

THE ACCESS TO INFORMATION ACT, 2002

DIRECTOR'S REPORT

ON

THE COMMENCEMENT AND IMPLEMENTATION OF THE ACCESS TO

INFORMATION ACT, 2002

REPORTING PERIOD (JANUARY 5 - MARCH 31, 2004)

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Appendix

- Sensitisation Report (details of all sessions conducted in the period June 2002 – March 2004)**

MANDATE

The Access to Information Unit is a Unit falling under the Jamaica Archives and Records Department of the Office of the Prime Minister. The Director has the wide mandate of oversight of the implementation and monitoring of the Access to Information Act.

Unlike some jurisdictions having Freedom of Information Laws, the post of Director in the Jamaican context does not carry the power to sanction, as time progresses, flagrant breaches of the Act. The Unit's powers are largely persuasive, albeit in the context of the possibility of sanctions under the Act itself.

In evaluating the government's performance in meeting its obligation under the Act of making information readily available, this report brings to the reader a report card of sorts in respect of the effectiveness of the activities of the Unit itself, and by extension, the government and also the Public Authorities involved in the first round of the administration of the Act.

Questions as to the adequacy of such activities and general methodologies may be raised, or on the other hand, quelled. Suffice to say that the programme continues to receive the support of the administration spearheaded by the office of the Minister of Information, Senator the Honourable Burchell Whiteman.

In any event, it is expected that this exercise will provide the basis upon which to build on the strengths of the ATI Programme as it currently exists, and to identify and correct the inevitable areas of weakness and deficiencies.

COMMENCEMENT OF THE ACCESS TO INFORMATION ACT
JANUARY 5, 2004

The Access to Information Act commenced on January 5, 2004 and, pursuant to S. 5 (1) (a), and the Access to Information (Public Authorities) Order, 2004 made by the Minister responsible for Information, was made applicable to the following Ministries and Agencies:

- Ministry of Finance and Planning
- Ministry of Local Government
- Office of the Cabinet
- Office of the Prime Minister
- Jamaica Information Service (JIS)
- National Works Agency (NWA)
- Planning Institute of Jamaica (PIOJ)

Before providing an assessment of the progress of the Access to Information programme as at the end of the Reporting Period (January – March 2004), an account will be provided of the preparatory activities undertaken by the Unit immediately before and since commencement.

A SUMMARY: Pre- & Post- Commencement Activities

Sensitisation Sessions:

Sensitisation sessions continue to be conducted with over **Four Thousand Three Hundred and Thirty Nine (4339)** persons sensitized at **16 Ministries, 23 Agencies/Departments and 11 Values and Attitudes/ATI Fora** since the establishment of the Unit.

Of that number, **Two Thousand One Hundred and Sixty Four (2164)** were sensitized during this Reporting Period. The sessions have been well received overall and this assessment has been informed by an evaluation exercise undertaken at the end of each session where participants are required to complete Evaluation Forms on the effectiveness of the session and presenter in bringing the message across.

Public Officers' Guidelines:

A draft Manual, "**Guidelines on the Discharge of Functions under the Act by Public Officers**" was made available (hard copy and compact disc) to the Entities. These Guidelines were prepared by the Unit and contain guidance and relevant recommendations on procedures to be followed in the administration of the Act, relevant forms to be used (prescribed and suggested) and a directional guide to the Entities administering the Act at any point in time.

A User's Guide:

An additional Manual "**A User's Guide to the Access to Information Act**" was also disseminated (hard copy and diskette) to Phase I Entities, civil society groups including the media, and any other group or individual for purposes of information and greater understanding of the Act and its purpose.

Advisory:

Further to a policy directive by the Honourable Minister of Information that Entities not currently falling under the operation of the Act should nonetheless act in the Spirit of the Act, an Advisory was disseminated in January, 2004 containing instructions on how this was to be translated into practice.

Newsletters

Two Issues of the Newsletter, “The Access Quarterly” have been produced and made widely available. They carry information on the programme and pointers and recommendations for best practices.

Media Coverage

The Unit, through the work of its Public Education Manager, arranged and conducted a number of radio interviews during the week of January 5, 2004. Articles on Access to Information also appeared in the print media.

