

# FREEDOM OF INFORMATION IN THE CARIBBEAN

20 Years & Beyond

**Fig. 1 STATUS OF FOI & RELATED LAWS IN THE CARIBBEAN**

COUNTRY	FOI LAW	COMPLIANCE & APPEALS	LEGISLATIVE FRAMEWORK		
			Privacy/Data Protection Act	Whistleblower Act	Official Secrets Act
<b>1. Belize</b>	FOI Act, 1994/2000	Ombudsman	_____	_____	
<b>2. Trinidad &amp; Tobago</b>	FOI 1999	Ombudsman	Data Protection Act, 2011	_____	
<b>3. Jamaica</b>	ATI Act, 2002	Appeal Tribunal	_____	Protected Disclosure Act, 2010	
<b>4. St Vincent</b>	FOI Act, 2003	High Court	Privacy Act, 2003	_____	
<b>5. Antigua</b>	FOI Act, 2004	IC (appt'ed)	_____	_____	
<b>6. Cayman Islands</b>	FOI Act, 2007	IC (appt'ed)	Data Protection Bill Working Group	_____	
<b>7. Bermuda</b>	Public ATI Act, 2010	IC ( to be appt'ed)	_____	_____	
<b>8. Guyana</b>	ATI Act, 2011	IC (appt'ed)	_____	_____	
<b>9. Bahamas</b>	FOI Bill, 2012	_____	Data Protection Act, 2007	_____	
<b>10. Barbados</b>	FOI Bill, 2008	_____	Data Protection Act, 2005	_____	
<b>11. Grenada</b>	FOI Bill	_____	_____	_____	
<b>12. St Kitts</b>	FO Bill, 2006	_____	Privacy and Personal Data Protection Bill, 2012	_____	
<b>13. St Lucia</b>	FOI Bill	_____	Privacy and Data Protection Bill, 2007	_____	

# **FREEDOM OF INFORMATION IN THE CARIBBEAN**

## **A SUMMARY**

- Of the 20 Caribbean countries, 8 have FOI laws (Belize, Trinidad and Tobago, Jamaica, St. Vincent, Antigua, Cayman Islands, Bermuda, Guyana), 5 have drafted Bills (the Bahamas, Barbados, Grenada, St. Kitts, St. Lucia) and 7 have no laws at all (Montserrat, Dominica, Suriname, Haiti, Turks and Caicos, Anguilla, British Virgin Islands);
- Except for Bermuda, of the 8 countries with FOI Laws, 7 are operational having appointed either an FOI Commissioner, a dual function Ombudsman, and in the case of Jamaica, an Appeals Tribunal;
- Of the 7 countries with no laws at all, 4 are British Overseas Territories;
- In terms of a supporting legislative framework, only Jamaica has a Whistleblower legislation;
- The Official Secrets Act remains on the books with no known repeals or amendments.

## GLOBAL RTI/FOI RATING (2013)

Source: Global RTI Rating/Centre for Law and Democracy

**Fig. 2 JAMAICA (47th/101)**

Section	Max Score	Score
Right to Access	6	3
Scope	30	18
Requesting Procedures	30	23
Exceptions	30	14
Appeals	30	17
Sanctions	8	5
Promotional Measures	16	8
<b>TOTAL</b>	<b>150</b>	<b>88</b>

**Fig. 3 TRINIDAD (45th/101)**

Section	Max Score	Score
Right to Access	6	3
Scope	30	24
Requesting Procedures	30	15
Exceptions	30	20
Appeals	30	15
Sanctions	8	3
Promotional Measures	16	9
<b>TOTAL</b>	<b>150</b>	<b>89</b>

**Fig. 4 BELIZE (51st/101)**

Section	Max Score	Score
Right to Access	6	1
Scope	30	19
Requesting Procedures	30	20
Exceptions	30	16
Appeals	30	19
Sanctions	8	2
Promotional Measures	16	6
<b>TOTAL</b>	<b>150</b>	<b>83</b>

**Fig. 5 GUYANA (78th/101)**

Section	Max Score	Score
Right to Access	6	4
Scope	30	15
Requesting Procedures	30	16
Exceptions	30	10
Appeals	30	9
Sanctions	8	4
Promotional Measures	16	11
<b>TOTAL</b>	<b>150</b>	<b>69</b>

