

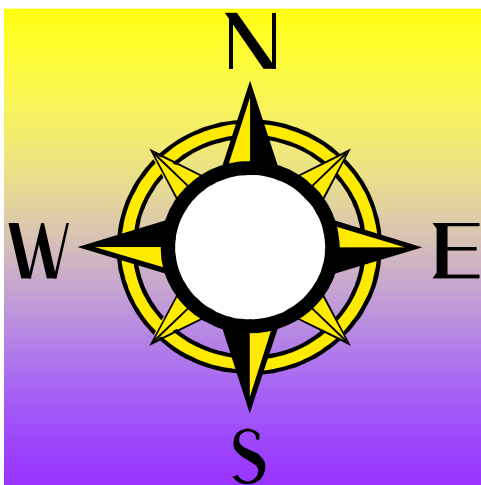


APPENDIX IV

PUBLIC EDUCATIONAL MATERIALS

The following may be utilised by Public Authorities in the development of Public Educational Programmes and Materials on Access to Information.

1. **A USER'S GUIDE TO THE ACCESS TO INFORMATION ACT**
2. **ATI FAQ's (Frequently Asked Questions)**
3. **OVERVIEW – "FREEDOM OF INFORMATION & ACCESS TO GOVERNMENT RECORDS AROUND THE WORLD"**



THE ACCESS TO INFORMATION USER'S GUIDE 2004

A

*Directional Guide to the use of the Access
to Information Act, 2002*

(Jamaica)

Note:

The information contained in this User Guide shall be subject to such modifications as may be necessary from time to time.

As such, and for the purposes of the development of public educational materials in whatsoever regard, this document should therefore be regarded as an interim one.



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ACCESS TO INFORMATION

Civil Society Activism on Information

.....TAKING UP THE GAUNTLETT FOR A BETTER JAMAICA

Embarking on the Journey

Upon the commencement of the Act, the challenge for all of us as Jamaicans will be to use the Act and the system it creates for accessing information.

The Government's mandate will continue to be the sustained education of government employees (and more specifically ATI administrators), the continued development and execution of quality public education and customer service programmes, and the exercise of the type of leadership and clear political will signalling its commitment to the Initiative.

Even as we unhesitatingly invite you to use the Act and exercise the level of responsibility which our Nation has come to expect from us all, it is our simultaneous desire that in doing so, we come to understand the novelty of this new Initiative, appreciate that there will be stumbling blocks and a learning curve with consequential challenges and that through this appreciation, good will may prevail.

The experience in the United States, where they have had Freedom of Information Laws for the past 30 years, shows that the early years are crucial in determining habits – on both sides. Let us help each other to establish good habits and foster the partnering which will be conducive to the advancement of a change in the culture.

The Access to Information Initiative offers much from which to benefit and so in a sense, we are all stakeholders embarking on a quest for a more transparent and participatory democracy.

Let us do so believing it can be done.....

As the Government, we wish to continue to play our role in establishing proper standards and enabling the effective use of the Act. To that end, information which is believed will be of assistance has been included, which you are now invited to explore:

A USER'S GUIDE **TO THE ACCESS TO INFORMATION ACT**

The Access to Information Act was passed in June, 2002. It will give citizens and other persons a general legal right of access to official government documents which would otherwise be inaccessible.

By recognising and upholding this right, the Act aims to reinforce fundamental democratic principles vital to:

- **improved , more transparent government;**
- **greater accountability of government to its people;**
- **increased public influence on and participation in national decision making; and**
- **informed knowledge of the functioning of government.**

Article 19 – Universal Declaration of Human Rights

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The Act therefore signals the departure from an age-old culture of secrecy surrounding government and its day to day activities.

The History of ATI

Access to Information or Freedom of Information legislation, as it is called in some jurisdictions, has existed since 1776 and is in force in many countries. (eg the United States, Australia, Canada and most of Europe.)

