



Information for Accountability Workshops

Sourcebook



RIGHTS AND RECORDS INSTITUTE
International Records Management Trust



**The
World
Bank**

*Danish Trust Fund
for Governance*



**Westminster Foundation
for Democracy**

Information for Accountability Workshops

Sourcebook

**Edited by
Dawn Routledge, Kimberly Barata
and Piers Cain**

**Designed by
Jennifer Leijten**



**International Records Management Trust
RIGHTS AND RECORDS INSTITUTE
London, UK**

September 2000

Published by the International Records Management Trust, Rights and Records Institute and sponsored by the World Bank Danish Trust Fund for Governance.
September 2000

© The International Bank for Reconstruction and Development/THE WORLD BANK
1818 H Street, N.W.
Washington, D.C. 20433, USA

Produced by the International Records Management Trust
12 John Street
London WC1N 2EB
United Kingdom

Printed in the United Kingdom

Enquiries concerning reproduction and requests for additional materials should be addressed to:

International Records Management Trust
RIGHTS AND RECORDS INSTITUTE
12 John Street
London WC1N 2EB
United Kingdom
Tel: +44 (0)20 7831 4101
Fax: +44 (0)20 7831 7404
e-mail: info@irmt.org
<http://www.irmt.org>

Acknowledgements

The success of the Information for Accountability Workshops initiative is a result of the support we received from a number of individuals and organisations. The Danish Trust Fund for Governance, administered by the World Bank, has funded the programme. We thank them for making it possible to develop this innovative approach. The pilot workshop in Dar es Salaam, Tanzania received additional financial and logistical support from the British Council Tanzania. The pilot workshop in Accra, Ghana received additional funding and logistical support from the British Council Ghana along with separate funding from the Westminster Foundation for Democracy. We are also grateful to the Westminster Foundation for Democracy for their contribution to the printing and distribution of the Workbook and Sourcebook.

In addition, we would like to express our appreciation to Transparency International and their local chapters in Tanzania and Ghana who helped to develop the methodology and make the pilot workshops a success. Special thanks go to Mr Jeremy Pope, Executive Director of TI and Mr Mike Stevens of the World Bank without whose encouragement and active support throughout, this project would never have taken off.

In addition we would like to thank the many people who have contributed to the preparation of this sourcebook. In particular Dr Pino Akotia, Lecturer at the University of Ghana at Legon, Ms Tanya Karlebach and Ms Carol Eden, Consultancy Management Group, IRMT and, especially Dr Justus Wamukoya, Head of the Archives and Records Management Department of the University of Moi in Eldoret, Kenya who has contributed greatly to this project throughout.

We are also grateful for the support given to us by our Steering Committee: Dr Ladipo Adamolekun, World Bank Office, Nairobi, Kenya; Mr Samuel Agere, Commonwealth Secretariat; Mrs Angeline Kamba, former Public Service Commissioner, Government of Zimbabwe; Dr Sahr Kpundeh, Consultant, World Bank Institute; Ms Rikke Nöhrind, Danchurchaid; and Dr David Wallace, University of Michigan, School of Information.

Special thanks go to Ms Jennifer Leijten, Publications Administrator, IRMT for designing and producing this publication.

Table of Contents

Foreword	1
<i>Jeremy Pope, Executive Director, Transparency International</i>	
Preface	3
<i>Piers Cain, Director, Rights and Records Institute, International Records Management Trust</i>	
PAPERS	
Access to Information and Civil Service Reforms	4
<i>Dr Robert Dodoo, Head of Civil Service, Government of Ghana</i>	
Access to Information and the Law in Tanzania: Some Thoughts and Views	15
<i>Dr Harrison Mwakyembe, Senior Lecturer in Law, University of Dar es Salaam</i>	
The State of the Law relating to Access to Information in Ghana	18
<i>Professor Kofi Kumado, Faculty of Law, University of Ghana at Legon</i>	
Fighting Poor Records Keeping in Kenya: The Case of Missing and Lost Files and Documents	23
<i>Musila Musembi, Director, Kenya National Archives and Documentation Services</i>	
Freedom of Information and the Right to Know: Accessing Government Documents	29
<i>Professor Tom Riley, Executive Director, Commonwealth Centre for Electronic Governance</i>	
CASE STUDIES	
MKSS, Rajasthan: A case study of public participation	47
OPEN: Transparency in government in Seoul, Korea	49
Citizen's Report Cards: Bangalore, India and Seoul, Korea	51
'Confidential' Documents in Tanzania: a case study of Adam Mwaibabile	56

