

**Submission to the Joint Select Committee on reform of the Jamaican Access to  
Information Act**

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*"The liberties of people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them." Patrick Henry June 5, 1788*

It is my distinct privilege to make a submission to the Joint Select Committee reviewing the Access to Information Act. I am an Attorney-at-Law by profession and have had the opportunity to work on Access to Information regimes in Jamaica and now the Cayman Islands. Firstly I worked for The Carter Center on a two year project working to ensure effective implementation of the Jamaican Access to Information Act, with the Jamaican Government, civil society and the media, and then I was hired in 2007 as the Freedom of Information Coordinator for the Cayman Islands to be in charge of implementation of the Cayman Islands Freedom of Information Act 2007 which is now in force since January 5, 2009. This submission reflects my views from these experiences.

This review is an opportunity for the Government of Jamaica to continue to make progressive reforms to the Access to Information Act and conduct a critical analysis of whether the Access to Information Act has achieved its objectives.

The Access to Information Act expresses notable objects in s.2 to ensure

- (a) Governmental accountability;
- (b) Transparency; and
- (c) Public participation in national decision-making,

by granting to the public a general right of access to official documents held by public authorities.

I would submit that it is only through substantial reform of the Act that these objectives will be achieved. Two areas for critical analysis in this regard are the mechanisms under the current Act to require proactive release of records by all public authorities; and the mechanisms for ensuring oversight, publicity, compliance and enforcement of the right to information.

The first area for reform is the section of the Access to Information Act which seeks to ensure proactive publication of records by public authorities sometimes termed 'Publication Schemes'. Proactive publication must be the heart of the Governments strategy to provide information to the public, with facilities to appropriately disseminate information.

The second area for reform is the enforcement and oversight mechanism under the Act, the Appeals Tribunal system. I suggest that this mechanism needs to be changed to an appropriate independent oversight officer called an Information Commissioner with responsibilities to:

- hear appeals when the public is refused information,
- ensure that there exists an informed public that can utilise their right to information, enforce it easily and use it responsibly
- report to Parliament on how the Act is working, and
- ensure that Government agencies meet with the required standards of the Act.

I wish to comment on these two areas of the Access to Information Act which I believe need to be urgently reformed:-

1. **Section 4 of the Access to Information Act**

The provisions which govern the requirement of Government to proactively provide information to the public; and

2. **The Second Schedule of the Access to Information Act and Section 32 & 36**

The provisions which govern the Appeals Tribunal, which is the current system for compliance and enforcement of the Access to Information Act in Jamaica.

**Proactive publication of information**

*"An effective freedom of information regime will result in more information being in the public domain and encourage public authorities to make information available voluntarily." (Jim Wallace – MSP, Scotland)*

*"It is clear that something needs to change. We should not be bashful about that, as we are talking about our information - public information, which is held on behalf of the public, created*

*by the public, paid for by the public and often kept secret by virtue of public funds" (Alastair Morgan – MSP, Scotland)*

For the Access to Information Act to be successful in creating a more open government it must work in two ways. It must provide a right to the public to obtain access to the information which they need in their daily lives, and it must also serve as a mechanism to promote the proactive release of information to the public by Government.

This second function is often overlooked and undervalued.

The provisions that address the proactive publication of information under the Access to Information Act are scant, difficult to interpret and provide little guidance to public authorities on the minimum types of information which must be published.

The Act provides in s. 4 that:-

*"A public authority shall cause to be published ...an initial statement of its organization and functions containing the information specified in the First Schedule. The provisions of the First Schedule shall apply for the purposes of making available to the public the documents described in that Schedule. The information required under subsection (1) shall be published in such manner and shall be updated with such frequency as may be prescribed".*

The Schedule then provides information that shall be proactively published by way of the Gazette that is:-

*(a) a description of the subject area of the public authority;*

*(b) a list of the departments and agencies of the public authority and—*

*(i) subjects handled by each department and agency;*

*(ii) the locations of departments and agencies;*

*(iii) opening hours of the offices of the authority and its departments and agencies;*

*(c) the title and business address of the principal officer;*

*(d) a statement of the documents specified in sub-paragraph (e) being documents that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the authority, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;*

*(e) the documents referred to in sub-paragraph (d) are—*

*(i) manuals or other documents containing interpretations, rules, guidelines, practices or precedents;*

*(ii) documents containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Act.*

It is submitted that the Act needs to be specifically reformed to establish clearly the minimum information that needs to be published by all public authorities and made available at the offices of the public authority in a designated area accessible to the public and on the internet. The Gazette although used by lawyers is hardly the appropriate place to provide proactive publication requirements.