The last ten years have seen a tremendous increase in the number of countries adopting this type of legislation, the chief reasons being:

- **the rise of new democracies with constitutional guarantees**

of the right to information;

- **an increased involvement of International Bodies/Funding Agencies in the promotion of this type of law in furtherance of government accountability and transparency;**

In the Caribbean, Jamaica follows Trinidad and Belize as the third CARICOM country to enact such legislation.

ATI PROCEDURES FOR THE APPLICANT

A. How to Request Information

Step 1

Research

Research the topic thoroughly before making a request. Fishing expeditions are usually an inefficient use of both your time and ATI Personnel's time and resources.

Step 2

Where to Apply

Determine which Government entity is most likely to have The documents containing the information desired and decide whether to make:

- i) an informal request for the documents (visit the websites, check the ATI Road Map or call the Access Centre in each Ministry to find out if the information desired is already routinely disclosed or made available)

or

- ii) a formal request under the Act for information which is not readily available or already published

Use the Access to Information Road Map to discern what entity is most likely to have the information required and the names, addresses and location of Principal Officers and ATI Officers

Step 3

A. Making Your Application for Information

- i.** To apply for access to official documents under the Act, **complete an Application form or write a letter** requesting the information desired.
- ii.** Applications may also be made by email, telephone or fax.
- iii.** If a personal visit is made to the Public Authority to request access, the Officer responsible for ATI applications will ask that the request be put in writing in order to conform with the provisions of the Act.
- iv.** If for any reason, you are unable to do this, then the Officer should be so informed so that this may be done by him for you.
- v.** Be as specific as possible in the Application i.e. describe the subject matter of the records and, if known, indicate the dates of the records, the places where they originated, and the names of the originating persons or offices.
- vi.** State that the documents are requested under the ATI Act. It would be prudent to address the envelope in the following manner: "**Access to Information Act Request**" or words to similar effect. This will bring the letter to the attention of staff in the mailroom so that they may appreciate the need to forward it as quickly as possible to the Authority's ATI personnel.
- vii.** The Officer responsible for ATI applications may be requested to assist in identifying the documents desired **(S. 7 (3) (a))**
- viii.** A daytime telephone number should be included and such other contact information as will make it easy for the Officer to remain in contact with you. This will aid the processing of your Application within the time specified.

Application Forms will be available in hard copy from each Ministry, on-line at each Ministry's website or at the ATI Unit's webpage at www.jis.gov.jm

SAMPLE BAD ATI APPLICATION LETTER

Dear Sir¹,

My name is Mr. Brown² and in the 1970's some official person was declared persona non grata. There was a newspaper article on it.³

Or

I would like information on the Furniture Scandal⁴

Sincerely

.....

Hurdell Brown

1. Should be addressed to a specific government entity's office

2. Should indicate in letter his address, tel. Number etc for contact

3. Should indicate the name of the paper if known

4. Should specify the documents requested.

B. Amendment & Annotation of Your Personal Records

- i.** Where an official document containing personal information about you is incomplete, incorrect, out of date or misleading, and is used or is available for use by a government entity for administrative purposes, an Application may also be made to have the document amended or annotated.
- ii.** This Application must be in writing and must specify the basis for making the claim and the nature of the amendment or annotation which you require.
- iii.** Where an annotation is required, you must include, along with the Application, a statement specifying the correction which you feel needs to be made.
- iv.** You will, in most cases, be required to provide verification of the truth of the matters contained in this type of Application. You may also be asked to provide relevant identification.

