



THE GOVERNMENT OF JAMAICA
ACCESS TO INFORMATION
RECOMMENDED PRACTICES AND
PROCEDURES

Leading By Example.....

I. RECEIPT & CLARIFICATION OF APPLICATIONS FOR ACCESS TO OFFICIAL DOCUMENTS

Step 1

The Public Authority receives the application for information either by prescribed Application Form, or by letter, email, fax or telephone.

See **Training Manual** for Case Study examples of scenarios in which a person may be regarded as making an Application under the Act and should be treated accordingly

Step 2

- (a) The Responsible Officer contacts the Applicant, upon receipt of the application, in order to confirm, clarify and ensure that the application is focused on the information that the Applicant really requires;
- (b) If this step is necessary, it is to be noted that the computation of the 30 day period for processing the request, and making the document available or not, begins immediately upon receipt of the application by the Public Authority;
- (b) It would therefore be to the Responsible Officer's advantage to complete the clarification process as quickly as possible.

(Please see Computation of Time at p.62)

Step 3

The Responsible Officer must now determine whether:

- (a) the information requested has already been published by his own entity;

Regulations
4 & 11

Or

- (b) the information requested is readily available under established administrative guidelines or by way of other existing statutory provisions;

Or

(c) the information requested is held by another Public Authority.

See Access to Information Road Map for details of the subject matter & portfolio of Public Authorities and Sample Available Documents

Step 4

(a) If any of **Steps 3 a - b** is applicable, the Applicant must be informed accordingly.

(b) It must not end there, however. **Try to be helpful.** If the information is readily available in the Officer's own Entity, it should be sourced and provided to the Applicant.

Regulation 4(l)

(c) If this is impracticable or inconvenient, then the Applicant must be told, with as much detail as possible, of where and how the information may be sourced (e.g. viewed on or downloaded from Ministry website or obtained from the Government Printing Office, etc.)

or

(d) If **3 (c)** is applicable i.e. if the information is known to exist at another Public Authority, the Applicant must be informed that the application will be transferred, and provided with as much detail as possible as to the particulars of the receiving Public Authority.

Regulation 4 (o)

Please see "Procedure for Transfer of Requests" at p.42

S 7 (4), S 8 Transfer of Requests

Step 5

If none of **Steps 3 or 4** is applicable, then the further processing of the application under the ATI Act must now be commenced.

II. TREATMENT OF APPLICATIONS FOR ACCESS TO OFFICIAL DOCUMENTS

(a). The Responsible Officer receives an application by:

- i. written request;
- ii. orally at Entity(walk in);
- iii. telephone;
- iv. e-mail;
- v. fax.

(b). **Oral Applications (Walk-in)**

- i. If the application is received orally (**walk in**), the Responsible Officer must request that the Applicant completes an Application Form or must himself reduce it to written form where the Applicant has a disability (illiteracy, infirmity or other) which prevents the completion of an Application Form;
- ii. In completing an Application Form under these circumstances, the Responsible Officer must seek to have another member of staff on hand to witness the transcription of the oral request;
- iii. **At the end of that process, the information must be read back to the Applicant and confirmed by him, in the presence of the witness, that the transcribed information is as was requested. The Applicant should be asked to sign/make his mark if he is able to do so.**
- iv. **An Attestation Clause must next be completed by the Responsible Officer, and signed or marked by the Applicant (or someone on his behalf), the Responsible Officer and witness, and filed as part of the Application.**

Regulations
7, 8 & 9

Administration of
Attestation
Clause-
APPENDIX I

(c) **Applications by Telephone or other Electronic Media**

- i. Where applications are received by telephone or other electronic means, the Responsible Officer must immediately record and store the application on the prescribed Application Form.
- ii. Where the Responsible Officer completes an Application Form in respect of applications received by telephone, there will be no need to require the Applicant to visit the Public Authority in order to sign the Form as so completed.
- iii. Instead, the Officer should make a notation on the Form further indicating that the application was received by telephone and as such, was completed by the Responsible Officer in accordance with the **Regulation 8 (1)**.
- iv. When acknowledging receipt of request, the Responsible Officer should retain **a copy** of the original Form and send **the original completed Application Form** to the Applicant for confirmation by the latter of its contents by affixing his signature at the space provided.