**Fig. 6 ST. VINCENT (75th/101)**

Section	Max Score	Score
Right to Access	6	2
Scope	30	21
Requesting Procedures	30	17
Exceptions	30	18
Appeals	30	2
Sanctions	8	2
Promotional Measures	16	8
<b>TOTAL</b>	<b>150</b>	<b>70</b>

**Fig. 7 ANTIGUA (11th/101)**

Section	Max Score	Score
Right to Access	6	3
Scope	30	24
Requesting Procedures	30	20
Exceptions	30	23
Appeals	30	24
Sanctions	8	5
Promotional Measures	16	14
<b>TOTAL</b>	<b>150</b>	<b>113</b>

# GLOBAL RTI/FOI RATING

*Source: Global RTI Rating/Centre for Law and Democracy*

## SUMMARY

1. 101 Countries were ranked in terms of the strength of their Laws (1- Strongest – 101 Weakest). This is based on how strong the provisions are on the broadness of the Scope of the law, the clarity and ease of the Requesting Procedures, how limited the exceptions are, ease, effectiveness and Affordability of the Appeals process, the effectiveness of Sanctions and provision for the implementation of Promotional Measures;
2. Except for Antigua's law in the upper percentile, all the other countries' laws occupy the middle to lower end percentile in terms of meeting international best practices;
3. The rating highlights that overall, the laws show limited scope, over-broad exceptions regimes; shortcomings in oversight and appeals mechanisms,; and lack of legal requirements to promote awareness of the public's right of access to information;
4. The author did not find a rating for the Cayman Islands. It is expected that in terms of the effectiveness of the law, would likely score similar to Jamaica since the Jamaican law was used to inform the drafting process;
5. However, a critical difference would be the provision for an Information Commission with compliance and enforcement powers. The responsiveness of the Commissioner in Cayman to complaints and appeals has resulted in far greater public confidence;
6. The 2013 Annual Report indicates that from 2009 – 2013, the Public Bodies in Cayman received a total of 2901 applications, and this number does not take into account those that were handled unofficially and not entered as formal requests using the JADE tracking software;
7. In terms of implementation, the Cayman Islands is regarded as having the best FOI regime so far in the region.

## SNAPSHOT OF KEY FOI PROVISIONS

COUNTRY	SCOPE	EXEMPTIONS	APPEALS	PROMOTIONAL MEASURES IN LAW
<b>Jamaica</b>	<p>Limitations: No documents over 30 years old except by order</p> <p>Excludes Governor General/judicial functions of a court/security forces/certain public bodies by ministerial order</p> <p>No private bodies carrying out public functions except by ministerial order</p> <p>Minister may issue exempt certificate in respect of certain exempt categories of documents. Certificate not subject to any judicial proceedings</p>	<p>Usual exemptions</p> <p>Public Interest test applicable to few exemptions</p>	<p>Appeal Tribunal</p> <p>Supreme Court</p>	<p>Yes</p>
<b>Trinidad</b>	<p>Presidential Order may exclude any public body</p>	<p>Usual exemptions</p> <p>Public Interest test applicable to only certain exemptions</p>	<p>Ombudsman(recommendations only)/High Court</p>	<p>None</p>
<b>Guyana</b>	<p>President/court/judge excluded</p> <p>Strategic and operational activities of the Disciplined Forces excluded: Police/Prison/Fire services/military/naval/air force</p> <p>Presidential Order may exclude any public body or functions</p>	<p>Usual exemptions</p> <p>Limited Public Interest override by IC</p>	<p>Information Commissioner (does not appear to have enforcement powers)</p> <p>High Court</p>	<p>Yes</p> <p>Also provides for digitization and online publication of records</p> <p>Promotion of FOI by Public Bodies</p> <p>Training by IC</p>