ACCESS TO INFORMATION MECHANISMS

Freedom of Information (FOI) 57

Code of Practice on Access to Government Information 63

The Role of the Ombudsman 69

Citizens' Charters 73

Citizens' Advice Bureaux 76

GLOBAL DISCUSSION: SUMMARIES 79

SELECT BIBLIOGRAPHY 97

RECOMMENDED WEBSITES 103

FOREWORD

The public, it is often said, has a “right to know.” But *does* it have such a right? And if it does, *should* it? If it should, how would such a right be recognised, protected and given effect?

The argument in favour of the public’s right to know was succinctly put forth by James Madison, one of America’s constitutional fathers: “A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power that knowledge brings.”¹ The experience of many developing countries bears out the wisdom of his words two centuries later.

The fight for information takes place between the public who want it and those in power who do not want them to have it.² Madison’s philosophy suggests that there can be no democracy without freedom of information, that secrecy impedes the political education of a community so that electoral choices are not fully informed, opportunities for individuals to respond meaningfully to political initiatives are blunted, and a political climate is generated in which the citizen views government not with responsibility and trust, but with malevolence and distrust.

The right to know is linked inextricably to accountability, the central goal of any democratic system of government. Informed judgement and appraisal by public, press and parliament alike is a difficult, even fruitless, task if government activities and the decision-making process are obscured from public scrutiny. Where secrecy prevails, major resource commitments can be incurred, effectively closing the door to any future review and re-thinking in the light of an informed public debate. There are, of course, other mechanisms within government such as parliament, the courts or an Ombudsman that act as a check on the abuse of power by an Executive. However, for these to be effective, their own access to information is an imperative. Given that such a right is worthy of recognition, how best can it be guaranteed?

If governments simply behaved in an open fashion, making information widely available to the public and affected individuals, there would be no problem. This approach has been tried, most recently in the UK, but has generally failed to make much headway. Providing information that reflects well on an administration presents little difficulty; however, when the information reflects the opposite, the voluntary approach is most vulnerable. Where the release of information is a matter of discretion, be it of politicians or of administrators, the temptation to give themselves the benefit of the doubt when the information is embarrassing is too often irresistible.³

¹ Quoted in “Freedom of Information Legislation”, by John McMillan (Office of the Australian Ombudsman) presented to the 1980 Meeting of Commonwealth Law Ministers, Barbados, April 1980 (Commonwealth Secretariat, London, 1980) to whom we are also indebted for other reasoning included in this Foreword.

² The freedom of information legislation presently under consideration in the United Kingdom is an excellent example of this. In opposition, Labour were strong supporters of wide-ranging rights to public information, only to reverse their stand abruptly on being elected into government.

³ See, for example, “Ministers to defer truth on nuclear power stations”, Guardian (UK), 21 August 1995: “Sensitive financial information about the country’s oldest and dirtiest nuclear reactors is being kept under wraps by the Government until it has privatised the industry’s more modern atomic power stations.”

That should not stop a government from making a concerted effort to encourage attitudinal changes that would relax restrictions on disclosures and increase the accessibility of decision-makers to press and public alike. But the problem with administrative guidelines will always be that, at the end of the day, discretion remains. And discretion, it is argued, runs counter to the fundamental principle of natural justice - for the administration is the judge in its own cause. The same argument stipulates that the dispute over access to information should be determined by a third, and neutral, party.

Legislation is therefore the only alternative. It can also establish practices that must be observed, even by those least willing to do so. It can reverse the usual presumption in favour of secrecy. Citizens are given the legal right of access to government documents without having to first prove special interest, and the burden of justifying non-disclosure falls on the government administration. Time limits within which requests must be handled can be imposed and an unimpeachable right of access to certain categories of information can be conferred.

