

JAMAICA

**No. 21—2002**

I assent,

[L.S.]

H. F. COOKE,  
*Governor-General.*

22nd day of July, 2002.

AN ACT to Provide members of the public with a general right of  
access to official documents and for connected matters.

[      The date notified by the Minister  
         bringing the Act into operation      ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by  
and with the advice and consent of the Senate and House of  
Representatives of Jamaica, and by the authority of the same, as  
follows:—

1. This Act may be cited as the Access to Information Act, 2002, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*. Short title  
and  
commencement.

*PART I. Preliminary*

2. The objects of this Act are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely— Objects of  
Act.

- (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, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.

Interpretation.

3. In this Act, unless the context otherwise requires—

"appointed day" means the day appointed pursuant to section 1;

"document" includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

"exempt document" means a document which by virtue of any provision of Part III is exempt from disclosure;

"exempt matter" means any matter the inclusion of which in a document causes that part of the document to be exempt from disclosure;

"government company" means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, whether

by the holding of shares or by other financial input, is in a position to influence the policy of the company;

"official document" means a document held by a public authority in connection with its functions as such, whether or not it was created—

- (a) by that authority; or
  - (b) before the commencement of this Act,
- and for the purposes of this Act, a document is held by a public authority if it is in its possession, custody or control;

"public authority" means—

- (a) a Ministry, department, Executive Agency or other agency of Government;
- (b) a statutory body or authority;
- (c) a Parish Council;
- (d) the Council of the Kingston and St. Andrew Corporation;
- (e) any government company which—
  - (i) is wholly owned by the Government or an agency of the Government, or in which the Government holds more than 50% shares; or
  - (ii) is specified in an order under section 5 (3);
- (f) any other body or organization specified in an order under section 5 (3);

"responsible Minister" means the Minister responsible for the public authority which holds an official document.

4.—(1) A public authority shall cause to be published within twelve months of—

- (a) the appointed day;

Publication of  
information  
by public  
authority.

- (b) its establishment; or
- (c) the coming into operation of an order under section 5 (3) which specified that authority,

whichever is later, an initial statement of its organization and functions containing the information specified in the First Schedule.

First  
Schedule.

(2) The provisions of the First Schedule shall apply for the purposes of making available to the public the documents described in that Schedule.

(3) The information required under subsection (1) shall be published in such manner and shall be updated with such frequency as may be prescribed.

(4) The Minister may amend the First Schedule by order subject to affirmative resolution.

Application  
of Act.

5.—(1) Subject to subsection (2), this Act applies to—

- (a) all public authorities;
- (b) official documents created by or held by a public authority not earlier than thirty years immediately preceding the appointed day.

(2) The Minister may, by order subject to negative resolution, declare that this Act shall apply to official documents created by or held by a public authority at such date, being earlier than the thirty years referred to in subsection (1) (b), as may be specified in that order.

(3) The Minister may, by order subject to affirmative resolution, declare that this Act shall apply to—

- (a) such government companies, other than those specified in paragraph (e) (i) of the definition of "public authority", as may be specified in the order;
- (b) any other body or organization which provides services of a public nature which are essential to the welfare of the Jamaican society,

or to such aspects of their operations as may be specified in the order.

(4) An order under subsection (3) may be made subject to such exceptions, adaptations or modifications, as the Minister may consider appropriate.

(5) The Minister may, by order subject to affirmative resolution, declare that the application of this Act in relation to any government company specified in paragraph (e) (i) of the definition of "public authority" shall be subject to such exceptions, adaptations or modifications as the Minister may consider appropriate.

(6) This Act shall not apply to—

- (a) the Governor-General, in relation to the exercise of the powers and duties conferred or imposed on him by or under the Constitution of Jamaica or under any other law;
- (b) the judicial functions of—
  - (i) a court;
  - (ii) the holder of a judicial office or other office connected with a court;
- (c) the security or intelligence services in relation to their strategic or operational intelligence gathering activities;
- (d) any statutory body or authority as the Minister may specify by order subject to affirmative resolution.

(7) This Act applies to official documents held in a registry or other office of a court, being documents that relate only to matters of an administrative nature.