## SNAPSHOT (cont'd)

COUNTRY	SCOPE	EXEMPTIONS	APPEALS	PROMOTIONAL MEASURES IN LAW
<b>St. Vincent</b>	<p>Governor General/judicial functions of a court excluded</p> <p>No mention of applicability to private bodies carrying out public functions</p> <p>Act does not apply to documents that are exempt from disclosure under another law</p>	<p>Usual exemptions</p> <p>Extended also to documents which if disclosed would infringe Parliamentary privilege</p>	High Court only	None
<b>Cayman Islands</b>	<p>Excludes Court, judge, police, constabulary or No private company performing public functions or receiving funds except by gubernatorial order</p> <p>Act does not apply to documents that are exempt from disclosure under another law</p> <p>Governor may make modifications of law's application to government companies and statutory bodies</p> <p>Governor may issue exempt certificate for certain exempt categories of documents. Certificate not subject to any judicial proceedings</p> <p>Application of Act is subject to any other law prohibiting disclosure</p>	Public Interest test applicable to only certain exemptions	<p>Information Commissioner(Enforcement investigation powers outlined and decisions binding)</p> <p>High Court</p>	Yes

## **FREEDOM OF INFORMATION IN THE CARIBBEAN**

### **IMPLEMENTATION STRATEGIES & STEPS**

- Jamaica, Trinidad and the Cayman Islands conducted phased implementation
- Establishment of Administrative Units (Jamaica – ATI Unit; Cayman Islands – Steering Committee/FOI Unit);
- Identification of more in demand Ministries and Agencies, designation into groups;
- Establishment of a schedule for each group of entities to begin administering the Act;
- Identification of Information officers;
- Improvement of records and information management systems and policies;
- Training conducted for public servants;



## FREEDOM OF INFORMATION IN THE CARIBBEAN

### MAIN IMPLEMENTATION CHALLENGES

- In 2013, 2 seminal reports on FOI implementation were published;
- One was published by the World Bank, *“Implementing the Right to Information – Lessons from Experience”* and the other from the Center for International Media Assistance (CIMA) titled *“Breathing Life into FOI Laws – The Challenges of Implementation in the Democratizing World”*
- While the World Bank Report did not include countries from the Caribbean, its observations and recommendations for effective implementation strategies in lesser developed countries were no less insightful than those contained in the CIMA report;
- At the same time, as the author and any other FOI advocate having experience with the implementation of an FOI law will know, the observations on the less than desirable situations were by no means entirely new and only served to underscore what is only too well known across the Caribbean;
- Following is a precis of some of the primary obstacles to implementation.

## MAIN IMPLEMENTATION CHALLENGES (cont'd)

### PROCEDURAL

1. Non-responsiveness to requests;
2. Delayed responses to requests;
3. Delayed decisions from Appeal Tribunals/Info Commissioners;
4. Delay in appointments of oversight mechanisms (Info Commissioners etc);
5. Under-Reporting/ – Inadequate statistics on the number of requests filed, the number of requests granted, refused or transferred, exemptions invoked, compliance with time frames, number of appeals filed, their nature and resolution;

### FINANCIAL

1. Limited Budgets. This affects:
  - Public Education activities;
  - Training exercises;
  - Development and maintenance of websites;
  - Acquisition of FOI tracking software – (Cayman Islands has the JADE Tracking system and at one point, Jamaica was considering software from Canada);
  - Implementation of effective records and information management policies and best practices;
  - Digitizing of records

## IMPLEMENTATION CHALLENGES (con'td)

### LEGISLATIVE

#### Jamaica

- In 2010, the Act was reviewed by a Parliamentary Committee and recommendations made, among other things, to improve its structure and increase its funding. It is now 5 years on and at last check, not much has happened to effect those recommendations;
- Public Disclosure Act took years to be passed;

#### Bahamas

- In 2012, an FOI Bill was drafted by the then government but not enacted. It was later decided by the succeeding incumbent government that significant revisions (too many exemptions, reduction of Ministerial powers) are necessary and a revised version will not be presented to parliament before spring 2016.

#### Bermuda

- The Public Access to Information Act has still not been implemented 5 years after enactment;
- Amendments (to clarify notice periods, penalties and exemptions) along with Regulations (fees/time for response to requests etc) drafted in 2014;
- It is said that the Act will come into operation on April 1, 2015. The delay of 5 years for implementation has been described as unreasonable

### TECHNOLOGY

#### Under-use of technology

- Of the 7 countries with FOI laws, only Jamaica, Trinidad and the Cayman Islands have FOI Unit websites that can be readily accessed. All three are outdated and not maintained regularly. The website for Cayman's Office of the Information Commissioner is up-to-date.