The Jamaica Information Service continues, (through its website and weekly pages carried in the Jamaica Herald), to be the primary dissemination point for information generated by the Unit.

Road Map:

A directional guide on the location and names and contact information for Responsible Officers for Phase I was developed and made available to the Public Authorities themselves and other stakeholder groups.

The Guide is now being updated to include additional similar information in respect of Phase II.

Appeal Tribunal:

The Appeal Tribunal was established in December, 2003 pursuant to S. 32 (1) and the Second Schedule of the Act. It now comprises the following persons:

| | |
|--|-------------|
| Mrs. Dorothy Pine McLarty | Chairperson |
| Hon. David Coore O.J., Q.C. | |
| Hon. Dr. Oswald Harding O.J., C.D., Q.C. | |
| Mr. John Maxwell C.D. | |
| Rev. Phillip Robinson | |

The Tribunal is now in the process of defining its Rules of Procedure and meets intermittently in an effort to keep updated on developments surrounding the Act.

APPLICATIONS FOR ACCESS TO INFORMATION & TREATMENT

...The Pulse of ATI

The most serious criticism that can be levelled against an Access to Information Law is a charge that it is ineffectual. The Unit continues to be very aware of the necessary duality of use of the law by the public and constant monitoring of how effectively it is being administered by the government.

The Phase I Entities have submitted reports on the requests for information received by them during this inception Quarter. A total of 84 applications were received for the months of January to March 31, 2004.

Cabinet Office

The Cabinet Office received a total of **Fourteen (14)** Applications for the Reporting Period. Of that number, 9 applications were transferred from other Phase I entities. Applicants were largely from civil society groups including the media, and the general public.

The Applications were treated in the following manner:

Full Grant of Access: 4

Deferral of Access: 8

Transfer of Application(s): 1

Information routinely available: 1

The Cabinet Office, under the leadership of the Cabinet Secretary and Head of the Permanent Secretaries' Board, Dr. Carlton Davis, has been exemplary in its approach to the Programme, evidenced by its laudable records management practices and the novel initiation and facilitation of Retreats at which the entire ATI Programme is examined and critiqued by a number of persons, including Permanent Secretaries, Information/Documentation managers and stakeholder groups.

Office of the Prime Minister

The Office of the Prime Minister received a total of **Nineteen (19)** Applications for the period. This Public Authority reports that this period was challenging with all of the requests being submitted by applicants during January and February. No applications were received in March.

The requests came primarily from the media, private organizations, academia and government.

The Applications were treated in the following manner:

Full Grant of Access: 2

Deferral of Access: 1

Transfer of Application (s): 12

Unable to Process (Document does not exist): 4

Under the leadership of its Permanent Secretary, Mrs. Charmaine Constantine, this Ministry is obliged to meet each month to address ATI matters and to ensure the timely release of non –exempt information. This is achieved through the instrumentality of an ATI advisory committee established in the first month of this reporting period.

Ministry of Finance and Planning

The Ministry of Finance and Planning received the majority of requests during the period, with a total of **Thirty (30)** applications. Two were carried forward to Reporting Period Quarter 1(April – June, 2004). Applications were received primarily from civil society. The print media also submitted a large portion of the total requests received.

The sum of \$980.00 was collected for copies done.

The Applications were treated in the following manner:

Full Grant of access: 6

Deferral of Access: 2

Transfer of Application: 9

Information routinely available: 11

Application abandoned by Applicant: 2

Jamaica Information Service (JIS)

The JIS received **One (1)** application which could have been regarded as an Access to Information request, in light of this entity already being in the business of disseminating information.

The request was received from the group Jamaicans for Justice. Full access was granted and this was done within the initial prescribed period of 30 days.

National Works Agency (NWA)

The NWA received a total of **Six (6)** applications. Of that number, **One (1)** was carried forward to the next Quarter.

3 requests were received from the civil society group, Jamaicans for Justice, 1 was received from the press, 2 from the general public.

This Public Authority reports that 5 of the 6 applications were dealt with within the initial 30 day period stipulated under the Act.

A total of \$6,350.00 was collected for copies made of official documents.