III. ACKNOWLEDGEMENT OF RECEIPT OF APPLICATIONS

(a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21;**

S. 7 (3) (b)
Acknowledgement of Receipt of Application

(b). The Responsible Officer must next acknowledge receipt of the application, using the relevant Response Form Letter;

Regulation 12-
Acknowledgement in writing

(c). A written acknowledgement sent by fax or email must carry a Reference Number and must be recorded. **Acknowledgements of receipt should only be done by fax or email where the Applicant has indicated that he may be communicated with in such a fashion;**

(d). At the same time, and **if possible and ascertainable at the point of acknowledgement of receipt**, the Responsible Officer may inform the Applicant of the exact or estimated fees involved if copies of the document are desired;

(In this context, ascertain at this point also whether the Applicant wishes to proceed based on the costing provided. This is in an attempt to halt the exercise and potential waste of resources if the Applicant definitively indicates an unwillingness to pay for the reproduction to be done)

(e). A notation must be made of any indication by the Applicant in this regard on the relevant file;

(f). If not ascertainable at the time of acknowledgement of receipt of the application, this information on fees must be provided when the formal response indicating the release of the information is sent to the Applicant;

(g). If the Responsible Officer believes that there will be an inability to respond within or at the end of the time period prescribed (30 days), he should also inform the Applicant in writing that the response will be late, the reason (s) for the expected delay, and inform the Applicant of his rights of appeal.

S. 7 (4) & (5)

(Please see Response Form Letter A at Appendix I)

IV. RECOMMENDED PROCEDURE FOR MAKING INFORMATION AVAILABLE

Step 1

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21**;
- (b). Attention must be paid to assigning a **Reference Number** to the application (whether the Application was by prescribed Form or by letter). The File Number of the file/primary file in which the information requested is contained, may be used as the Reference Number for the purposes of the Application.

Step 2

Make a copy of the application and send the copy to the Registrar/Library staff for the actual search to commence;

Step 3

The relevant document containing the information requested is retrieved and it is brought to the attention of the Responsible Officer;

Step 4

The Responsible Officer informs the Registrar, after the necessary consultations, whether the information is non-exempt, or whether exempt matter is to be deleted.

(see the Steps outlined at **“Procedure for the Determination of the Status of Document(s) Requested” at p.29**);

Step 5

The document(s) is reproduced, or prepared for viewing, examination, listening to or for transmission electronically according to the directions of the Responsible Officer;

Step 6

The document(s) is now sent to the Responsible Officer who then prepares it (e.g. filing it by Applicant name alphabetically) for pick up, viewing or listening to, as the case may be;

Step 7

The Responsible Officer next contacts the Applicant (**using the relevant Response Form Letter**) to inform him that the document containing the information requested has been found, and in the case of a request for copies, indicates:

Regulation 20
– Cost of
Reproduction

- the applicable costs;
- that payment must be made before the document is reproduced for release; and
- the method of payment desired by that Public Authority;

Step 8

Where copies of official document have been requested by an Applicant, the following should be noted:

Regulations
15, 16

- (a) The copies so provided must be authenticated by affixing the official stamp or other official imprimatur of the Public Authority to the copies;
- (b) Where the copies requested would be of a poor quality, the Applicant must be so informed and an alternative form of access suggested.

Step 9

In the case of official documents to be viewed, listened to or examined, arrangements should now be made in respect of a mutually convenient time and place for the document to be made available.

Note: The processing of the every application must be recorded.
(Please see relevant Internal Processing Form at Appendix II)

Regulation 7

V. PROCEDURE WHERE THE REQUEST IS LARGE AND/OR COMPLEX

- (a) Responsible Officers must endeavour at all times to proficiently manage the processing of applications. This is particularly so where an application for access:
- Involves copious documentation;
 - spans many years;
 - pertains to a complex subject matter.
- (b) Where relevant and necessary, the Applicant should be made aware that the processing of applications is normally done on a first come, first serve basis;
- (c) The Responsible Officer must also be wary of applications which are in essence requiring him to do academic research on the Applicant's behalf;
- (d) The Responsible Officer may therefore need to request, for instance, that the Applicant prioritises which of the documents/time period he would wish to have processed or researched first;
- (e) The Responsible Officer should also determine whether the initial thirty (30) day period will be sufficient to complete the processing of the application. If this will not be possible, the Applicant should be informed that an additional thirty (30) day period, as authorized under the Act, will be necessary;