Jamaica can learn from other jurisdictions in this regard including India s. 4 of the *Right to Information Act*, s.7 of the Trinidad and Tobago, *Freedom of Information Act*, and s. 7 Chapter 2 of the *Transparency Law* of Mexico whose legislation includes clear minimum requirements for proactive publication of information by all public authorities. Proactive publication has the benefit of reducing the need for persons to make requests for information, standardization of requirements for the publication of information across government entities - resulting in improved records management practices, and probably most importantly clearly ensuring that government as a whole is committed to deliver to the people of Jamaica the most updated relevant information in relation to each government agencies mandate in an accountable way.

I would recommend that the Committee specifically reviews these proactive publication provisions in other jurisdictions and I put forward a proposed amendment for s. 4 of the Access to Information Act as follows:

**4. (1) Every public authority shall—**

**a) maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to access information under this Act and ensure that all records that are appropriate to be put in electronic form are, within a reasonable time and subject to availability of resources, placed in such form to be available to the public;**

**b) Publish as soon as practicable or make available for purchase but no later than six months from the date of bringing into effect of this provision the following:**

**(i) the particulars of its organisation, functions and duties;**

**(ii) the powers and duties of its officers and employees;**

- (iii) the procedures followed in its decision making process, including channels of supervision and accountability;**
- (iv) any prescribed or other forms used by the public to make applications to the public authority;**
- (v) any legislative provisions highlighting statutory obligations of each public authority;**
- (vi) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;**
- (vii) a statement of the categories of documents/catalogue that are held by it or under its control;**
- (viii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;**
- (ix) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public;**
- (x) a directory of its officers and employees;**
- (xi) the yearly remuneration received by each of its officers and employees, including the system of compensation as provided in its law;**
- (xii) the budget allocated to each of its authority, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;**
- (xiii) the design and execution of any subsidy programs as well as the amounts allocated to them and criteria for access to them, and the details of beneficiaries of such programmes;**
- (xiv) particulars of recipients of concessions, permits or authorisations granted by it;**

- (xv) travel and hospitality expenses for senior level employees as determined by the public authority ;**
- (xvi) All contracts granted by the public authority over an amount prescribed by the Minister responsible for Information and for each contract:**
- a) The public works, goods acquired or rented, and the contracted service; in the case of studies or research the specific subject must be indicated;**
  - b) The amount;**
  - c) The name of the provider, contractor or the physical or moral person to whom the contract has been granted, and**
  - d) The periods within which the contracts must be completed.**
- (xvii) reports containing the results of surveys, studies or tests, prepared by the public authority to assess the feasibility of establishing new or proposed Government policies, programmes or projects;**
- (xviii) scientific or technical reports, including the results of surveys, studies or tests, prepared for the public authority by a scientific or technical expert;**
- (xxiv) environmental impact statements or assessments prepared within the public authority;**
- (xxv) the names, designations and other particulars of the Access to Information Administrator for the public authority as well as the electronic address where requests for information can be received ;**
- (xxvi) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;**

**(xxvii) such other information as may be recommended. by the Minister  
/Information Commissioner ; and thereafter update these publications  
every year;**

**(xxviii) Nothing in the section requires the publication of exempt  
information, if such document is not so made available, the public  
authority shall, except where it is impracticable, cause to be  
prepared a corresponding document, altered only to the extent  
necessary to exclude the exempt information;**