The Applications were treated in the following manner:

Full Grant of Access: 2

Deferral of Access: 1

Transfer of Application: 1

Under the able guidance of Mr. Ivan Anderson, CEO, and Information Manager, Ms. Marion Edwards, this Agency has been congratulated by stakeholder groups as being the most proactive and exemplary in its approach to the provision of information requested.

Ministry of Local Government, Community Development and Sport

The Ministry of Local Government received a total of **Thirteen (13)** Applications for the Reporting Period. Applicants were largely from Non- Governmental Organisations. The sum of \$250.00 was derived from copies made of official documents

The Applications were treated in the following manner:

Full Grant of Access: 8

Transfer of Application: 3

Treated informally: 2

Planning Institute of Jamaica (PIOJ)

The PIOJ received **One (1)** application from the civil society group, Jamaicans for Justice. That request was deferred.

Overall Rate of Full Grant of Access under the ATI Programme

| Entity | Total No. of Applications Received | No. of Full Grants of Access |
|--------------------------------|---|-------------------------------------|
| Cabinet Office | 14 | 4 |
| Office of the Prime Minister | 19 | 2 |
| Ministry of Finance & Planning | 30 | 6 |
| Ministry of Local Government | 13 | 8 |
| JIS | 1 | 1 |
| NWA | 6 | 2 |
| PIOJ | 1 | 0 |
| <u>TOTAL</u> | <u>84</u> | <u>23</u> |

APPLICATIONS OF INTEREST:

Samples

Cabinet Office:

- Terms and Conditions and value of Contracts for Consultants in the Government Service
- Expenditure by the Government under the Social Economic and Support Programme (SESP)
- Government Policy and Plans for the engagement of Consultants, including inspection of Job descriptions

Office of the Prime Minister:

- Correspondence between OPM and the United States Embassy regarding National Security, US/Jamaica Relations, 1972-2003
- Minutes of the Committee deciding on the conferment of National Honours and Awards and the details of the decision regarding the conferment of the title "Most Honourable"
- Contract for the General Manager of the Railway Corporation
- Copy of the Rattray Review of the Angus Report on former Minister of Water and Housing, Karl Blythe and Operation Pride
- Copy of Accounts for Non-Aligned Conference held in Malaysia, 2003
- Social Economic and Support Programme (SESP) Accounts for St. Catherine, 2001-2, 2002-3

Ministry of Finance and Planning:

- Contracts relating to the renovation of the residence for the Governor of the Bank of Jamaica
- Original terms of all Euro bonds issued by the Ministry
- Report on the operations of Caymanas Track Ltd.
- Current financial statements for a number of Children's Homes in the Corporate area
- Finsac's sale of Island Broadcasting Services Ltd.
- Sale of Hot 102 FM

Ministry of Local Government Community Development and Sport:

- Payment vouchers on work commissioned by Ministry
- Inspection of signed contracts and information on their value
- Certificates of completion for work contracted to be done
- Details on projects commissioned by the Ministry

National Works Agency:

- Copies of contracts related to most of the projects undertaken by the NWA
- Copies of the contract for the Northern Coastal Highway Improvement Project
- Number of Contractors paid, and the amount owing.
- Contract for installation of curb stone on Charlemount Drive, Kingston 6

Planning Institute of Jamaica (PIOJ) & the Jamaica Information Service (JIS)

- Policy Guidelines on Access to Information.

This Reporting Period has evidenced a good mélange of information being requested.

MATTERS ARISING FROM IMPLEMENTATION:

Notwithstanding commendable efforts to date, the Programme has not been without the inevitable drawbacks.

Based on feed back from stakeholder groups, and the experiences of both the Phase I Entities and the Access to Information Unit, the following matters have arisen for consideration and resolution:

- Business versus Calendar days in the computation of time under the Act
- Unsigned Application Forms (prescribed) and their validity
- Creation of “new” official documents from the gathering and compilation of information not contained at one source
- Time being taken to respond
- Assigning of Reference Numbers to applications
- Inaccessibility of Files located in Ministers’ offices
- Reticence of staff not directly involved with Access to Information in Public Authorities to assist in the location and retrieval of information requested.

The advice of the Attorney General has been sought and is being awaited in respect of the first three matters itemized.