(8) In subsection (6) "security or intelligence services" means—

- (a) the Jamaica Constabulary Force;
- (b) the Island Special Constabulary Force;
- (c) the Rural Police;
- (d) the Jamaica Defence Force.

**PART II. *Right of Access***

Right of  
access.

**6.—**(1) Subject to the provisions of this Act, every person shall have a right to obtain access to an official document, other than an exempt document.

(2) The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Minister may specify by order, subject to affirmative resolution.

(3) An applicant for access to an official document shall not be required to give any reason for requesting access to that document.

(4) Where an official document is—

- (a) open to access by the public pursuant to any other enactment, as part of a public register or otherwise; or
- (b) available for purchase by the public in accordance with administrative procedures established for that purpose,

access to that document shall be obtained in accordance with the provisions of that enactment or those procedures, as the case may be.

Application  
for access.

**7.—**(1) A person who wishes to obtain access to an official document shall make an application to the public authority which holds that document.

(2) An application under subsection (1)—

- (a) may be made in writing or transmitted by telephone or other electronic means;
- (b) shall provide such information concerning the document as is reasonably necessary to enable the public authority to identify it.

(3) A public authority to which an application is made shall—

- (a) upon request, assist the applicant in identifying the documents to which the application relates;

(b) acknowledge receipt of every application in the prescribed manner;

(c) grant to the applicant, access to the document specified in the application if it is not an exempt document.

(4) A public authority shall respond to an application as soon as practicable but not later than—

(a) thirty days after the date of receipt of the application; or

(b) in the case of an application transferred to it by another authority pursuant to section 8, thirty days after the date of the receipt by that authority,

so, however, that an authority may extend the period of thirty days for a further period, not exceeding thirty days, in any case where there is reasonable cause for such extension.

(5) The response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty days, it shall state the reasons therefor, and the options available to an aggrieved applicant.

8.—(1) Where an application is made to a public authority for an official document—

Transfer of requests.

(a) which is held by another public authority; or

(b) the subject matter of which is more closely connected with the functions of another public authority,

the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority and shall inform the applicant immediately of the transfer.

(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen days after the date of receipt of the application.

Forms of  
access.

9.—(1) Access to an official document may be granted to an applicant in one or more of the following forms—

- (a) the applicant may be afforded a reasonable opportunity to inspect the document;
- (b) the authority concerned may furnish the applicant with a copy of the document;
- (c) in the case of a document from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;
- (d) in the case of a document by which or in which words are—
  - (i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or
  - (ii) contained in the form of shorthand writing or in codified form,

the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that document.

(2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.

(3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would—

- (a) be detrimental to the preservation of the document, or be inappropriate, having regard to its physical state;
- (b) constitute an infringement of copyright subsisting in any “matter contained in the document.

(4) Copies of documents to which access is granted shall be authenticated in the prescribed manner.



**10.—(1)** Where the information provided by the applicant in relation to the document is not such as is reasonably necessary to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the document can be identified.

Assistance  
and deferment  
of access.

(2) A public authority may defer the grant of access to an official document—

- (a) if publication of the document within a particular period is required under the provisions of any enactment, until the expiration of that period;
- (b) if the document was prepared for presentation to Parliament or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to the person or body;
- (c) if the premature release of the document would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the document would not be contrary to the public interest.

(3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen days of its decision, inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate.

**11.—(1)** Where an application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document with the exempt matter deleted therefrom.

Deletion of  
exempt  
matter.

(2) A public authority which grants access to a copy of an official document in accordance with this section shall inform the applicant—

- (a) that it is such a copy; and

- (b) of the statutory provision by virtue of which such deleted matter is exempt matter.

Fees, etc.

**12.—**(1) The cost of reproducing any documents containing information in relation to which an application is made under this Act shall be borne by the applicant.

(2) The responsible Minister may waive, reduce or remit, the cost specified in subsection (1) for access to an official document where he is satisfied that such waiver, reduction or remission is justifiable.

Grant of access.

**13.** Subject to this Act, where—

- (a) an application is made in accordance with section 7 for access to an official document; and
- (b) the cost incurred by the public authority in granting access has been paid,

access to the document shall be granted in accordance with this Act.