Whatever the scope of FOI legislation, there will always be arguments against it and for exemptions from it. The most frequent argument against FOI legislation is one of cost and efficiency. Some claim that it diverts resources and staff away from programs that could actually make an impact on public welfare. Yet, one must consider the costs of failing to provide such legislation, which includes a lack of accountability and transparency and a fertile environment for corruption.

Defence, national security, foreign relations, law enforcement and personal privacy and, to some extent, the internal deliberative processes of an agency may each have legitimate claims to protection or exemption from FOI legislation. The Swedish Secrecy Law, for example, has as many as 250 exemptions, some defined by their relation to protected interests and others by reference to categories of documents. Many exemptions contain a time limitation on the life of the exemption, which varies from as much as 70 years to as little as two. Still other exemptions protect documents only until a particular event has occurred. The options are many and varied, but the issue appears to be one of growing importance among civil societies around the world.

It is also said that too much openness can impede free and frank exchanges of opinion between public officials, that officials cannot operate efficiently in a goldfish bowl. This argument has some merit, but it must be weighed against the alternative: secrecy and a lack of accountability. Can anyone seriously argue that decision-making which is not accountable is better than decision-making which is subject to scrutiny?

But the initial task is to start to reverse traditional and inherited cultures of secrecy. Colonial powers were far from transparent and obsessed with secrecy. Their legacy in this area to many countries has been extremely negative.

*Jeremy Pope
Executive Director, Transparency International
London, September 2000*

PREFACE

The Rights and Records Institute was created by the International Records Management Trust to generate new thinking and develop new strategies and techniques for the management of recorded information.

We came to realise that we needed to find a way of enabling the ordinary citizen to obtain access more easily to the vast quantities of information that every government has in its possession. If we could stimulate public demand for information, this could lead to a culture of information use, which would ensure that information systems in the public sector needed for accountability would be maintained and be relevant.

Information for Accountability Workshops are designed to stimulate demand by the public for information from their governments through an open-ended discussion process. This deliberately avoids promoting a particular policy solution. Each country must decide what level of information disclosure and which policy options are appropriate for its own needs. The workshops simply provide a framework for the discussion to take place.

The *Information for Accountability Workshops* development project was a twelve month initiative. We are particularly grateful to the Danish Trust Fund for Governance, administered by the World Bank, for their funding and support to the project throughout. The project aim was to develop a methodology to allow members of the public, civil society organisations, civil servants, politicians, and records and information professionals to come together to improve access to government information. Two pilot workshops were held, in Tanzania and Ghana, in 2000. The resulting methodology is made available in the *Workbook*, the companion volume to this *Sourcebook*. The two should be used in tandem.

The *Sourcebook* makes available the most relevant background information gathered by the project team in developing the methodology and running the two pilot workshops. We hope this information will be of use to those who wish to run their own workshops or to make some other contribution in this area.

Piers Cain
Director, Rights and Records Institute
International Records Management Trust
London, September 2000

PAPERS

Access to Information and Civil Service Reforms

Dr Robert Dodoo¹
Head of Civil Service, Government of Ghana

INTRODUCTION

Preamble

I am delighted and privileged to be invited to participate in this very important workshop on ‘Information for Accountability’ and to present a paper on ‘Access to Information and Civil Service Reforms’.

I wish to congratulate the organisers and the sponsors – the Ghana Integrity Initiative (the local chapter of Transparency International) and the International Records Management Trust, Right and Records Institute (IRMT) - for the relevance, timeliness and thought-provoking theme ‘Information for Accountability’; and for the choice of the topics and the high calibre of individuals selected for each of the presentations. Equally, I must acknowledge the support by the World Bank, Danish Trust Fund for Governance, the Westminster Foundation for Democracy and the British Council Ghana in funding this Workshop.