SAMPLE GOOD ATI APPLICATION LETTER	
<p>Principal Officer or other relevant Officer¹</p> <p>Name of Ministry Address of Ministry</p> <p>Re: Access to Information Act Request</p> <p>Dear:</p> <p>This is a request under the Access to Information Act.²</p> <ul style="list-style-type: none"> • I request that a copy of the following documents <i>[or documents containing the following information]</i> be provided to me:³ _____ <p>I am aware that I am entitled to make this request under the Access to Information Act and that if my request is denied I am entitled to know the grounds for this denial⁴</p> <p>If possible, I would prefer to see the original documents in person rather than having copies made, in order to avoid copying fees.</p> <p>Sincerely,</p> <p>.....</p> <p>Name Address Telephone Number and email address</p>	<p>1. Addresses letter to ATI offices in the relevant Government Entity;</p> <p>2. Specifies law under which the request is being made;</p> <p>3. Specifies documents requested;</p> <p>4. Establishes familiarity with the ATI Act</p>

C. Responding to Your Application and Time Limits

- i.** Receipt of your Application must be acknowledged in writing by the Public Authority to which it is addressed. A decision must be made and you must be so informed **within 30 days of receipt of the Application.** The Act also allows for the extension of this time period by another 30 days which may only be done where there is reasonable cause to do so.
- ii.** If access to the document is to be given, that also must be done within the 30-day time limit.
- iii.** If you desire copies to be made, a fee will be chargeable. You may, however, request a waiver, remission or reduction of those fees. You should note that the running of time will be suspended until a decision in whatever regard is made.

D. Granting You Access to Documents

Under the Act, you are entitled to view, listen to, inspect or have a copy or transcript made of the document requested. Access to information may be granted in a form other than that which you requested, if to grant it in the form requested would prove detrimental to the preservation of the document or be inappropriate having regard to its physical state.

E. Transfer of Applications

- i.** Your Application may be transferred to another government entity if the document requested is held by that other entity or the subject matter of what you requested is more closely connected to that other entity's functions.
- ii.** The transfer must be done not later than 14 days after receipt of your Application by the original government body
- ii.** You must be informed immediately of this transfer and told the details of the receiving government body and personnel.

F. Release/Denial of Request

Official documents requested will be released provided they do not fall in any of the nine (9) categories of exempt documents under the Act.

Exempt documents are those which:

- affect security, defense or international relations (S. 14 (a))
- relate to law enforcement (S. 16)
- are subject to legal privilege (S. 17)
- affect national economy (S. 18)
- reveal government's deliberative processes (S. 19)
- relate to business affairs (S. 20)
- relate to heritage sites (S. 21)
- affect personal privacy (S. 22)
- are Cabinet Documents (S. 15)

G. Applicable Fees

- i. Fees under the Act are chargeable only for the reproduction of any official document (**S. 12**). You are not liable to pay fees for inspection, viewing, or listening to any official document to which access has been granted.
- ii. You will be required to pay such fees as are applicable before the actual reproduction of the document is done
- iii. A request for a waiver, reduction or remission of fees may be made under **S. 12 (2)** of the Act.

H. Your Rights of Appeal

- i. You have a right of Appeal with respect to:
 - refusal of a grant of access
 - the grant of access to only some of the documents requested
 - deferral of the grant of access
 - refusal to amend or annotate a personal record
 - the charging of, or amount of a fee
- ii. You must make your Appeal in writing [Internal Review or Appeal to the Appeals Tribunal if a decision has already been made at Internal Review or where Internal Review is not applicable]

SAMPLE LETTER APPEALING FEES

Permanent Secretary or Principal Officer
Name of Public Authority
Address of Public Authority

Re: Access to Information Act Application for Internal Review

Dear:

This is an application for Internal Review under the Access to Information Act. On *[date]* I requested documents under the Act. My request was assigned the following Reference Number: *[000 000-000]*.

On *[date]*, I received a response to my request in a letter signed by *[official's name]* stating that access to the document requested would be granted upon payment of *[\$ amount of fees]* I am appealing the amount of the fee charged.

Or *[Name of responsible Minister, official address etc.]*

On *[date]*, I received a response to my request in a letter signed by *[official's name]* stating that access to the document requested would be granted upon payment of *[\$ amount of fees]*

I believe that I am entitled to a waiver/ reduction of fees. Disclosure of the documents I requested is in the public interest as the information is likely to contribute significantly to public understanding of the operations or activities of the government.