#### Lack of use of wide scale FOI Tracking software

- Cayman Islands Public Bodies utilize JADE, a request tracking software;
- In 2012, Jamaica was at one point considering the purchase of tracking software. The author asked for, but did not receive an update on the progress of this from the ATI Unit there in time for inclusion



## USE OF TECHNOLOGY

### *Bridging the Digital Divide in the Caribbean*

1. Technology is an important tool in the empowerment of citizens to hold government to account as well as to improve public service delivery. E-government fosters greater accountability by providing government services in a more efficient, transparent and responsive manner
2. Many people in the Caribbean are increasingly turning to their mobile phones and the internet as a source of information, staying connected with each other and becoming informed of national developments. This has tremendous significance for FOI especially for public education and awareness strategies, making requests in some cases through FOI information clearing houses, establishing access points etc
3. The information on mobile and broadband penetration following was taken from a survey conducted in 2011 by the International Telecommunications Union (ITU)

## USE OF TECHNOLOGY

### *Bridging the Digital Divide in the Caribbean*

#### **E-Government**

- Since 2002, UNDESA (UN Department of Economic and Social Affairs) has issued e-GOV reports which examine the use of ICT by government agencies and also explores, among other things, how public trust can be gained through on-line facilitation of the public's ability to access and submit information;
- In its 2010 survey, the UN e-GOV Report found that the Caribbean region has been improving e-government, scoring above the world average;
- Some countries have been moving at a faster pace than others (Barbados, Antigua) and it has also been observed by experts in this area, that the planning and development process tends to be protracted and initiatives and projects are greatly dependent on donor agencies support.

#### **Mobile/Cellular Market Penetration**

- 12 of the 14 countries have mobile/cellular subscriptions densities over 100%, with Antigua (198%) and the Cayman Islands (168%) among the highest;
- 3 countries have mobile/cellular subscriptions densities of less than 100% – Belize, at approximately 64 subscriptions per 100 inhabitants, Guyana at around 69 subscriptions per 100 inhabitants, and Jamaica, at 97 subscriptions per 100 inhabitants;
- Overall, mobile/cellular penetration is on the increase across the Caribbean

#### **Fixed Internet Broadband Penetration**

- Across 75% of countries surveyed, fixed Internet broadband subscriptions increased. Since 2011, the countries that realised the greatest increase in broadband subscription density were Guyana, which experienced a 36% increase, followed by Suriname (21%) and Trinidad and Tobago (15%);
- Conversely, the greatest decline in subscription density was reported in the Bahamas, followed by Antigua, and Saint Vincent and the Grenadines
- At the start of this year, the Government of Jamaica signed agreements that will pave the way for the country to receive support from the United States to increase access to the Internet in rural parishes. A six-month pilot project will be used to accommodate Internet bandwidth connectivity

## USE OF TECHNOLOGY

### *Bridging the Digital Divide in the Caribbean*

- Technology is an important tool in the empowerment of citizens to hold government to account as well as to improve public service delivery. E-government fosters greater accountability by providing government services in a more efficient, transparent and responsive manner;
- The information on mobile and broadband penetration was taken from a survey done in 2011 by the International Telecommunications Union;
- From the information, it is clear that the Caribbean is holding its own in respect of internet and mobile market penetration;
- Many people in the Caribbean are increasingly turning to their mobile phones and the internet as a source of information and staying connected with each other and in general public developments. This has tremendous significance for FOI especially for public education and awareness strategies, making requests in some cases through FOI clearing houses using phone apps, the public being able to report real time on instances of corruption etc;
- However, there is no immediately available and comprehensive statistics, to the author's knowledge, on the impact of these positive ICT developments on FOI advocacy across the region, aside from, of course, a few government websites and a dedication, by some NGOs, of part of existing websites to detail the law, its purpose and how to make requests.

## FREEDOM OF INFORMATION IN THE CARIBBEAN

### LOCAL & REGIONAL FOI STAKEHOLDER EFFORTS

#### ***1. Regional Conference on Freedom of Information in the Caribbean: Improving Management for the Environment***

For the first time in 2013, 11 Caribbean governments and various civil society groups met in Kingston, Jamaica for 2 days to discuss access to information, public participation in governance, and access to justice at a landmark conference held in Kingston, Jamaica.