I am particularly pleased and honoured to share this platform with distinguished personnel such as Professor Kofi Kumado who will speak on ‘State of the Law Relating to Access to Information’ and Mrs Gifty Affenyi Dadzie who will speak on ‘Access to Information: The Perspective of the Press’ and not ‘Gender Mainstreaming in the Press Houses or Businesses’.

THE BACKGROUND

The British Era

The Civil Service, as an administrative institution of Government, and the accompanying issue of Access to Information, date as far back as the British Colonial Era in the then Gold Coast, now Ghana. The Civil Service, being a creation of the British, had its original functions, structures and value systems fashioned to serve principally the exclusive interests of the British Crown and people. It must be noted that the Civil Service then encompassed all the institutions of State which currently constitute the public service. It served then as a vital and powerful administrative arm of the colonial power as well as a vital instrument in the hands of the colonial agents for administering the colony and enforcing political, social and economic levers of the society.

¹ Dr Robert Dodoo, Head of Civil Service, Government of Ghana, PO Box M49, Accra, Ghana. Paper given at the ‘Information for Accountability Workshop’, Accra, Ghana. August 2000.

The British, as is well known, were efficient in administering their widely spread colonies in the then British Empire. They depended, amongst other measures, on information and were adept in the gathering, documenting, classifying, using and strictly controlling data and information which was communicated to, and secured in, Britain. Information available locally was strictly controlled and classified hence access to vital information was almost impossible. At any rate, the Press/Media Houses and Journalists were very few and were preoccupied not with “bread-and-butter” issues but with local politics. This state of affairs persisted right through to independence in 1957.

Post-Independence: 1957-1983

The Civil Service was, at independence, an enviable institution for administrative efficiency, loyalty and commitment to duty. It continued to serve the post-independent Government of the day as loyally, obediently and efficiently as before, but was, adamantly, too “conservative” and not amenable to change. Hence, even after Independence, the Government and the Civil Service persisted in adhering to almost the same administrative policies and practices: over-centralised structures ie, the command and control structures and systems; outmoded inefficient rules and regulation-bound administrative systems; and to the stringent information classification systems and access to information culture that they inherited. They tended to be too cautious and stingy with information and shied away from releasing information of whatever kind.

Prior to 1983 ie, soon after independence to about 1983, there were some modest attempts to reform the Civil Service, by indigenising and Africanising its personnel; examining its structures and systems; and re-orienting them towards serving post-independence Ghanaian interests. But the British system of administration had been so effectively entrenched that the civil servant of the day found almost sacrilegious any attempt, by the Government, to meaningfully tamper with the Civil Service and change it.

As a consequence of economic decay, political instability and the almost moribund administrative system, the revolutionary regime of the Provisional National Defence Council (PNDC) in 1983 embarked upon the Economic Recovery Programme (ERP) and State Adjustment Programme (SAP) and then instituted the Civil Service Reform Programme (CSRP) of 1983-1992/3. Even then, the reforms were limited in scope to structures and cost-saving measures, and not to effecting fundamental changes and orientation in functions, operations and responsiveness to the stakeholders outside Government. The CSRP, however, terminated with the promulgation of the new Civil Service Law, PNDCL 327 of 1993.

THE TOPIC: THE CIVIL SERVICE POST-1993

I wish then in examining the issue of ‘Access to Information and the Civil Service Reforms’ or the ‘Civil Service and the issue of Access to Information’ to begin from 1993 and for three main reasons. The Civil Service Operating Law was promulgated as recently as 1993 and had its roots almost embedded within the 1992 Constitution. I assumed office as the first Head of the Civil Service, to be designated a Public Servant, to have been appointed from outside the Service (about the same time 1993/94) and to have no cabinet secretarial duties. I have witnessed, since then, the Law in operation, within the context of the current political and constitutional system and access to information regime. The initiation of the new

paradigm in civil service reforms also dates from the year 1993.

The Civil Service of today derives its existence from the 1992 Constitution of the 4th Republic, and its establishment to the Civil Service Law PNDCL 327 of 1993. The Service, now constituting one of the Public Service institutions, has about 76,000 employees and functions at the level of 23 Ministries, 38 Departments, 10 Regional Co-ordinating Councils (RCCs), 110 District Assemblies and other extra-Ministerial Agencies.