### *PART III. Exempt Documents*

Documents affecting security, defence or international relations.

**14.** Official documents are exempt from disclosure if—

- (a) the disclosure thereof would prejudice the security, defence or international relations of Jamaica;
- (b) those documents contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.

Cabinet documents.

**15.—**(1) An official document is exempt from disclosure if it is a Cabinet document, that is to say—

- (a) it is a Cabinet Submission, Cabinet Note or other document created for the purpose of submission to the Cabinet for its consideration and it has been or is intended to be submitted;
- (b) it is a Cabinet Decision, or other official record of any deliberation of the Cabinet.

(2) Subsection (1) does not apply, to—

- (a) any document appended to a Cabinet document that contains material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature; or
- (b) a document by which a decision of the Cabinet has been officially published.

16. Official documents relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to—

Documents relating to law enforcement.

- (a) endanger any person's life or safety;
- (b) prejudice—
  - (i) the conduct of an investigation of a breach or possible breach of the law; or
  - (ii) the fair trial of any person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
- (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;
- (e) facilitate the escape of a person from lawful detention; or
- (f) jeopardize the security of any correctional facilities.

17. An official document is exempt from disclosure if—

- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; or

Documents subject to legal privilege, etc.

(b) the disclosure thereof would—

- (i) constitute an actionable breach of confidence;
- (ii) be in contempt of court; or
- (iii) infringe the privileges of Parliament.

Documents  
affecting  
national  
economy.

**18.—**(1) An official document of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Jamaican economy, or the Government's ability to manage the Jamaican economy.

(2) The types of documents referred to in subsection (1) include but are not limited to, documents relating to taxes, duties or rates, interest rates, monetary policy and exchange rate policy or currency or exchange rates.

Documents  
revealing  
Government's  
deliberative  
processes.

**19.—**(1) Subject to subsection (3), an official document is exempt from disclosure if it contains—

- (a) opinions, advice or recommendations prepared for;
- (b) a record of consultations or deliberations arising in the course of, proceedings of the Cabinet or of a committee thereof.

(2) Subsection (1) shall not apply to documents which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.

(3) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

Documents  
relating to  
business  
affairs, etc.

**20.—**(1) Subject to subsection (2), an official document is exempt from disclosure if—

- (a) its disclosure would reveal—
  - (i) trade secrets;

- (ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
- (b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests.

(2) Subsection (1) shall not apply where the applicant for access is the person or organization referred to in that subsection or a person acting on behalf of that person or organization.

**21.—**(1) Subject to subsection (2), an official document is exempt from disclosure if its disclosure would, or could reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of—

Documents relating to heritage sites, etc.

- (a) any historical, archaeological or anthropological resources;
- (b) anything declared to be a national monument, designated as protected national heritage or protected by a preservation notice under the Jamaica National Heritage Trust Act;
- (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;
- (d) any other rare or endangered living resource.

(2) A public authority shall grant access to a document referred to in subsection (1) if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

**22.—**(1) Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.

Documents affecting personal privacy.

(2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the document relates.

Issue of  
certificate re  
exempt  
document.

**23.—(1) Where—**

- (a) the Prime Minister is satisfied that an application for access relates to a document specified in section 15 (1);
- (b) a responsible Minister is satisfied that an application for access relates to an official document to which section 14, 16 or 18, as the case may be, applies,

the Prime Minister or the responsible Minister, as the case may require, may issue a certificate to the effect that the document is an exempt document and shall specify the basis of the exemption.

(2) Where the Prime Minister or a responsible Minister, as the case may be, is satisfied as mentioned in subsection (1) by virtue of anything contained in any particular part or parts of an official document, a certificate issued under that subsection in respect of that document shall identify that part or those parts of the document by reason of which the certificate is issued.

(3) A certificate issued under subsection (1) shall be conclusive that the document is exempt.

**PART IV. *Amendment and Annotation of Personal Records***

Application  
for  
amendment or  
annotation of  
personal  
records.