#### ***2. Caribbean Network on Freedom of Information (CNOFI)***

At the Conference in 2013, the decision was made to launch the network to support improvement of standards for access to information in the region. CNFOI does not currently have its own website. It operates as an information sharing and advocacy network right now, you must become a member , and members communicate via an email list serve that is moderated by JET and hosted by Environmental Law Alliance Worldwide.

#### ***3. Open Data Assistance Project - IDB/WB (See Jamaica, Antigua and St Vincent)***

#### ***4. Develop Aware – Jamaica***

Environmental project facilitating reports from the public on discrepancies/corruption in environmental policy and implementation matters

#### ***5. Disclose Today – Trinidad***

Portal for public reporting of procurement irregularities



## **FREEDOM OF INFORMATION IN THE CARIBBEAN**

### **FOI IMPACT ON SOCIO-ECONOMIC DEVELOPMENT:**

#### **Some Examples...**

#### **Jamaica**

- Act used to obtain documents to build a legal case compelling the government to fix a non-functioning sewage treatment plant in a coastal town in the capital, Kingston;
- The Gleaner, a daily publication published information on overseas travel by government ministers for the first half of 2013. While only the Office of the Prime Minister and seven of the 16 ministries responded with a breakdown of air fares, accommodation, and per diem for ministers and their entourages, the public was informed of what many thought was extravagant expenditure such as seven government ministers racking up more than \$25 million in overseas travel expenses in the first six months of that year;
- When Phase 2 of a hotel development was proposed, the Act was used by local environmental NGO, JET, to access Phase 1 monitoring reports to highlight the numerous breaches by the developer and the neglect by the regulators to enforce the building permit conditions. The formal objection used the monitoring reports to buttress its argument and as a result of public pressure, the permit for Phase 2 was rescinded;
- Using information requested under the Act, the bad treatment of children under the care of the state was highlighted by another NGO, Jamaicans for Justice, resulting in a report presented to the IACHR, public attention to the matter, an improvement in the housing and treatment of children in homes and the separation of juvenile offenders from the general prison population



# FREEDOM OF INFORMATION IN THE CARIBBEAN

## RECOMMENDATIONS

### **1. Link foreign aid to transparency measures & rating**

*This would be no different than the Standard & Poor's ratings of credit worthiness. In other words, make it matter. Tie transparency and CPI ratings and any other recognized global assessment to foreign direct investment and aid; Besides the author, quite a few persons in Jamaica are now increasingly thinking along these lines since this type of accountability requirement was what formed the crucible, in the first place, for a number of FOI laws which otherwise would not have been enacted or even seriously considered.*

### **2. Re-evaluate Donor Approach to Transparency**

*The author suggests that more emphasis be placed by our donor partners on a bottom-up approach (greater grassroots involvement) rather than top-down one, as has been the case, in the conceptualization of transparency programmes. We have talked enough, presented enough, and "conferenced" enough....it is now full time for far more deeply meaningful "connecting of the dots" for the ordinary man in the street*

### **3. Develop a Caribbean Regional FOI Policy & Implementation Plan**

*The author has advocated for some time now for Caricom leadership and ownership of the FOI movement. This has been lacking, even as some countries have now endorsed and embarked upon Open Data initiatives. In the recent Caricom Implementation Plan published in 2014, there is very little mention of the right to information in the midst of ICT for development plans, which itself is indisputably necessary. Caricom countries' scant and diminishing regard for FOI is also very apparent in the fact that to date, only Trinidad and Tobago is an OGP member. The author suggests that the current UN-PRAC currently being rolled out in the Pacific by the UNDP could be used as a template.*

### **4. Increase the use of technology, such as request tracking software**

### **5. Develop more youth centric FOI education strategies**

*Both UNESCO and Transparency International recently published excellent guidelines on developing youth community radio and empowering youth activism. Young people could be urged to develop stories on development matters in their communities that directly affect them and to use their access to information to learn more about what happens at the government level.*

### **6. Develop more Request Assistance portals for the public such as Muck Rock/WhatDoTheyKnow/PublishWhatYouFund**