The length of time taken to respond has been discussed with the Entities and it has been explained that a number of factors conspire to stall the finalisation of a request:

- ATI Administrators have expressed concern at the reluctance of some staff to provide information requested by them expeditiously.
This has been particularly so in respect of files located in the a few offices of Ministers of Government
- It has also been noted that the time taken to clarify requests tends to affect the overall time taken to finalise them.

It would seem therefore that the need for on-going sensitization of staff on ATI, at all relevant levels in public authorities, has never been more apparent. Public Servants should be made to realise that Access to Information has, “unfortunately” for some, come

to be everybody's business and that we all stand to be embarrassed by a less than adequate and satisfactory attempt at the administration of the Act. .

Additionally, it has been posited that the increased support of Heads of Departments should be sought as this could possibly address this particular problem to some degree.

Finally, increased public awareness on the necessity of making requests as clear as possible is another way of addressing the stated difficulty.

The assigning of Reference Numbers to Applications has also been discussed and the Entities reminded that this is essential. The ATI Stakeholder Committee reports that this matter appears to have been satisfactorily addressed.

Overall, and as was expected by the Unit, some of the delays may also have been unwittingly occasioned by the commendable desire of the Phase I entities to seek the best advice on grey areas of interpretation and to consult carefully on complex applications.

COST OF IMPLEMENTATION

It was thought that it would be useful to represent, as accurately as possible, the costs incurred by the administration in its implementation of the Access to Information Act.

Pre- and post- commencement expenditure for Entities under Phases I and II will be compiled and presented in the Report for the next Reporting Period (April – June, 2004).

MONITORING

ATI Advisory Committee of Stakeholders

This Committee, under the initiative of the Honourable Minister, was established in February, 2004. It comprises representatives from Civil Society organizations with the primary mandate being that of non-government monitoring and recommendations on the implementation of the ATI Act within a constructive forum.

Meetings have been continuous since inception, with meetings taking place on the third Wednesday of each month and to which the Honourable Minister of Information and the Director, ATI Unit are invited in order to discuss concerns etc arising from implementation. The Committee will liaise with the executive of the ATI Association of Administrators (ATIAA) in a continuing bid to be fully cognizant of all matters affecting public authorities as they attempt to implement the Act.

Its input in identifying glitches in the process and making relevant recommendations has been most helpful to the Unit in its bid to effectively monitor the programme.

ATI Association of Administrators (ATIAA)

This body has now been established. Its primary mandate is to act as a secondary self regulatory body in respect of the administration of the Act by Public Authorities and to actively liaise with the ATI Committee of Stakeholders. From this is expected to flow a greater understanding of the role and expectations which they are expected to fulfill and satisfy, the sharing of relevant experiences and technical knowledge with each other and assistance to the Unit in its monitoring role.

Internal Advisory Committees

All Phase I Entities have established structured secondary advisory committees to address matters arising from applications.

Generally, the Entities, as part of basic records management practices, maintain records committees, which, besides advising generally on issues arising from records systems in place, are so structured and composed as to enable the consideration of, and initial guidance, on access to information matters as well.

Websites

All Phase I Entities have websites in place that carry information on Access to Information. Various recommendations for improvement of content as regards ATI have been made by the Unit.

CIVIL SOCIETY– *The Interplay*

There continues to be a relatively strong relationship between the Unit and Civil Society organisations. An umbrella group, The ATI Committee of Stakeholders, brings together the local Human Rights group Jamaicans for Justice, the Media Association of Jamaica (MAJ), the Press Association of Jamaica (PAJ), the Farquarhson Institute, the Private Sector Organisation of Jamaica (PSOJ) and others.

During this quarter, (and the preceding one and a half years), information on the Act and surrounding activities and events, was continuously fed to the media (Newsletters, press kits containing all relevant legislation and other general information). This was expressed to be with the intention that that group, being a primary stakeholder, would utilize this information to inform its public about access to information.

While the media has sought to perform its role of monitoring the progress and effectiveness of the administration of the Act, it is desirable that the all- important role of informing the public through their own offices about the Act, its objectives and value, be as satisfactorily and adequately executed.