**24.—(1) Where a person claims that an official document contains personal information about the person that—**

- (a) is incomplete, incorrect, out of date or misleading;  
and
- (b) has been used, is being used or is available for use by a public authority for administrative purposes,

the person may apply to the public authority for an amendment or an annotation, as the case may be, of that document.

(2) An application under this section shall be in writing and shall specify as far as practicable, the document claimed to be the personal record requiring amendment or annotation, as the case may be, and shall—

(a) in the case of an application for amendment, specify—

- (i) whether information in the record is claimed to be incomplete, incorrect, out of date or misleading and the information in respect of which that claim is made;
- (ii) the applicant's basis for making that claim; and
- (iii) the nature of the amendment required by the applicant;

(b) in the case of an application for annotation, be accompanied by a statement specifying—

- (i) the matters referred to in paragraph (a) (i) and (ii); and
- (ii) the information that would make the record complete, correct, up to date and not misleading.

25.—(1) Where, in relation to any application under section 24, a public authority is satisfied as to the truth of the matters stated in the application, it shall amend the document concerned in the prescribed manner. Amendment  
of records.

(2) Where a public authority decides not to amend an official document it shall—

- (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 24 (2) (b); and
- (b) annotate the document by adding thereto the statement referred to in paragraph (a).

Annotation of  
personal  
records.

**26.** Where, in relation to an application for annotation of an official document containing personal information, the public authority—

- (a) is satisfied as to the truth of the matters specified in that application, the authority shall annotate the document in the prescribed manner;
- (b) is not so satisfied, it may refuse to annotate the document.

Notice of  
amendments  
or  
annotations.

**27.** A public authority which amends or annotates an official document pursuant to section 25 or 26, or, as the case may be, decides not to do so, shall take reasonable steps to inform—

- (a) the applicant; and
- (b) any other public authority which it is satisfied has made prior use of the document,

of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

Transfer of  
applications  
for  
amendment or  
annotation.

**28.** The provisions of section 8 shall apply, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

#### *PART V. Review and Appeal*

Interpretation.

**29.** In this Part and Part VI “relevant decision” means a decision referred to in section 30 (1) or (2), as the case may require.

Internal  
review.

**30.—(1)** An applicant for access to an official document may, in accordance with subsection (4), apply for an internal review of a decision by a public authority to—

- (a) refuse to grant access to the document;
- (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.



(2) An applicant for amendment or annotation of a personal record may, in accordance with subsection (4), apply for a review of a decision by a public authority to refuse to make that amendment or annotation.

(3) For the purposes of subsections (1) and (2), a failure to give a decision on any of the matters referred to in subsection (1) (a) to (c) or to amend or annotate a personal record within the time required by this Act shall be regarded as a refusal to do so.

(4) An application under subsection (1) or (2) may only be made where the decision to which the application relates was taken by a person other than the responsible Minister, a Permanent Secretary or the principal officer of the public authority concerned.

31.—(1) An internal review shall be conducted—

*Procedure re  
internal  
review.*

- (a) by the responsible Minister in relation to documents referred to in sections 14, 15, 16 and 18;
- (b) in any other case, by the Permanent Secretary in the relevant Ministry or the principal officer of the public authority whose decision is subject to review.

(2) An application for internal review shall be made—

- (a) within thirty days after the date of a notification (in this subsection referred to as the initial period) to the applicant of the relevant decision, or within such further period, not exceeding thirty days, as the public authority may permit; or
- (b) where no such notification has been given, within thirty days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the authority.

(3) A person who conducts an internal review—

- (a) may take any decision in relation to the application which could have been taken on an original application;
- (b) shall take that decision within a period of thirty days after the date of receipt of the application.

Appeal.  
Second  
Schedule.

**32.—**(1) An appeal shall lie pursuant to subsections (2) and (3), to the tribunal established for that purpose, constituted in accordance with the Second Schedule.

(2) A person may lodge an appeal—

(a) where internal review under section 30 is applicable—

(i) against a decision taken on such review;

(ii) if the time specified in section 31 (2) (b) has expired without the applicant being notified of a decision;

(b) in any other case, against a relevant decision in relation to any of the matters referred to in paragraphs (a) to (c) of section 30 (1) or section 30 (2), and accordingly section 30 (3) shall apply with necessary modifications to an appeal under this paragraph.

