in the primary Act and should be applied to requests for any exempt document.

Internal Review

Sections 28-29 of the Act provide for internal review. The Model Law gives 60 days to apply while the Act gives 30 days.

Recommendation: Increase the time limits for application for internal review in accordance with the provisions in the Model law.



Appointment of Information Commissioner & Deputies/Assistants

Sections 30-31 of the Act address appointments, as do Articles 57-59 and 61 of the Model Law. The Act provides for the establishment of one Commissioner but the Model Law establishes multiple Commissioners in a Commission. In the Act, the Commissioner is appointed by the Governor General on the recommendation of Prime Minister after consultation with the Leader of the Opposition. The Model Law requires the agreement of a two-thirds majority in Parliament. The Model Law only allows renewal for one term but the Act allows continuous renewal for five-year terms, which may weaken independence.

Recommendation: Revise the appointment & renewal procedures to strengthen the independence of the Commissioners.

Additional Powers

Article 63 of the Model Law gives a broader range of powers to the Guarantor Body including identifying areas for law reform and working with Civil Society Organisations than those given to the Commissioner by s. 35 of the Act.

Recommendation: Amend the Act to include powers related to law reform and cooperation with civil society.

Removal of Commissioner

Section 36 of the Act does not contain a definition of misbehaviour as a basis for removal unlike Article 62 of the Model Law.

Recommendation:

- Provide the definition for what actions constitute misbehaviour.
- The procedure for removal should mirror that of judges.

Appeals

Article 47-48, 50-52 & 54 of the Model Law set out the procedures for filing appeals. The Model Law allows 60 days for filing appeals while the Act requires 30.

Recommendation: Extend the limit limits for filing appeals in line with the provisions in the Model Law.

Judicial Review

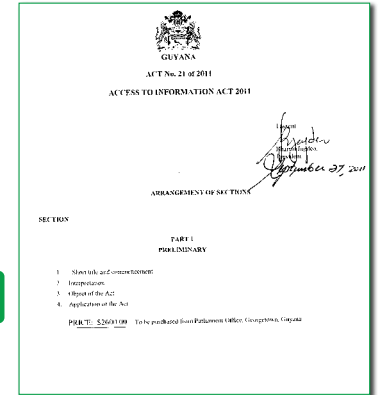
Article 53 of the Model Law allows 60 days to apply for judicial review while s. 44 of the Act allows 45 days.

Recommendation: Expand the time limits in accordance with the provisions of the Model Law.





Assessment of Access to Information Act (2011) Guyana



Special Note:

In the General Comment section, it was stated that the Guyanese statute needs fundamental reform. A repeal of this statute and re-enactment according to internationally accepted standards was therefore recommended. Nevertheless, the following section is included to help explain the deficiencies in the Act and the overarching recommendation for repeal and re-enactment.

Scope of the Law

Article 2 (3.1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed.

The Act gives broad powers to the President to exempt public bodies without any objective principles being applied. There is no such provision in the Model Law. On the contrary, Article 2 (4) provides that “no public body shall be exempt including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof.”

Recommendations:

- The formulation of the Model Law should be adopted.
- The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with recommendations for a public interest test. This would be in keeping with the Principle 1 (maximum disclosure).

The Right of Access

There is no prohibition on the provision of the reasons for the requests and s. 25(4) of the Act implies that reasons would be provided even though the prescribed form in the Schedule does not require it. Article 3 (1) (e) of the Model Law gives the right to request information without giving reasons. Section 14(4) of the Act seemingly states that an authority is not compelled to disclose any document existing before the commencement of the Act.



Recommendation:

- Repeal section 14(4).
- Amend the Act to explicitly provide the right to request information without giving reasons.

Active Transparency

The Commissioner of Information has a centralized role to field requests and staff and there are no Information Officers appointed per public authority. While there is a duty to create an information management system, it is unclear whose duty that becomes, particularly as it relates to proactive publication.

Section 13(3) of the Act does establish a duty to publish material proactively. The Model Law requires proactive disclosure of information that falls within the classes described in Article 6 (classes of key information subject to proactive disclosure).

Recommendations:

- A regime for proactive disclosure of documents (particularly those related to information that is already publicly available such as services, structure, work plans, laws, information on public officials) should be adopted. This accords with Principle 2 (obligation to publish).

Previously Disclosed Information

Article 10 of the Model Law states that entities shall guarantee access to previously disclosed information and makes provision for ease of subsequent access to that information. If the information is requested a second time it shall be proactively made available on the entity's website. There is no provision in the Act regarding the approach to previously disclosed information with the exception that s. 15 of the Act prohibits applications for publicly accessible documents whether or not there is a fee for that access.

Recommendation: the provision in the Model Law on previously disclosed information should be adopted.