It is essentially, then, that part of the Public Services that is concerned with service in a Civil Office of Government in both central and local government.

As the central administrative machinery of government, it is charged with the overall responsibility for policy initiation and formulation, project and programme implementation through its various departments and agencies, and co-ordination of government programmes and projects. Additionally, the Civil Service plays a key advisory role to Government on major issues of national importance.

Throughout the history of the Civil Service (ie colonial past, independence and post-independence eras) civil servants, in the course of their day-to-day administrative functions, do generate, come into contact with, stumble upon, and handle large volumes of various kinds of information. The information could be sensitive and non-sensitive, classified and non-classified, restricted and non-restricted and marked or stamped secret - all variously designated for many reasons and intended to serve, obvious and less obvious purposes and interests.

These various kinds of information/documentation contain subjects, issues and matters relating to:

- national development, ie economic, social, including cultural and environmental, and political matters
- raw details of the budget and finances of Government
- high profile security information, specifically related to the State, national security, protection of vital resources and interests, etc.

The civil servant is expected to hold such a variety of vital information jointly with Government and in trust for the State and people of Ghana, and is expected to adopt the position of a custodian to retain and protect, as well as to use and to communicate the information as and when ordered to do so, or when it is deemed appropriate to do so.

Records Management ie, data collection, retention, storage and dissemination, had been poor and hence information had been difficult to retrieve and use for all-types of societal purposes.

Mr Chairman, at this stage let me draw attention to a few pertinent considerations:

- As late as 1993, the Civil Service continued to exist as a highly centralised and bureaucratic institution. In orientation, it was bound by and operated under rigid rules and regulations. Its hackneyed terminologies and administrative procedures and systems were hardly understood by the citizens and stakeholders.

- Traditionally the Civil Service and, by implication, the civil servant, has to be efficient, competent, loyal and honest and to exhibit a high sense of political neutrality and anonymity in the discharge of his/her duties. The civil servant, in the process and with time, had become reticent and cagey with regard to information disclosure. Seen from the outside then, the Civil Service was a ‘closed system’.
- This state of affairs, however, has had its own backlash. Indeed this has led to mistrust on the part of the citizens and stakeholders who are frustrated with the feet-dragging posture adopted by the civil servant in the delivery of services. The media in particular complained about being starved of information and in reaction has tended to resort to the use of half-baked information, the tabloids-type, to inform and at times to deliberately misinform the public and embarrass the Government and officials.
- Naturally public confidence in the Civil Service had been severely damaged and the image of a hitherto virile institution had been impaired.
- The reaction from the civil servant was to ‘dig in’ and to bemoan his/her plight as a victim of circumstances caught in the web of the intimidating legislation on information disclosure (eg State Secrets Act and General Orders/Administrative Instructions).

THE STATE SECRETS ACT

Mr Chairman, in the conduct of the work of civil servants, and with specific reference to the concept of freedom of information, attention must be drawn to the State Secrets Act 101, 1962, particularly Section 3 Sub Section 1-4, which deals with matters of ‘wrongful communication etc of information’. Some sections of this Law specifically impose limitations on the ability of civil servants to communicate, handle, retain and use certain specified official information in their possession or to which they are privy.

Since my colleague the eminent Law Professor, Dr Kofi Kumado, would be following with his presentation on ‘State of the Law Relating to Access to Information’, I deem it prudent not to delve deeper into this particular aspect of the Law. He would, as usual, do better justice to the issues contained in the Act than a layman so close to it and its implementation.

I would, however, wish to note the following threatening, perhaps disturbing, features of the Act under which the civil servant operates. Under the Act, it is:

- an offence to communicate the code, word, password, sketch, article, mode, document or information to any person, other than a person to whom one is authorised to communicate or a person to whom it is in the interest of the Republic
- an offence to use information in one’s possession for the benefit of any foreign power or in any other such manner
- not permissible for a public servant to retain a note or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it

- also a requirement to comply with the directives with regard to the return or disposal of the document
- similarly, an offence for a public servant to fail to take reasonable care of, or so conduct himself/herself as to endanger the safety of official notes and documents.