(3) An appeal shall be made—

(a) by the lodgement of a document within sixty 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) where no notification has been given within the period required by this Act, within sixty days after the expiration of that period.

(4) Where an appeal is not made within the period specified in subsection (2), the Appeal Tribunal may extend that period if it is satisfied that the appellant's delay in so doing is not unreasonable.

(5) On the hearing of an appeal, the onus of proving that the relevant decision was justified or that a decision adverse to the appellant should be made by the Appeal Tribunal, shall lie on the public authority which made the relevant decision.

(6) On hearing an appeal, the Appeal Tribunal—

(a) may subject to paragraph (b), make any decision which could have been made on the original application;

(b) shall not nullify a certificate issued under section 23.

(7) The Appeal Tribunal may call for and inspect an exempt document, so however that, where it does so, it shall take such steps as are necessary to ensure that the document is inspected only by members of staff of the Appeal Tribunal acting in that capacity.

#### PART VI. *Miscellaneous*

33.—(1) Nothing in this Act shall be construed as authorizing the disclosure of any official document—

Protection  
from liability  
*re* defamation  
breach of  
confidence or  
copyright.

- (a) containing any defamatory matter; or
- (b) the disclosure of which would be in breach of confidence or of copyright.

(2) Where access to a document referred to in subsection (1) is granted in the *bona fide* belief that the grant of such access is required by this Act, no action for defamation, breach of confidence or breach of copyright shall lie against—

- (a) the Government or any public authority, any Minister or any public officer involved in the grant of such access, by reason of the grant of access or of any republication of that document; or
- (b) the author of the document or any other person who supplied the document to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the document.

(3) The grant of access to an official document in accordance with this Act shall not be construed as authorization or approval—

- (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the document or its contents by the person to whom access is granted;

(b) for the purposes of the Copyright Act, of the doing by that person of any act comprised within the copyright in any work contained in the document, as follows—

- (i) any literary, dramatic, musical or artistic work;
- (ii) any sound recording, cinematograph film, television broadcast or sound broadcast; or
- (iii) a published edition of a literary, dramatic, musical or artistic work.

Offence.

**34.—**(1) A person commits an offence, if in relation to an official document to which a right of access is conferred under this Act he—

- (a) alters or defaces;
- (b) blocks or erases;
- (c) destroys; or
- (d) conceals,

the document with the intention of preventing its disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Provisions re  
other Acts.

**35.—**(1) Where access to an official document is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.

(2) Subject to subsection (3), nothing in this Act shall affect the provisions of any other Act other than the Official Secrets Act, relating to the non-disclosure of information.

(3) For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.

**36.—**(1) The Minister shall, as soon as practicable after the end of each year (but not later than the 30th of June in the following year) prepare a report of the operation of this Act during the year, containing the matters specified in subsection (4). Reports.

(2) The report referred to in subsection (1) shall be laid on the table of the House of Representatives and of the Senate.

(3) Each public authority shall submit to the Minister, quarterly reports on the matters specified in subsection (4).

(4) The matters referred to in subsections (1) and (3) are—

- (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;
- (e) such other matters as are considered relevant.

**37.** The Minister may make regulations generally for giving effect to the provisions and purposes of this Act and such regulations shall be subject to affirmative resolution. Regulations.

**38.—**(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose. Review of  
Act by  
Parliamentary  
committee.

(2) The first such review shall be conducted not later than two years after the appointed day.

## FIRST SCHEDULE

(Section 4)

*Information to be Published by Public Authorities*

## 1. The information referred to in section 4 of this Act 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.

## 2. The principal officer of the authority shall—

- (a) cause copies of such of the documents specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) within 12 months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not

more than 12 months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.

3. The principal officer is not required to comply fully with paragraph 2 (a) before the expiration of 12 months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.

4. This Schedule does not require a document of the kind specified in paragraph 1 (e) containing exempt matter, to be made available in accordance with paragraph 2, but, if such a document is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt matter, and cause the document so prepared to be dealt with in accordance with paragraph 2.