S. 7 (4), (5)

VI. PROCEDURE FOR THE DETERMINATION OF THE STATUS OF DOCUMENT(S) REQUESTED

(Treatment of Exempt/Non-Exempt/Partially Exempt/Deferred Official Documents)

S. 14 – 22
Exempt
Categories of
Documents

Step 1

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21;**
- (b). The Responsible Officer determines whether the information requested appears to fall within any of the above categories **(this preliminary process will most likely be based on the classification of records and the Responsible Officer’s own familiarity with/knowledge of the matter in question. The Training Manual should also be consulted for assistance in this regard)**

Step 2

Appropriate consultations must next follow with the Permanent Secretary or Principal Officer of the Public Authority and/or such Legal Officer(s) as there may be at the Public Authority.

Regulation 4 (h)

Step 3

If this step yields no final decision, then the matter must be referred to the Attorney General’s Chambers for an official and final ruling.

The Attorney General must be briefed on all matters pertaining to the Application including the time remaining for a final response to be made to the Applicant.

Step 4

In accordance with such decision(s) as may have been taken at any of the preceding levels, the Applicant must be so informed.

(Please see relevant Response Form Letters at Appendix I)

VII. PROCEDURE WHERE THE REQUEST IS FOR AN OFFICIAL DOCUMENT WHICH IS NON- EXEMPT

Grant of Access

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21**;
- (b). The Steps outlined at **“Procedure for Determination of the Document(s) Requested” at p.29** should also be observed.
- (c). Where it is decided, through appropriate consultations, that the document requested is non-exempt, and such costs as may applicable (costs are applicable only to the reproduction of official documents)have been paid by the Applicant, access must be granted in accordance with the provisions of the Act.
- (d). Access may be granted in a form other than that requested, if to do so would be detrimental to the preservation of the document or be inappropriate having regard to its physical state or constitute an infringement of copyright subsisting in any matter contained in the document. S. 9 (3)
- (e). If, therefore, the Applicant requires a copy of a document which, for example, is fragile and which it would be imprudent to subject to reproduction, the Applicant should be informed of this and further advised of alternative ways in which access may be granted eg. inspection/viewing/listening of the original, under supervision.
- (f). If the Applicant requires an inspection of an official document which contains exempt matter, the Responsible Officer must inform the Applicant of this and inform that a copy may be provided instead with the exempt matter deleted.

If the Applicant agrees to this, then the copy should be made and the Applicant may not be charged for the cost of this reproduction.

- (g). Where the volume of the document makes it inappropriate for copying, then the Applicant should be informed of this and an

attempt made to come to a mutually agreed compromise, possibly that the copies will be made in instalments beyond the prescribed initial period for granting access (30 days).

The Responsible Officer may, in such circumstances, officially extend the time for granting access, to a further 30 days.

- (h). Where the Applicant requests copies to be made in a form other than that in which it is normal or reasonable for the Public Authority to so provide, then the Applicant should be informed of this and offered the option of receiving copies in the form appropriate for the Public Authority.
- (i). Copies of documents are to be authenticated in the manner outlined in the Regulations.

Regulation 15

(Please see Response Form Letter B at Appendix I)

VIII. PROCEDURE WHERE THE REQUEST IS FOR AN OFFICIAL DOCUMENT WHICH IS EXEMPT

Step 1

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21**;
- (b). The Steps outlined at **“Procedure for Determination of the Status of Document(s) Requested”p.29** should also be observed.

Step 2

Where it has been determined that the official document being requested is exempt, the Responsible Officer must so inform the Applicant and indicate the applicable Exempting Section.

Step 3

The Applicant must be informed of his rights of Appeal (Internal Review and appeal to the Appeal Tribunal)

Step 4

If a Certificate of Exemption in respect of the information requested has been issued by a Responsible Minister, this must be attached to the Responsible Officer’s response to the Applicant.