**(xxix) A document from which exempt information has been excluded  
shall indicate, to the extent practicable without exempt information  
being disclosed, the nature of the information excluded.**

**(xxx) Notwithstanding that a document is an exempt document, if the  
fact of the existence of that document can be published without  
exempt information being disclosed, the public authority shall cause  
that fact to be published.**

The obligation to publish this information by every public authority should be included within the Act alongside a requirement for every public authority to take steps to provide as much information to the public at regular intervals through various means of communications, including the internet, so that the public have minimum resort to the use of this Act to obtain information. The Act should require that all public authorities disseminate information taking into consideration the cost effectiveness and the most effective method of communication in that local area and the information should be easily accessible, and to the extent possible in electronic format.

The public should also be given a specific right to challenge any public authority that has failed to comply with this obligation by way of notice in writing stating that, in the opinion of the person, the public authority has failed to comply with the requirements of the Act and bring the public authority before a duly constituted oversight agency to remedy the defect.

The following section is proposed:-

**A person may serve upon a public authority a notice in writing stating that, in the opinion of the person, a statement published by the public authority does not include a record as required in their Publication Scheme.**

**The public authority shall –**

- (a) make a decision within twenty-one days of receiving a notice and publish the decision in relation to the record in the *Gazette*;**
- (b) cause the person to be given notice in writing of its decision.**

**Where the decision is adverse to the person's claim, the notice shall –**

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and**
- (b) inform the person of his right to apply to appeal this decision.**

I suggest that this new section is a much more substantive and clear statement of the types of information which all public authorities must proactively publish in Jamaica and this provision would provide “real guidance” to public authorities and “real transparency” in the way the government operates. It also has worked in other jurisdictions, as it does not require the publication of exempt information and the provision includes a period of time (6 months) for each agency to be able to organize their records and prepare a scheme to meet with these new requirements.

A decision in this regard will show a clear commitment to achievement of the aims of the Access to Information Act and is in line with best practice all over the world, and achievable within the context of Jamaica's cultural and political history.

## **Oversight and enforcement model**

*“History has shown that to give meaning to the right of access to information it must be enforceable and enforced”<sup>1</sup> Laura Neuman*

The current enforcement model under the Access to Information Act is an Appeals Tribunal constituted pursuant to the Second Schedule of the Access to Information Act. It is worth mentioning that the Tribunal is created as an independent body to hear appeals made by citizens who have either been

- a) refused access to information after an internal review
- b) grant access only to some of the documents specified in an application;
- c) defer the grant of access to the document;
- d) charge a fee for action taken or as to the amount of the fee.

The Appeal Tribunals role as laid out in the Access to Information Act is limited to the hearing of appeals as a quasi judicial body. There is no mention in the Access to Information Act of any powers to:

- (i) investigate the government agencies conduct in either ignoring requests, refusing requests, failing to carry out adequate searches for information;
- (ii) review decisions by public authorities to transfer applications
- (iii) monitor agencies compliance with the requirements of the law including ensuring that Agencies have proactively published information as is required under s. 4 of the Act ;
- (iv) levy sanctions for frustrating applicants or investigating any allegation of a person destroying records subject to which a request has been made
- (v) Summon witnesses and the power to serve notices to require the furnishing of records) and to mediate decisions.

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<sup>1</sup> Enforcement models: Context and Content Laura Neuman ,World Bank Institute

- (vi) Ensure the public understands how to make a request, an internal review and an appeal if refused information.
  
- (vii) Report to Parliament on the performance of public authorities and trends in compliance. (This task is currently in the hands of the Minister of Information and statistical information on the requests received by all government agencies and actions taken has not been published regularly over the last couple of years as is required by the Act).

The Appeals Tribunal also has no staff and no budget to carry out these activities.

It is therefore my submission that considerations should be given to create an alternative model for oversight and enforcement of the Access to Information Act.

This is also supported by the fact that the current Appeals Tribunal in its operation has also been criticized for:-

- Very formalistic appeals mechanism requiring lawyers to be able to assist in the filing of appeals and
- Significant delays in hearing matters and publishing their reasons for their decisions including failure to publish substantive reasons for decision-making which could be reviewed by a court in judicial review proceedings
- Functioning with the Access to Information Unit as its Secretariat which is a department of Government which may undermine the independence of the Tribunal.