Application Process

Section 16 only allows for written or electronic applications. Article 11 of the Model Law permits multiple methods for making requests, such as verbally in person.

Recommendations:

- The methods by which information may be requested should be expanded to include requests not made in writing.
- There should also be an obligation on the public authority to record a request that is not made in writing.



Costs

The model allows for removal of reproduction and delivery costs if the requester earns below a certain income. S. 21(5) allows for fees to be waived, however the basis is not prescribed. Article 16 of the Model Law limits the fees chargeable to the cost of reproduction which should not exceed the actual cost of the material.

Recommendation:

- Establish by regulation or orders, the basis of waiver of reproduction fees.
- The costs charged should be limited to the cost of reproduction which should not exceed the actual cost of the material used. This accords with Principle 6 (costs).

Information Officers

There are no provisions for Information Officers as the Commissioner handles all requests. There is no requirement to publish details of staff however, if Commissioner is bound by key information provisions, then this would be published. Article 18 of the Model Law provides for appointment of Information Officers.

Recommendation: Information Officers should be appointed by each public body to manage the applications for information.

Time Limits

Articles 22-23 in the Model Law provide for 20 days for a response and a 20-day extension. Section 18 of the Act provides for 60 days for a response and another 60 days for an extension.

Recommendation: These time limits are far removed from internally accepted standards and should be reduced.

Exemption Regime and Public Interest Test

There is a broad public interest override in s. 38 and a public interest test is featured in several categories of exemption. Section 25 gives the Commissioner wide discretion to refuse requests because of resource constraints that may be imposed on public authorities.

Recommendation:

- Apply the public interest override to all areas.
- Repeal section 25 as it may act as a significant barrier to access.

Appeals

As Commissioner handles all requests, s. 43 provides that all appeals are to the high court. The Model Law provides for internal appeals in Article 50 and for external appeals in Article 51.

Recommendation: A mechanism for internal and external appeals should be established.



Guarantor Body

The Act establishes one Commissioner in s. 5 but the model establishes multiple Commissioners in a commission. The Commissioner is appointed by the President but the Model Law requires a 2/3 majority vote in Parliament. There is no appellate jurisdiction, however it acts as a regulatory body for public authorities. It handles all requests for information and can recommend law reform.

Recommendation: Revise appointment & procedures to strengthen independence of the Commissioner. Restructure the office and appoint Information Officers in the public entities to handle requests.

Term of Office

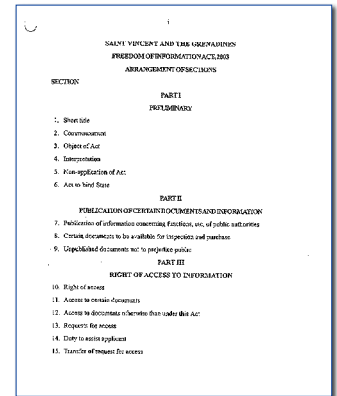
There is no provision under the Act for term limits or a specific term of office.

Recommendation: This should be amended in line with Article 61 of the Model Law to increase the independence of the office.





Assessment of Freedom of Information Act 2003, St. Vincent and the Grenadines



Special Note:

St. Vincent and the Grenadines passed its Freedom of Information Act in 2003, but it has never been brought into effect.

Prime Minister Dr. Ralph Gonsalves [was reported in 2019](#) as stating that "...shortly after the passage of the act, I was informed by the chambers of the Attorney General that there is an attempt to coordinate across the region, the OECS (Organisation of Eastern Caribbean States), and, indeed, in CARICOM (the Caribbean Community) similar-type legislation and that there are changes which would be required to these existing laws."

Scope of the Law

Article 2 (3) (1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed. Section 4 (h) of the St. Vincent Act allows the Minister to designate by regulation under the Act any other body as a public body for the purpose of the Act. This requires action by the Minister and approval by Parliament.

Recommendation: Amend the Act in line with the Model Law.

Bodies Exempt from the Act

Article 2 (4) of the Model Law states that no public body shall be exempt including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof."

The Vincentian law in s 5. exempts the Governor General, a Commission of Enquiry established by the Governor General, courts and holders of judicial office, the judicial capacity of the administration offices or registry of a court.



Recommendation: Adopt the formulation in the Model Law. The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with recommendations later on to establish a public interest test.

Active Transparency

In Articles 5-6 of the Model Law, it states that agencies should proactively disseminate key information established under law without the need for any request. The Vincentian law provides for proactive disclosure in s. 7 but the classes of information to be proactively published under the Model Law are far more expansive.

Recommendation: Adopt the key classes of information listed in the Model Law, particularly as it relates to information that is routinely generated such as services, work plans, laws, information on public officials). This accords with Principle 2 (obligation to publish).