(Please see Response Form Letter C at Appendix I)

IX. PROCEDURE WHERE THE REQUEST IS FOR AN OFFICIAL DOCUMENT WHICH CONTAINS EXEMPT MATTER

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request” at p.21**;
- (b). The Steps outlined at **“Procedure for Determination of the Status of Document(s) Requested” at p.29** should also be observed.
- (c). Where it is determined that an official document contains exempt matter, such information should be deleted in such a manner as to:
 - prevent the discernment of the exempt matter;
 - allow for legibility of the remaining information
- (d). If the Applicant requests an examination of an official document which contains exempt matter and which cannot be copied, then the Responsible Officer must make arrangements for the examination to be done under supervision, with the relevant exempt matter rendered indiscernible;
- (e). Where the deletion of exempt matter will render the remaining information requested incomprehensible, the Applicant must be informed of this;
- (f). The Applicant must be informed of his rights of appeal regarding the deletion of the information determined to be exempt.

(Please see Response Form Letter C at Appendix I)

X. POINTS TO NOTE ON THE APPLICATION OF EXEMPTIONS

In applying the exemptions under **S. 14 – 22 of the Act**, Access to Information personnel must:

- i.** Exercise discretion as far as possible to facilitate and promote the disclosure of information;
- ii.** Weigh carefully the public interest in disclosure against the interest in withholding information, including consideration of any probable harm from disclosure and the fact that information generally becomes less sensitive over time;
- iii.** Be proactive and consider whether the exemption, as applicable to an official document, has outlived its purpose or should be removed in the public interest. If this is considered to be the case, appropriate representations should be made to the Principal Officer of the Entity so that the necessary consultations may ensue for the possible application of **Section 6 (2) of the Act**;
- iv.** Have good, cogent reasons for withholding information when claiming a discretionary exemption (**eg. S 16, 18, 19, 20, 21, 22**);
- v.** Bear in mind that an entire document may not be withheld on account of some of its contents being exempt;
- vi.** Have careful regard, when assessing the applicability of an exemption, to the “mischief” that the exemption is directed toward. A better understanding of it will aid proper application for the exemption.

So, for example, in the case of the deliberative process exemption (**S. 19**), the exemption is intended, according to international standards and jurisprudence, to provide government ministers with an opportunity to be candid with each other in relation to the political element of the decision making (which is why factual and other reports must be released) and to avoid driving government underground.

This does not provide a wide exemption for the whole policy-making process. On the contrary, public participation should be encouraged, which means disclosure of draft policies and supporting documentation.

In other words, not only is the reason for requesting the information immaterial, nor should government officials be concerned about the implications for government;

vii. Seek to ensure that exemptions are understood and interpreted properly. **Applying them as narrowly as the law defines them is the appropriate approach.** Using the language and the public interest they are aimed at serving is crucial to the operation and success of the Act;

viii. Avoid undue use of phrases such as “sensitive” or “classified” information is important too. There are only two categories of information: **open, disclosable information and exempt information.**

Using language such as “sensitive” will only encourage those public servants that either do not understand the objectives of the Act or are ill-disposed towards them, to drive a wedge through it.

XI. POINTS TO NOTE ON THE INTERPRETATION OF PUBLIC INTEREST

Where a Public Authority considers that substantial prejudice would result from disclosure of requested information by virtue of the exempting provisions under the Act, under some of those provisions it will still be necessary to consider the public interest in making the information available.

The public interest has been described as something that is of serious concern or benefit to the public and not being merely of individual interest. It has also been stated that public interest does not mean “**of interest to the public**” but “**in the interest of the public**”.

The term is not defined in the Act. Because of this, Public Authorities will need to judge each case on its merit and in light of any emerging guidance or best practice.