[or] I cannot afford any of the amounts charged as I am a student engaged in research at the University of the West Indies.

Thank you for consideration of this appeal.

- iii. You must utilise the Internal Review Process (where applicable) before an appeal may be made to the Appeal Tribunal
- iv. Internal Review will not be applicable if the original decision on the Application for access to information was made by the Permanent Secretary or Principal Officer, or the Responsible Minister **or** where no decision on the original application was made.

**SAMPLE LETTER
APPEALING EXEMPTION**

Principal Officer or other relevant Officer
Name of Public Authority
Address of Public Authority

Re: Access to Information Act Appeal

Dear _____:

This is an appeal under the Access to Information Act.

On *[date]* I requested documents under the Access to Information Act. My request was assigned the following Reference Number: *[000 000-000]*.

On *[date]*, I received a response to my request in a letter signed by *[official's name.]* denying my request. I now wish to obtain a review of the denial of my request.

I believe the documents that were withheld must be disclosed under the ATI Act because

Thank you for consideration of this appeal.

Sincerely,

Name
Address
Telephone Number

A FEW ATI FAQs (Frequently Asked Questions)

1. What are my rights under the ATI ACT?

The ATI Act gives you the legal right to see official documents held by Government Bodies. You may also ask for personal information to be changed if it is incomplete, misleading, out of date, or incorrect.

2. What are Official Documents?

Official Documents are documents in the possession, custody or control of a government body and which are connected to its functions.

3. Can I see all Official Documents?

No. There are documents which are exempt from disclosure under the Act. These are documents which it is believed not be disclosed in order to protect essential public interests or the private/business affairs of others. Similar statutes internationally recognize these concerns as well and make similar provisions.

Some exempt documents are however subject to public interest tests. Release of exempt documents may also be achieved through an Order of the Minister responsible for Information or after the expiration of 20 years after their creation, or such shorter or longer period as the Minister may specify by Order.

4. What are the types of documents which are exempt from disclosure?

Documents pertaining to:

- *Security, defense, international relations; (S. 14 (a))*
- *The Cabinet; (S. 15)*
- *Law enforcement; (S. 16)*
- *Legal privilege (S. 17)*
- *The national economy (S. 18)*
- *Government's deliberative processes; (S. 19)*
- *Business affairs of others (trade secrets, etc.) (S. 20)*
- *Personal privacy (S. 22)*
- *Heritage sites (S. 21)*

5. How do I make an ATI request?

Identify the document you wish to have access to and the government body most likely to have it.

Write/phone in/email or fax your request giving as much information as possible about the document in order to help the Officer assigned for those purposes to quickly retrieve it.

Include contact information which will allow the Officer responsible for ATI applications to remain in contact with you. This will assist the Officer in obtaining clarifications from you and enable the observance of the timeline (30 days from receipt of Application) prescribed for finding and granting access as the case may be.

6. What must a government entity do when it gets my request?

- Inform you in writing that it has so received it.
- Deal with the Application as quickly as possible and inform you of any difficulties being experienced. This will help both parties in possibly coming to a mutual workable understanding, particularly if the request is a complex one (eg. large volume of documents requested) or where it will take longer than the prescribed time allowed within which to find the document.
- Inform you within 30 days of receipt of the Application whether or not the information will be disclosed and grant access or inform you of your rights of appeal as the case may be.

7. How much will it cost me?

Fees are payable for the reproduction of documents. You are not required to pay if you wish to view, inspect or listen to the document. Cost for reproduction may be obtained from the relevant government entity.

8. How will the documents be given to me?

Generally, in the form in which you request it – you may be allowed to view, listen to, inspect or be given a copy of the document. However, access may be given in a form other than that which you have requested

if there is a need to preserve the document or its physical state makes the form of access requested inappropriate.