### **What is the role of an oversight or enforcement mechanism in access to Information Legislation?**

An appropriate oversight mechanism for access to information according to “*Enforcement Model Content and Context*”, *World Bank Institute*<sup>2</sup> should be:

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<sup>2</sup> Enforcement Models Content and Context, Laura Neuman

- “independent from political influence,
- accessible to requesters without the need for legal representation,
- absent overly formalistic requisites,
- affordable,
- timely, and
- preferably specialist, as ATI laws are complex, necessitating delicate public interest balancing tests”.

It is suggested that the Joint Select Committee consider reforming the mechanism of an Appeals Tribunal under the Access to Information Act and consider the creation of an Information Commissioner model similar to the jurisdictions of UK/Scotland, Mexico, Ireland, Australia ( Territories) and Canada ( Federal and Provinces), the Cayman Islands and Barbados<sup>3</sup>. This would require significant amendment to the Act including provision for creation of an independent Information Commissioner with order making power and an office and staff to:-

- (1) monitor the operation of the Access to Information Act,
- (2) ensure public awareness of the Act and the right of appeal,
- (3) adjudicate on appeals made under the Access to Information Act,
- (4) make binding orders to grant or refuse the release of information.

There is growing recognition that the model of an Information Commissioner for oversight and enforcement as a first level of appeal, in practice, is more effective than that of a Tribunal unless the Tribunal Service is part of a larger government reform with a specialist structure and significant resources to address complaints under a variety of statutes.

In England, the Information Tribunal is a secondary right of appeal after an appeal to the Information Commissioner. The Information Tribunal, hears appeals from notices (decision, information and enforcement) issued by the Information Commissioner. An appeal from the decision of the Tribunal is only permitted on a point of law to an appropriate High Court. The Tribunal may also hear appeals on the basis of the issuance of a national security certificate<sup>4</sup>.

The Information Tribunal will become part of a Government Tribunals Service in September 2009, which is an Executive Agency of the Ministry of Justice. The mission of the Tribunals

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<sup>3</sup> A provision for Information Commissioner is included within the new Freedom of Information Bill of Barbados.

<sup>4</sup> Part V of the Freedom of Information Act 2000

service is to establish, for the first time, a unified administration for the tribunals system so that the public at large have the opportunity to exercise their rights and to seek effective redress against Government decisions. The Information Tribunal has a tribunal manager and a small staff which runs the information tribunal with a budget. In addition the tribunal deals with appeals under a number of separate pieces of legislation including the Data Protection Act, Freedom of Information Act, and Privacy and Environmental Information Regulations. There are 11 Deputy Chairs of the Information Tribunal in England and 34 non- legal members.

The other jurisdiction with a well established Tribunal system that addresses appeals for access to information cases is Australia. It has been stated that the Jamaican Appeals Tribunal is modeled after the Administrative Tribunal in Australia<sup>5</sup>. This Tribunal is an administrative tribunal which serves as an independent merits review of a wide range of administrative decisions made by Australian Government ministers, departments, agencies, authorities and other tribunals. The Tribunal falls within the portfolio of the Attorney-General. It was established under the *Administrative Appeals Tribunal Act 1975* (AAT Act).

This Administrative Tribunal deals with a range of matters under more than 400 separate Acts and legislative instruments. Decisions in the areas of social security, taxation, veterans' affairs and workers' compensation constitute the bulk of the Tribunal's workload. The Tribunal also reviews decisions in areas such as bankruptcy, civil aviation, citizenship, corporation's law, customs, freedom of information, immigration, industry assistance and passports. In contrast to the Appeals Tribunal in Jamaica Section 33 of the AAT Act requires that proceedings of the Tribunal be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act. The Tribunal is not bound by the rules of evidence and can inform itself in any manner it considers appropriate. The Tribunal consists of the President, other presidential members (who may be judges or Deputy Presidents), Senior Members and Members and has a staff of 161 employed under the *Public Service Act 1999* to assist the Tribunal to carry out its functions.