Costs

Article 16 of the Model Law states that applicants should pay only the cost of reproduction and shipping if relevant. The Vincentian Act at s. 19 provides that the Minister may, by regulation, prescribe or alter fees.

Recommendation: It should be included in the primary Act that fees are not to exceed reasonable cost of reproduction. This accords with Principle 6 (costs).

Information Officers

Article 18 of the Model Law provides that an Information Officer is to be appointed in each entity as the Focal Point for implementing the law. The Vincentian Act does not provide for appointment of an Information Officer.

Recommendation: This should be a provision of the primary Act.

Time Limits

Articles 22-23 of the Model Law provide for a response period of 20 days and an extension of 20 days. Vincentian law provides at s. 16 that the applicant should be notified of a decision within 30 days. There is no provision in Vincentian law for an extension to be granted.

Recommendation: An extension period should be provided for in the Act.

Right to Appeal

The Vincentian Act makes reference only to the right to judicial review of a decision of a public authority. Article 50 of the Model Law provides for internal appeal and Article 51 provides for external appeal, outside of the court system. This is important as legal action is expensive and time-consuming.



Recommendation: An independent review mechanism should be established outside of the court for both internal and external appeals.

Declaration of Exemption

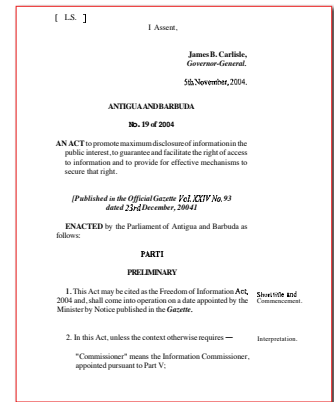
The Vincentian Act at s. 36 allows the Minister in consultation with a public authority, and by order to declare any document exempt, even if it does not fall into one of the statutory exemption categories. The model law has no equivalent provision.

Recommendation: This provision should be repealed.





Assessment of Freedom of Information Act 2004, Antigua and Barbuda



Scope of the Law

Article 3 (1) of the Model Law applies to private organisations, political parties or similar associations, unions, guilds or non-profits, but only to the extent of public funds received and public functions performed.

The Antiguan Act provides at s. 3 (e) that the Act may also apply to “such other body carrying out a public function as the Minister may, by Order published in the *Gazette*, designate.” This requires action by the Minister and approval by Parliament.

Recommendation: It is proposed that the Act be amended in line with the Model Law.

Bodies Which are Exempt

Article 2 (4) of the Model Law states that no public body shall be exempt including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police & other security bodies, Chiefs of State & government & the divisions thereof.” Section 7 of the Antiguan Act lists the entities to which the Act does not apply.

Recommendation: The formulation in the model law should be adopted. The removal of blanket immunity will force agencies to justify claims of the need to withhold disclosure, and is in keeping with recommendations later on to establish a public interest test. This is in keeping with Principle 1 (maximum disclosure).

Active Transparency

Articles 5-6 of the Model Law state that agencies should proactively disseminate key information without the need for any request. Section 10 of the Act stipulates key information which agencies shall publish and disseminate in an accessible form. The classes of information to be proactively published under the Model Law are more expansive.



Recommendation: Adopt the key classes of information listed in the Model Law, particularly as it relates to information that is routinely generated such as services, work plans, laws, information on public officials. This accords with Principle 2 (obligation to publish).

Open Government

The thrust towards improving FOI/ATI legislation dovetails with the global thrust towards open government. An open government is understood to be a government that “[shares information, empowers people with tools to hold the government accountable, and fosters citizen participation in public policy deliberations \(and\) is a necessary component of a system of government founded on the rule of law.](#)”

An important principle of open government, closely linked to FOI/ATI is open data. Open data is data that “[can be freely used, modified, and shared by anyone for any purpose.](#)” This means that it is legally open, that is, either available in the public domain or available with an open license for members of the public to use. Such data should also be technically open, meaning accessible either at a reasonable reproduction cost, no more than the cost of reproduction or downloadable free on the internet. The data should be in a machine readable format and capable of being modified by the user.

Jamaica is the only English-speaking country that has signed on to the [Open Government Partnership](#), a multilateral network of 75 countries and 104 local government entities working to increase transparency, accountability and public participation in government. One of Jamaica’s commitments in this regard is modernising the existing ATI legal framework.

The provision of open data through open government channels would significantly enhance the benefits of access to public information. This would also provide a significant boost to the proactive disclosure arm of FOI/ATI regime.

Recommendation: English-speaking Caribbean countries should commit to the provision of open data to members of the public. Joining the Open Government Partnership would be one way to facilitate this, although not being the only path.



Freedom of Information Act (FOIA)

Conclusion



Over the past two decades, there has been significant advocacy aimed at greater liberalisation of information laws in the English-speaking Caribbean. In 2015, the General Assembly of the Association of Caribbean Media Workers (ACM) passed a resolution calling upon the Caribbean Community (CARICOM) member states to pass FOI/ATI laws where they did not yet exist.