Mr Chairman, within the context of this law civil servants as employees of Government functioning within the administrative machinery of the State do contend with compelling, competing and conflicting interests and dilemmas. These dilemmas are:

- to be open, honest, loyal, committed and obedient to the Government and safeguard the interests of the State
- to assist the Government in its policy formulation and implementation of decisions, plans and programmes
- to uphold the laws of the land including the Official Secrets Act of 1962, Act 101
- to serve as custodians of various categories of sensitive and non-sensitive information
- to be loyal and faithful to the Government of the day which, in our multi-party system, should be the political party in power. On the other side of the political equation or divide also are political parties in opposition which collectively or to be specific, the majority thereof, could be described in effect as the 'Government-In-Waiting' and which prey and pry into Government business and search for information of various kinds to enable them to contribute meaningfully to providing alternate solutions to national problems, and sometimes to enable them to gain or score pure political advantage
- there are also the business community, foreign powers, and donor agencies, NGOs, citizens and the media who need information for various reasons
- the civil servant should be non-partisan and anonymous in the conduct of his duty within a political milieu. In reality, politics and political considerations necessarily and invariably affect and influence decisions and conduct
- quite significantly, the Act carries a penalty of imprisonment, fine or both. The spirit and letter of Act 101 naturally influence and bind the civil servants who subscribe to or take the 'Oath of Office' and the 'Official Secrets Oath'.

THE CHALLENGES AND IMPETUS FOR CHANGE

By 1993 it was becoming increasingly difficult for the Civil Service and civil servants to continue to do business as usual, and there was need for change. This had come about as a result of a number of challenges and pressures:

- Low public image and public perception of the Service and its employees
- Constitutional, multiparty system and democratic imperatives

- ◇ good governance
- ◇ human rights and administrative justice
- ◇ the media and freedom of speech and expression
- ◇ an independent judiciary and the rule of law
- ◇ openness, transparency and accountability
- ◇ customer sensitivity and orientation etc
 - ◆ an educated, elite core of Journalists and emergence of investigative reporters and reporting
 - ◆ proliferation of print (private) and electronic media
 - ◆ private sector
 - ◆ the emergence of an equally vocal and informed public demanding quality and timely service delivery.

The Service also faced some mounting and persisting problems:

- motivation:
 - ◇ low productivity
- scarce resources:
 - ◇ financial
 - ◇ material and equipment
- skill shortages in key areas:
 - ◇ brain drain
 - ◇ lack of professionalism
- decline in discipline and work ethics and the need to improve upon this situation for effective performance and good governance
- government functions expanding and becoming more complex and demanding by the day:
 - ◇ Ghana Vision 2020
 - ◇ private sector, etc.

- the country was characterised by poor record keeping and management
- the civil servant had to confront compelling, competing and conflicting interests and dilemmas vis-a-vis the ‘nature of work, loyalties, good governance’ and the ‘Oath of Office’ and the ‘Official Secrets Act’.

In the face of all these compelling challenges and pressures emerged a number of realities:

- overwhelming pressure for change, for improvement in services and responsiveness, and an imperative to reverse the negative trend
- there was the urgent need for the Civil Service to change, to reform and for a new paradigm shift.

THE CIVIL SERVICE PERFORMANCE IMPROVEMENT PROGRAMME (CSPIP), 1994/95

Mr Chairman, the Civil Service Performance Improvement Programme (CSPIP) which commenced in 1995, was in response to these pressing challenges and pressures and the need to develop a new paradigm shift in the conduct of our work. CSPIP then is intended:

- to enhance the delivery of services to the Government, public and other stakeholders
- to strengthen and build institutional capacity
- to institute a good governance culture and best management practices.

The Paradigm Shift involved:

- the re-examination and re-definition of vision, mission, functions, roles and stakeholders, and re-orientation of our focus and priorities
- the adoption of a participatory approach to problem solving and new forms of management and leadership styles
- the involvement of clients and stakeholders in formulating, designing and developing performance improvement initiatives
- focusing on improving service delivery and performance management
- making the Civil Service more open, more transparent and accountable and sensitive to the needs of our stakeholders, including being pro-active towards the private sector.