Indeed what is most interesting is the fact that the Australian Government has just released a draft Information Commissioner Bill 2009 and a draft Freedom of Information Amendment (Reform) Bill 2009 for public consultation<sup>6</sup>. The Office of the Information Commissioner is proposed to be

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<sup>5</sup> Roberts, Alasdair "The Right to Information and Jamaica's Access to Information Act" Fostering transparency and Preventing Corruption in Jamaica February 2002 The Carter Center

<sup>6</sup> [http://www.pmc.gov.au/consultation/foi\\_reform/docs/Companion\\_Guide.pdf](http://www.pmc.gov.au/consultation/foi_reform/docs/Companion_Guide.pdf)

established and operational by January 2010. It will be headed by the Information Commissioner (a new office holder) who will be supported by the Privacy Commissioner (an existing office holder), and the FOI Commissioner (a new office holder). It is proposed that the Information Commissioner, supported by the FOI Commissioner, will act as an independent monitor for FOI and will be entrusted with a broad range of functions designed to make the Office of the Information Commissioner both a clearing house for FOI matters and a hub for the promotion of the objects of the Act. The current administrative appeals tribunal will act as a second tier of appeals similar to the Tribunal in the UK.

In the 'Freedom of Information (Reform of FOI) Companion Guide' issued in March 2009 by the Australian Government it states

*“Retention of the AAT creates a two-level merits review system for FOI matters. It is anticipated that review by the Information Commissioner should facilitate resolution of most FOI matters. The AAT, as an experienced review body, has the expertise to deal with highly contested matters involving extensive evidence. The retention of the AAT also provides FOI applicants with a cost effective option for a review of the Information Commissioner’s decision, without bearing a costs risk. The Information Commissioner will be able to decline to review a decision if satisfied that the interests of the administration of the FOI Act make it desirable that the AAT review an FOI decision. In some cases further merits review, after review by the Information Commissioner, may not be the right option for a review party. To that end, an appeal on a question of law will lie directly to the Federal Court from a decision of the Information Commissioner. The Information Commissioner will also be able to refer a question of law to the Court during a proceeding, which is a measure to support the Information Commissioner in making the correct decision”.*

Taking into consideration these examples, it is suggested that a critical look is made at the Jamaican Appeals Tribunal structure and rules for appeals under the Act and also at how the Tribunal has worked in Jamaica and whether it has achieved the standards of resolving disputes fairly, informally, efficiently, quickly and cheaply.

It should also be noted that the roles which are critical to be provided by any oversight and enforcement body are not appropriate for the Access to Information Unit which is a part of Government. The Access to Information Unit’s mandate must be firmly established in Law in relation to the training of public officials in over 200 public authorities in the operation of the Act and in setting standards, guidelines and procedures to ensure compliance with the provisions of

the Act, providing research and advice to public authorities in making decisions, assisting public authorities in meeting requirements of proactive publication and changing the culture of the civil service to one of more openness. The Access to Information Act therefore needs to be amended to include:-

- Constitution of the Information Commissioner's office and provisions to ensure that the office is independent;
- Provisions for nomination and funding;
- Functions of the Commissioner including provision for the Commissioner to issue Codes of practice, and his/her role to ensure public awareness;
- Laying of reports in Parliament;
- Powers of Enforcement and investigation; and
- Provisions for hearing of Appeals

I would recommend that the Committee specifically reviews the provisions setting up the Appeals Tribunal and I put forward requirements for amendments as follows:-

## **INFORMATION COMMISSIONER**

**1. (1) There is hereby established the position of Information Commissioner, the office-bearer of which shall be appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition.**

**(2) The Commissioner shall hold office for a term of five years or such shorter term as may be determined at the time of appointment, and may be reappointed to serve a maximum of two terms, and**