CARICOM has stated that its commitment to access to information and freedom of expression has been set out in Article VIII of the Charter of Civil Society for the Caribbean Community. However, the extent to which member states have firstly, enacted FOI/ATI legislation, and secondly, ensured the effective implementation of the legislative has been very much a mixed affair. [Procedure problems were still being reported in the Cayman Islands in September 2023](#) 15 years after the passage of FOI legislation, for instance. [Reporters Without Borders has called for reform in Guyana](#) to ensure “proper access to public information.” [In Jamaica, state agencies have been criticised](#) for their reluctance to disclose information requested by the public.

However, it is also true to say that over the past 30 years, the English-speaking Caribbean has made significant progress in the area of FOI/ATI with the enactment of statutes in some countries. These have been used with varying degrees of success. There are also varying levels of public awareness of the importance of, and possibilities of these laws to enhance public participation and accountability in governance.

It is now time for the region to take another step towards good governance. Countries without FOI/ATI legislation should enact such laws as soon as possible. The ATI Advocacy Toolkit developed as part of this project should be promoted on a continual basis to media workers and civil society and advocacy groups across the English-speaking Caribbean to assist in lobbying efforts. The Model Law will prove useful in this respect, but a contemporary, updated Model Law specifically drafted for the English-speaking Caribbean would be culturally and practically more useful and relevant. Countries with FOI/ATI statutes should review them, and amend them where necessary in line with the recommendations made in this report.

An important aspect of the FOI/ATI ethos is prioritising proactive disclosure of state-held information, that is, publishing information without the need for applications from the public. Proactive disclosure enhances good governance, transparency and accountability. It is a critical component of the thrust towards Open Government, and helps to inform public debate and national participation in decision-making. The countries in the English-speaking Caribbean should embrace the global trend towards Open Government and proactive disclosure of information in the public interest as part of on-going efforts to enhance the quality of democracy in their societies.

An on-going process of public awareness is important. The seminars carried out under this project and MIC’s on-going training of media workers have been important in continually re-affirming the importance of FOI/ATI laws and how to use them. The survey carried out under this project has shown that three big problems hindering wider use of FOI/ATI laws are lack of awareness of the laws, uncertainty in how to use them, especially when state agencies ignore or refuse requests, and frustration experienced by people who use



them without receiving the information being sought. On-going and increasing use of the legislation and pressure on government from the media and civil society can help alleviate all three problems.

In addition, a mechanism for helping applicants use the law would also enhance the process. The Help Desk established under this project, while not heavily used, has shown that there is need for assistance in navigating the laws. This complemented the information gleaned from the survey.

Properly drafted and regularly used FOI/ATI laws would be an important step in continuing to improve good governance in the English-speaking Caribbean. MIC stands ready to assist at all stages of this process.

Next Steps

- 1.** Draft an updated FOI/ATI Model Law for the English-speaking Caribbean.
- 2.** Continue training media workers and civil society members in how to use FOI/ATI laws.
- 3.** Promote the importance of FOI/ATI laws for the media, civil society and the general public.
- 4.** Implement a mechanism to provide periodic or on-going assistance for people seeking to use or using FOI/ATI laws.

Closing Note

This legislative review regarding Freedom of Information and Access to Information legislation reinforces its significance to all countries.

Freedom of Information / Access to Information legislation stands as a cornerstone of democratic governance, ensuring transparency, accountability, and public participation in the political process. Through the course of this report, we have examined the multifaceted impacts of these laws, demonstrating not only their intrinsic value in fostering an informed citizenry but also their instrumental role in enhancing governmental oversight and combating corruption.

Implementation with a robust framework can support a higher degree of trust between the government and its citizens, bolstering the legitimacy of public institutions and empowering individuals with the tools necessary to engage meaningfully in civic life. In some other countries outside of our region, such legislation has proven to be a catalyst for social and economic development, facilitating a more efficient allocation of resources and stimulating innovation by ensuring access to information.



However, the effectiveness of freedom of information laws is contingent upon their comprehensive implementation and the willingness of governments to operate in a transparent manner. Challenges such as bureaucratic resistance, limited public awareness, and legal loopholes can undermine the potential of these laws. Therefore, continuous efforts to strengthen these legal frameworks, enhance public awareness, and foster a culture of openness are imperative for realizing the full benefits of freedom of and access to information.

As we move forward, it is crucial for policymakers, civil society, and the international community to champion the cause of freedom of information, recognizing it not merely as a legal obligation but as a fundamental human right that underpins the very essence of democracy. In doing so, we reaffirm our commitment to building societies that are more open, just, and equitable for all.





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