Factors however, which may inform a decision on “public interest”, are:

- i. Whether disclosure would enhance scrutiny of decision making processes thereby improving accountability and participation;***
- ii. Whether disclosure would contribute to the administration of justice and enforcement of law or would prejudice the prevention or detection of crime or the apprehension or prosecution of offenders;***
- iii. Whether disclosure would affect the economic interests of the whole or part of Jamaica;***
- iv. Whether disclosure would contribute to effective oversight of expenditure of public funds;***
- v. Whether disclosure keeps the public adequately informed of any danger to public health or safety or to the environment;***
- vi. Whether disclosure would contribute to ensuring that any government entity with regulatory responsibilities is adequately discharging its functions;***
- vii. Whether disclosure would prejudice the protection of an individual’s right to privacy.***

In deciding whether the release of information would be in the public interest, Public Authorities should not take into account;

- i possible embarrassment of government or other Public Authority officials;
- ii. Possible loss of confidence in government or other Public Authority;
- iii. The seniority of persons involved in the subject matter;
and
- iv. The risk of misinterpretation of the information by the Applicant.

XII. PROCEDURE WHERE THE REQUEST IS FOR AN OFFICIAL DOCUMENT THE RELEASE OF WHICH HAS TO BE DEFERRED

Step 1

- (a). The Responsible Officer receives the application and goes through the Steps outlined at **“Receipt and Clarification of Request”** at p.21;
- (b). The Steps outlined at **“Procedure for Determination of the Status of Document(s) Requested”** at p.29 should also be observed.

**S.10-
Assistance and
Deferment of
Access**

Step 2

- (a). Where a decision is taken to defer the grant of access, the Responsible Officer must inform the Applicant of the decision using the relevant Response Form Letter. The reasons for the deferral must also be stated.
- (b). The time when the information will be made available must be indicated where this is known and the Applicant must be informed of his rights of appeal.

(Please see Response Form Letter C at Appendix I)

XIII. PROCEDURE WHERE THE REQUEST IS FOR AN OFFICIAL DOCUMENT WHICH CANNOT BE FOUND, DOES NOT EXIST OR HAS BEEN LEGALLY DESTROYED

(a). The Access to Information Act and Regulations make no provision for circumstances under which access to an official document is prevented due to any of the following:

- i. Public Authority's genuine inability to locate the document. This is a real possibility particularly where, over time, the subject matters of Public Authorities and the portfolio responsibilities of responsible ministers are frequently changed;
- ii. the non-existence of the document (that is, the subject matter of the Application does lie within the portfolio of the Public Authority but the document being requested was never created) ;

or

- iii. the prior disposition of the document in accordance with existing laws and disposition schedules.

(b). In recognition of the reality of official documents not being found, not having existed or having been destroyed, it is recommended that **Response Form Letter D** be utilised in these circumstances.

(c). In an effort to discourage the possibility of undue reliance on the circumstances outlined at **i. and ii.** above, it should be noted that this Form Letter must be signed by the Responsible Minister and the Principal Officer of the Public Authority in question and must be accompanied by a Declaration of Search signed by both.

(d). The Declaration of Search has been made to be pursuant to the **Voluntary Declaration Act** and the **Attestation of Instruments (Facilities) Act**. The latter allows for the attestation of Documents by Members of the House of Representatives.

For those Public Authorities whose Responsible Ministers are not Members of the House of Representatives, the Form should be signed by a Justice of the Peace pursuant to the Voluntary Declarations Act.

(Please see Appendix I for Response Form Letter D and Declaration of Search).

XIV. POINTS TO NOTE ON ACCESS TO INFORMATION AND RETENTION/DISPOSAL SCHEDULES

- a. The ATI Act is applicable to official documents created by or held by a Public Authority not earlier than thirty (30) years immediately preceding the appointed day (January 5, 2004). The Act is therefore applicable to official documents dating back to 1974;**
- b. It is to be noted, however, that within this period, the application of the Archives Act and Regulations regarding the development and use of retention/disposal schedules will still apply;**
- c. If an official document due for destruction is known to be the subject of an application for access to information under the Act, the destruction must be delayed until the application is processed and a decision made in whatever regard;**
- d. Where access to an official document has been deferred and the date for the destruction of the document falls within the period of deferment, the document must not be destroyed until access has been given;**
- e. Where access has been denied, or partial access only has been given, it would be prudent to further suspend the planned destruction of the document (s) for at least another 90 days or such other period as will facilitate a possible decision by the Applicant to pursue his right to internal review and/or appeal to the Appeal Tribunal or for Judicial review.**