**(a) may be relieved of office by the Governor General at that officer's request;**

**(3)The Governor-General, after consultation with the Prime Minister and Leader of the Opposition may terminate the appointment of the Commissioner who—**

**(a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;**

**(b) becomes bankrupt or compounds with or suspends payment to his creditors;**

**(c) is convicted and sentenced to a term of imprisonment or to death;**

- (d) is convicted of any offence involving dishonesty;**
- (e) fails to carry out the functions conferred or imposed on him by this Act.**

**2. (1) The Commissioner shall have all powers, direct and incidental, as are necessary to undertake his functions as provided for under this Act.**

**(2) In the exercise of his powers, the Commissioner shall be responsible to Parliament.**

**3. The Commissioner may appoint such officers and employees as are necessary to enable him perform his functions.**

**4. In addition to any other powers and responsibilities provided for in this Act, the Commissioner may-**

- (a) hear, investigate and rule on appeals filed under this Law;**
- (b) monitor and report on the compliance by public authorities with their obligations under this Law;**
- (c) make recommendations for reform both of a general nature and directed at specific public bodies;**
- (d) refer to the appropriate authorities cases where it appears that a criminal offence has been committed; and**
- (e) publicise the requirements of this Act and the rights of individuals under it.**

**5. (1) The Commissioner shall, as soon as practicable after the end of each year, lay before the Parliament-**

**(a) a report of the operation of this Law during the year, containing the matters specified in subsection (2) and may from time to time submit such other reports as he thinks appropriate;**

**(b) audited accounts.**

**(2) The matters referred to in subsection (1) are those relating to compliance by the Commissioner's office with this Act and otherwise relating to the activities of his offices including but not limited to-**

- (a) the number of applications for access received, granted, deferred, refused or granted subject to deletions;**
- (b) the categories of exemptions claimed and the numbers of each category;**

**(c) the number of applications received for-**

- (i) amendment of personal records;**
- (ii) annotation of personal records;**

**(d) the number of-**

- (i) applications for internal review of relevant decisions;**
- (ii) appeals against relevant decisions, and the rate of success or failure thereof.**

**(3) A public authority shall report quarterly and by the end of the year send to the Commissioner a written report containing the details contained in subsection (2) to the extent that such information is in their custody or control.**

**6. (1) Neither the Commissioner nor any member of staff of his office shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.**

**(2) For the purposes of the law of libel or slander, anything said or any record supplied pursuant to an investigation under this Law is privileged, unless that record is shown to have been said or supplied maliciously.**

#### **ENFORCEMENT BY COMMISSIONER**

**7. (1) A person who has made a request for a record and has exhausted the other means of redress provided for under this Act except this section may appeal to the Commissioner on the following grounds that the public authority-**

- (a) expressly denied or refused the request ;**
- (b) failed to indicate whether or not it holds a record or failed to respond at all;**
- (c) granted access to only some of the records requested;**
- (d) claimed that the record does not exist ;**
- (e) failed to provide the record within the time allowed by this Act;**
- (c) failed to respond to a request for a record within the time limits established in this Act;**
- (d) failed to provide adequate reasons in writing in relation to a request for a record;**
- (e) charged a fee that is in contravention of this Law; or**
- (f) otherwise failed to comply with an obligation imposed under this Act.**

- (g) transferred a record without reasonable cause as required by the Act**
- (h) deferred access or charged an unreasonable fee;**
- (i) is releasing a record that includes a third parties personal information;**
- (j) failed to comply with the requirements of a Publication scheme**

**(2) An appeal-**

- (a) shall be made within thirty calendar days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or**
- (b) shall, where no notification has been given, be given within the period required by this Law, within thirty calendar days after the expiration of that period.**

**(3) Where an appeal is not made within the period specified in subsection (2), the Commissioner may extend that period if he is satisfied that the appellant's delay in doing so is not unreasonable.**