In short, in emphasising the above and being guided by the principles of consensus building, ownership, participation, commitment and involvement, and taking into consideration the re-establishment of constitutional rule and liberalisation of the economy, it was clear that:

- the Reforms had to influence and affect the structure, systems, rules, procedures and the mind-set of the civil servants in order for it to be sustainable
- the Civil Service had to be more responsive to the needs of the general public and the private sector; provide information to investors and the general public to aggressively market the investment drive; and recognise the role and involvement of the media, (which hitherto the civil servants had shied away from) in disseminating and marketing Government's policies and programmes.

These and other demands inform us that the flow and access to information are imperatives, indeed vital ingredients which oil the engine of development and progress. Consequently, the Civil Service must respond to these demands by ensuring timely, credible and easy access to information to the Government, the public and stakeholders.

THE CIVIL SERVICE PERFORMANCE IMPROVEMENT PROGRAMME (CSPIP)

Mr Chairman, within the context of 'Access to Information' the Reforms through a number of strategic interventions sought to enhance the knowledge and competence of the civil servant and thereby enable him/her confidently and responsibly to react to all the Civil Service's stakeholders, including the media.

The exercise of undertaking an Institutional Self-Appraisal (ISA) enabled the civil servants to undertake internal and objective discussions; and analysis and review of mission, objectives, functions, performance and capacity development needs of the organisation within the context of the current development agenda and specific mandates. The civil servant thereby gained factual and current insight into the institution and placed him/her in a better position to respond to enquires and function effectively.

In support of the Institutional Self-Appraisal, each Ministry, Department or Agency (MDA) is expected to conduct a Beneficiary Survey (BS) whereby it systematically consults its clients, users and customers about their perceptions of the functions, performance quality and quantity of services which the MDA provides.

The CSPIP Technical Team at the Office of Head of Civil Service (OHCS), serving as a referee, facilitates a Diagnostic Workshop for each institution that completes the Beneficiary Survey, to identify its capacity building priorities. Stakeholders participate in these workshops in order to encourage openness and democratic decision-making, and achieve consensus usually on improving access to services available and enhancing the relevance and effectiveness of programmes.

A Performance Improvement Plan usually is the end result of activities in which the institution formalises what capacity building actions need to be taken. The plan clearly delineates for each programme the objectives, outputs/targets, inputs required, target dates, risks and assumptions and provides a monitoring matrix.

The Pillars of the Reforms

Mr Chairman, let me now focus on the other key pillars of the Reform Programme and the performance/output-oriented measures we have introduced and their impact.

- **Capacity Building and the Performance Improvement Plan**

The Performance Improvement Plan and its implementation is one of the pillars of our reform agenda. With its introduction we have instituted in the Civil Service the concept of efficient design, planning and implementation of programmes and projects aimed at making top executives more aware, alive and responsive to their mission, functions and tasks. The plan is also to help executives meet public expectation and demands. In this new paradigm, each top executive is expected, for each programme or project, to set out clearly the objective(s), the targets or outputs, the expected results, the actions, individual responsibilities, time-scales for achieving set targets, individual performance, success criteria etc.

Underpinning this strategic tool is the in-built mechanism for skills training, performance orientation and leadership enhancement. It is a means of making top management more accountable, efficient and effective. We have found this to be one of the potent means of developing and enhancing leadership competence, building institutional capacity and making leadership operate in a more cost-effective and efficient manner.

- **Focus on Service Delivery**

Over the past few years, we have made special efforts to be relevant and pro-active, to move towards satisfying the needs and meeting the concerns of the private sector, and most importantly, being sensitive and responsive to the concerns and needs of the public. In this regard, we are engaged in re-orienting our structures, attitudes and behaviours in order to enhance service delivery. This entails, among other measures, the following:

- ◇ setting of standards of service delivery
- ◇ streamlining cumbersome procedures
- ◇ facilitating the establishment of client services units which are to see to on-going improvements in service delivery
- ◇ facilitating the development of service delivery standards brochures. To date, 23 brochures have been developed and 23 Client Service Units established.