Further, enough care is not being taken to accurately reproduce basic factual information relayed to them by the Unit

In addition, other groups need also to be more energised in the role which they have to play. The group, Jamaicans for Justice is by far the most proactive and involved.

Many of the requests received by the Entities were submitted by local human rights groups and the media. ATI Administrators have noted that once access is granted and arrangements are put in place to facilitate the examination/inspection of documents required, the applicants fail to turn up.

While it is understood that many of the requests are submitted for the purposes of testing the administration on the value being placed on this initiative and how effectively it is being implemented (and this is indeed appreciated and welcome), it is disingenuous, not to mention frustrating, for ATI administrators, for the process to be prematurely abandoned by applicants once they are notified of the grant of access.

PUBLIC AWARENESS: *Taking the Show on the Road*

Public awareness of the implications of the Act, its objectives and many benefits, was not as would have been desired. The breadth of the Unit's activities in this regard was confounded by the overall budgetary constraints with which the current administration has had to contend.

The Unit's activities were limited largely to continuous strategic sensitizations in the various Government entities, dissemination of information through the auspices of the Jamaica Information Service and strategically placed news items and articles on various ATI events.

A methodical approach to informing the public through the media, relevant literature and general advertising was limited. It has been observed that since the beginning of the Reporting Period, the numbers of applications for information has declined. It has been the generally held view that this has been due to the general public's lack of awareness.

It is, however, expected that this drawback will be somewhat alleviated as plans are now being brought to finality for a collaborative approach with civil society groups, aimed at the development of relevant literature and advertising strategies.

In the meantime, efforts made by the Unit, since inception, have been re-energised. Approaches continue to be made to various non government organizations and agencies for consideration of assistance in this regard.

Additionally, the media is being encouraged to adopt a more proactive approach to the filtering general information to their readers, listeners and viewers.

INTERNAL REVIEW & APPEALS

No requests for Internal review or Appeal to the Tribunal were made during the reporting period.

NEXT STEPS

Phase II

The following Entities are slated to be in Phase II, which is to commence in May, 2004:

Ministry of Water and Housing
Ministry of Education
Ministry of Agriculture
Ministry of Health
Ministry of Commerce, Science and Technology
Bank of Jamaica
Accountant General's Department
Urban Development Corporation

These Entities were selected for this Phase based on assessments of the degree of preparedness. This activity was informed by an evaluation of Action Plans prepared by them and submitted to the Unit in 2003.

Responsible Officers have been appointed, pursuant to the Access to Information Regulations.

The Office of the Chief Parliamentary Counsel has been asked to prepare the **Access to Information (Public Authorities) (No. 2) Order, 2004**

Preparatory Activities for Phase II

The Unit has conducted sensitization sessions with all of the Entities slated for Phase II. These activities began in January, 2004.

Efforts continue to be made by these Entities to further the sensitization and preparatory exercise. The Unit desires however to offer sessions to selected public officers on the recently passed regulations and amendments to the ATI Act.

Mrs. Milford-Allen, ATI Responsible Officer for the Ministry of Agriculture, reports that sensitisation sessions for all members of staff have continued. Educational materials have been developed and disseminated. One request had been received and was being addressed.

All managers at the Bank of Jamaica have been exposed to sensitization sessions conducted by the Unit and these have been continued by relevant personnel at the Bank.

It is to be noted that even at this point in time, the Ministry of Land and Environment has expressed very strong concerns about its ability to be ready for the applicability of the Act to its functions and which is slated for Phase IV

Phasing of Departments, Agencies, etc of Ministries.

It is proposed that Entities falling under Phase I Ministries should be brought under the operation of the Act as soon as possible. To that end, Action Plan templates are being disseminated to these entities in an effort to arrive at an informed understanding of their state of readiness.

In particular, the Ministry of Local Government, Community Development and Sport has begun auditing its agencies in an effort to assess their readiness for the time when those agencies will come on stream. Concern has been expressed by Ms. Althea Scott, Director, Information and Documentation at that Ministry, on the state of the records at particular parish councils. Efforts have begun in an attempt to address these concerns.

Similarly, Mr. Rohan McCalla, Information Manager of the OPM, has indicated that he has now begun visiting the agencies falling under that Ministry in an effort to have a better understanding of their readiness.