**(4) On the consideration of an appeal, the Commissioner-**

- (a) may, subject to paragraph (b), grant, refuse, grant or partial access, defer access to any record, change a fee or make any decision to allow the publication of a record, or any other decision that could be made in relation to the original application;**
- (b) shall only be able to nullify a certificate issued by the Minister where the Commissioner finds that the information referred to in the certificate was not exempt information or the Minister did not have reasonable grounds for issuing the certificate.**
- (c) seek a settlement of the matter between the complaint and the public authority including using mediation and conciliation techniques.**

**(5) An appeal shall be made in the following form**

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);**
- (b) state the name of the complainant and an address for correspondence; and**
- (c) specify—**

- (i) the request for information to which the requirement for appeal relates;**
- (ii) how the complainant is dissatisfied with the response of the public authority.**

**8. (1) The Commissioner shall, subject to subsection (2), decide an appeal under the relevant section of this Act as soon as is reasonably practicable, after giving both the complainant and the relevant public authority an opportunity to provide its views in writing or orally. The Commissioner may prepare detailed rules to govern the conduct of appeals.**

**(2) In any appeal, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Act.**

**(3) In his decision pursuant to subsection (1), the Commissioner may-**

- (a) accept or reject the appeal;**
- (b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the law;**
- (c) in cases of egregious or willful failures to comply with an obligation under this Act, refer the matter to an appropriate disciplinary authority to take sanctions against a civil servant or public official.**

**(4) The Commissioner shall serve notice of his decision, including any rights of appeal, on both the complainant and the public authority.**

**9. (1) The Commissioner may, after giving a public authority an opportunity to provide its views in writing, decide that the public authority has failed to comply with an obligation under this Act.**

**(2) In his decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Act, and in exercise of this power, may-**

- (a) order the publishing of certain information or categories of information;**
- (b) recommend the making of certain changes to the practices of the public authority concerned in relation to the keeping, management and destruction of records, and the transfer of records to the national archives, but such**

recommendations shall not be at variance with any law for the time being in force in relation to such matters;

(c) recommend the provision of training to the public authority's officials on the right of access to records; or

(d) refer a matter to the appropriate disciplinary authority where there has been an egregious or willful failure to comply with an obligation under this Act.

(3) The Commissioner shall serve notice of his decision on the public authority concerned and the person who was seeking access to records, which notice shall include a statement of the right of appeal.

10. (1) In coming to a decision, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence or any record and compelling witnesses to testify; in the exercise of this power he may call for and inspect an exempt record, so however, that, where he does so, he shall take such steps as are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to that matter.

(2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

11. Notwithstanding the provisions of this Law relating to appeal, the Commissioner may on his own initiative conduct an investigation into any matter and where he does so, the matter shall be treated as an appeal to the extent practicable.

12. (1) The complainant, or the relevant public authority, may, within 60 days, appeal to the Supreme Court by way of judicial review of a decision of the Commissioner

13. Upon expiry of the sixty day period for an application for judicial review, the Commissioner may certify in writing to the court any failure to comply with a decision made by the Commissioner and the court may consider such failure under the rules relating to contempt of court.

14. The Information Commissioner shall-

- (a) publish a code on minimum standards and best practices regarding the duty of public bodies to publish information; and**
- (b) upon request, provide guidance to the public authority regarding the duty to publish.**
- (c) hear appeals on the failure to publish information as required in a publication scheme**

**15. (1) Every public authority shall maintain its records in a manner which facilitates access to information under this Act and in accordance with a Code of Practice .**

**(2) The Information Commissioner shall, after consultation with interested parties and upon the recommendation of the Director of National Archives, issue from time to time a Code, which shall contain the practices relating to the keeping, management and disposal of records, as well as the transfer of records to the National Archives of Jamaica.**

### **Conclusion**

It is hoped that the recommendations in this paper are assistance to the Joint Select Committee in its deliberations. This is an important Act that can change the relationship between the government and the people of Jamaica. Democracy depends on persons having the ability to have information, understand the government's priorities, raise questions about government policy based on credible information and even challenge the government if there is belief that public officials are not being accountable. This can only be achieved if we have an Access to Information Act which has foresight and promotes transparency in the workings of Government. It is hoped that the Committee will consider these areas for reform as key to achieving these objectives.

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