5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Act, or has been specified by order under section 5 of the Act as if the references in paragraph 3 to the appointed day were references to the day on which the authority comes into existence or has been so specified, as the case may be.

## SECOND SCHEDULE

(Section 32)

### *Constitution of Appeal Tribunal*

Constitution of tribunal.	1. The Tribunal shall, subject to paragraph 2, consist of five members appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition.
Power of one member to sit alone.	2. For the hearing of any appeal under this Act the Tribunal may consist of one member sitting alone if the parties to the appeal agree.
Tenure of office.	3. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for a period of five years and shall be eligible for re-appointment.
Chairman.	4. The Governor-General shall appoint one of the members of the Tribunal appointed under paragraph 1 to be chairman thereof.
Acting appointments.	5. The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition may appoint any person to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member.

**Resignation.**

6.—(1) Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the chairman, and from the date of the receipt by the Governor-General of such instrument that member shall cease to be a member of the Tribunal.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Governor-General and such resignation shall take effect as from the date of receipt by the Governor-General of that instrument.

**Revocation of appointments.**

7. The Governor-General, after consultation with the Prime Minister and Leader of the Opposition may terminate the appointment of any member of the Tribunal 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.

**Filling of vacancies.**

8. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member.

**Publication of membership.**

9. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

**Remuneration of members.**

10. There shall be paid to the chairman and other members of the Tribunal, in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as may be determined by the Minister responsible for the public service.

**Voting.**

11. Subject to paragraph 2, the decision of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

**Power to regulate own proceedings. Office of chairman or member of Tribunal not public office.**

12. Subject to the provisions of the Act, the Tribunal shall regulate its own proceedings.

13. The office of chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.



## ACCESS TO INFORMATION MADE SIMPLE: THE ROLE OF THE PUBLIC AUTHORITY

The Access to Information Act, 2002 is a very critical piece of legislation that gives ordinary citizens the right to access official government documents, and other related information except those exempted for legal, personal and or confidential reasons as so stated by the Act. It is a bold step that Jamaica has taken to expand its citizens' participation in the entire democratic process. Once again, the government has taken very proactive measures to complement its thrust towards a participatory approach to governance.

### **OBJECTIVES OF ATI ACT, 2002**

1. To ensure that Jamaican citizens experience all aspects of democracy as ascribed to them by the constitution.
2. To improve the level of political participation by citizens and to promote an atmosphere of trust and responsibility.
3. To remove the culture of secrecy that usually surrounds the civil service by advancing openness and accountability as strategies for development.
4. To improve the government's effectiveness and aid in promoting sound policy initiatives.
5. To increase public knowledge.

### **A SHORT HISTORY OF THE ATI ACT, 2002**

The ATI Act, 2002 had an 11-year gestation period during which time the Bill was referred to Access to Information from Freedom of Information. The Bill proceeded to Joint Select Committee for consideration

and report. The Committee received submissions from local and international

NGOs, public authorities and members of the general public. The Committee employed a critical, non-partisan approach in its assessment of the ATI Act so that its potentials for advancement and implementation could be realised. Committee members ensured that the objectiveness of the process was maintained.

The people of Jamaica can therefore be assured that the Act is not a farce but represents in actuality a very important piece of legislation that will confer enforceable legal rights onto citizens. ***That is, the Act gives the citizen the right to an appeal process if a request for information is denied. In the instance where the appeal process is exhausted it is also within the citizen's right to take the matter to court.***

Prior to the creation of the ATI Act, 2002 extensive research and consultations were done, both locally and internationally, to ensure that the Act complies with international standards while taking into consideration the cultural characteristics of the land.

### **Government's Role in Facilitating Access to Information**

It is all well and good for the government of the day to promote the ATI Act, 2002 but if this is not balanced by the government's willingness and obligation to facilitate such

access then the Act becomes a pretentious and useless piece of legislation. To ensure that this does not occur, the government has to put in place the necessary apparatus and systems. Other functions of the government will have to include:

- ❑ Establishing the right structures to facilitate an easy flow of requests.
- ❑ Procuring the necessary capital, human and otherwise, needed to make the transition from a culture of secrecy in the civil service to one of transparency and accountability as quickly as possible.
- ❑ Making arrangements for citizens to access the various records with relative ease.
- ❑ Designing and implementing policy initiatives aimed at establishing an operational records management system.
- ❑ Facilitating an independent review process.