9. Can I have documents about me corrected?

Yes, provided they have been or are being used by the government body for an administrative purpose.

10. How do I ask for these corrections about me to be done?

You apply by letter or on the prescribed application form, phone in, email or fax your request.

12. What kinds of appeal do I have?

The grounds on which you have the right to Appeal include:

- refusal of a grant of access
- the grant of access to only some of the documents requested
- deferral of the grant of access
- refusal to amend or annotate a personal record
- the charging of, or amount of a fee

13. What are the Offences and Penalties under the Act?

Under the Act, a Government employee commits an offence if:

- *he alters or defaces, blocks or erases, destroys or conceals an official document to which the public has a right of access, with the intention of preventing its disclosure.*

A fine of a maximum of five hundred thousand dollars (\$500,000.00) or six (6) months imprisonment or both are applicable.

Freedom of Information and Access to Government Records Around the World (Extract)

By David Banisar, Privacy International

JAMAICA

The Access to Information Act was adopted in July 2002. The law creates a general right of access by any person to official documents held by public authorities. Authorities must respond in 30 days but can delay access if required by law, to allow the person who received the document a reasonable time to present it to the body or person it was prepared for or if the premature release prior to an occurrence of an event would be contrary to the public interest.

The Governor-General, security and intelligence services, the judicial function of courts, and bodies as decreed by the Minister of Information are excluded from the scope of the act.

Documents are exempt from disclosure if they would prejudice security, defense, or international relations; contain information from a foreign government communicated in confidence; is a submission to the Cabinet or a Cabinet Decision or record of any deliberation of the Cabinet (except for factual information); are law enforcement documents that would endanger or could reasonably expected to endanger lives, prejudice investigations, or reveal methods or sources; the document is privileged or would be a breach of confidence, contempt of court or infringe the privileges of Parliament, contains opinions, advice or recommendations or a record of consultations or deliberations for Cabinet decisions that are not factual, scientific or technical in nature or if the release is not in the public interest; would harm the national economy; would reveal trade secrets or other confidential commercial information; could be expected to result in damage, destruction, or interference with historical sites, national monuments or endangered species if the release is not in the public interest; or relating to the personal affairs of any person alive or dead. The Prime Minister can issue a conclusive certificate that the document is a Cabinet record. Other responsible Ministers can issue a certificate exempting documents relating to national security, law enforcement or national economy. Exemptions are 20 years or less as the minister decrees.

Individuals can also apply to correct documents that contain personal information that is incorrect if the documents are used for administrative purposes.

Appeals are heard internally by the Permanent Secretary or principle officer of the Ministry or the Minister for documents subject to a certificate and then to an Appeal Tribunal.

Acts done to illegally prevent the disclosure of information can be punished by fine and imprisonment.

The Act will be phased into effect in four phases, starting on October 1, 2003, initially applying to seven bodies. The Access to Information Unit of the Jamaica Archives and Records Department in the Office of the Prime Minister was formed in July 2002 to oversee the implementation of the Act. It is providing training and guidance to both agencies and the public on the Act and is working with NGOs such as the Carter Center. Beginning in January 2003, the Unit began training over 400 employees on the Act at the Management Institute of National Development (MIND)

The Archives Act (1982) provides for access to documents over 30 years old. Minister of Information Colin Campbell announced in June 2002 that the first set of Cabinet Documents from the ten years following independence would be made available at the archives.

The Official Secrets Act 1911 remains in force and applies to the unauthorized disclosure of documents. Minister of Justice AJ Nicholson said in April 2003 that the Government would move to abolish the Act following implementation of the AIA in October 2003.

Note:

ATI Administrators and other users of these educational materials should include, as resource materials and additional information, the following:

- Information on Ministry Responsible Officers and Information Managers (**Appendix III**)
- Related Statues (**Appendix V**)
- Recommended reading and websites (**Appendix V**)
- The Act and attendant legislation (**Appendix VI**)