#### **ROLE OF THE PUBLIC AUTHORITY**

It is imperative that public authorities adhere to the stipulations of the Act, create a database and employ modern records management methods to facilitate and promote the effective and efficient access to information. The Archives Act will be amended to complement the ATI Act.

#### **Conditions for Access**

The ATI Act, 2002 gives a right of access to all persons in accordance with global advancement in technology and in keeping with the spirit of (transparency and accountability) the Act. Consequently, the Act imposes no obligation on applicants to establish reason(s) for access.

**Clauses 4 through 13** of the Act detail the role of, and conditions under which, public

authorities may grant access to official documents.

#### **ELUCIDATION OF RELEVANT SECTIONS OF THE ATI ACT, 2002**

**Clause 4** read with the First Schedule to the Act puts the onus on the public authority to publish information of documents provided for in the Schedule. Public authorities are further charged with making frequent updates to the list of available documents so that the applicants are kept informed. Subsection 1 of the clause gives a specified time for the publication of such information by the various authorities.

The Minister may amend the First Schedule 'by order subject to affirmative resolution'.

**Clause 5, the application section of the Act**, provides for public authorities, which fall within the ambit of the Act. The clause further extends to other bodies, companies and organisations as so declared by the Minister, by order subject to affirmative resolution, as providing services essential to the welfare of the Jamaican society. Also subject to affirmative resolution by the Minister, public authorities shall make available documents preceding the stipulated 30 years of the appointed day.

Subsections (6) and (7) of clause 5 outline documents excluded from public access and conditions under which it is applied.

**Clause 6** accords unto each individual a right of access to official documents, 'other than an exempted' document, in the control of the public authority. The public also has a right of access to exempted documents in existence for more than 20 years as such shorter or longer period specified by the Minister.

**Clause 7** sets out the role of the public in its application for access to official documents. An applicant may submit an application to a public authority either by writing or via the telephone or other electronic means such as the Internet. It is the role of the public authority to:

- ☐ assist the applicant in identifying the documents to which the application relates, upon request;
- ☐ acknowledge the receipt of every application in the prescribed manner; and to
- ☐ grant the applicant access to the specified document if the document is not excluded or exempt.

Public authorities are mandated by the Act to respond to applications of request before but no later than 30 days after the receipt of the application. In the event that an application is transferred to the relevant public authority, the current holder also has 30 days after receipt of the application for acknowledgement. Where there is reasonable cause for extension the authority may extend the period to, but not beyond 30 days. It is the responsibility of the public authority to state, on the application, reasons for refusal, deferment of access or extension of an additional 30 days.

**Transfer of requests** is addressed by clause 8 of the ATI Act, 2002. It is the sole duty of a public authority to determine the transfer of an application to the relevant authority to which the matter of request is more closely connected; and to immediately inform the applicant of such transfer. An application shall be transferred before but no later than 14 days after its receipt.

**Clause 9** of the Act provides for various forms of access to official documents. When access is granted, the applicant may be allowed to inspect the document, get a copy of the document or in

the case of audio/visuals whose reproduction is likely, the applicant will be allowed to listen/view the document. The authentication of a document will be prescribed by the Regulations to the Act. **Assistance and grounds for the deferment of access** are outlined in Clause 10.

**Clause 11 speaks to the deletion of exempt matter.** That is, where a document contains exempted information, access to the document will be given with the exempt matter deleted.

**Clause 12** stipulates that an applicant shall pay the cost of reproducing a document to which access is granted. However, the responsible Minister may waive or reduce fees where justifiable.

**Clause 13** outlines the conditions under which access to official documents is granted.

#### **ACTION PLAN for ATI**

Each Ministry and government agency is expected to design an action plan including, but not limited to, a budget detailing resource allocation and the engagement of senior personnel to lead the ATI process.