In effect, we are institutionalising quality management assurance in the Civil Service, conscious of the fact that the taxpayer deserves value-for-money services. In this regard, we have put in place the necessary mechanisms for consultation, dialogue and consensus building with our stakeholders. This provides a healthy working relationship in which the views, concerns and needs of the customers are taken into consideration in setting standards and developing strategies to help improve the quality of services.

- **Performance Agreements**

This is another mechanism we have introduced in order to improve the performance of civil servants and render them more accountable, and results- and output-oriented. This is a form of contractual arrangement designed for Chief Directors, Regional Coordinating Directors, Directors of Ministries, Departments and Agencies and the District Co-ordinating Directors, with the aim of making top executives focus on their mission, objectives and key predetermined, programmed or expected outputs or deliverables.

- **Code of Conduct and Work Ethic:**

Underpinning the performance-orientation measures undertaken and human resources management in the workplace has been the promulgation of a new code of conduct and accompanying work ethic which emphasises:

- ◇ loyalty to the Government of the day
- ◇ delivering work outputs on time
- ◇ customer sensitivity/orientation
- ◇ efficiency and cost-consciousness
- ◇ punctuality
- ◇ integrity and selflessness
- ◇ anti-corruption practices, etc.

CONCLUSION

Ladies and Gentlemen, I have taken you through this evolutionary transformation of the Civil Service to establish that the flow and access of information is a process activity. We have, through the Reforms, strengthened and developed institutional capacity, developed and enhanced the knowledge and competence of civil servants; established and redesigned structures and systems, streamlined procedures, embarked on a mind-set change and evolved new management tools all designed to improve performance and output. These and the major pillars of the reform initiatives directly and indirectly should enhance access to information as well as meet other stakeholder concerns.

Mr Chairman, permit me at this stage to refer to the concluding sections of a paper I read on '*Freedom of Information and Civil Service Reforms in Ghana*' during the Media Foundation for West Africa Forums contained in the Ghana Free Expression Series No.1 (1999).

'Information in the public domain which is locked-up, untouched and unused is wasteful. Parliament and the people have a right to the use of information, the right to be informed to enable them to take the right decisions and make well-informed choices.

The media, as an important estate of the Republic, has the enviable tasks of being the harbinger of news and information essential to our democracy. I believe the Civil Service has a duty in furthering this desirable development.

Considering the fact that we have embraced the concepts of an open and transparent society, democracy, the rule of law and human rights etc, and viewing the current and developing trends in communication and Information Technology, the days of a secretive and closed bureaucracy are coming to an end. As we empower and educate our citizens they will demand and expect an increasingly transparent Government and Civil Service in the next millennium.

However, in the process of implementing the current reforms, I do not think we have effectively targeted the media practitioners and administrators by taking them on board as stakeholders and beneficiaries. We are aware that the media has the powerful weapon to disseminate available information and market the activities of the Civil Service and thereby, ensure transparency, accountability and good governance.

The trend towards a free flow of information between the Civil Service and the public is likely to be an irreversible development in this century and next millennium. There is hope for the achievement of total partnership between the Civil Service, the Media, Government and the public to enable the free flow of information to become an important aspect of our national development'.

Thank you.

Access to Information and the Law in Tanzania: Some Thoughts and Views

Dr Harrison G. Mwakyembe¹
Senior Lecturer in Law, University of Dar es Salaam

INTRODUCTION

Access to information, transparency and accountability are inextricably linked. The more access to information a people has, the more those in positions of authority and responsibility at all levels are placed in a public spotlight and inclined to discharge their duties much more diligently and honestly. If they do not, they promptly face the wrath of an informed public.

An uninformed public likewise finds itself relegated to the sidelines and rendered a passive observer of its own affairs. It goes to the polls without any knowledge of the candidates and the parties they represent, and becomes easy prey to manipulations and lies by unscrupulous politicians. These are some of the syndromes in a public denied access to information. For, as I have noted above, without access to information there is no transparency; without transparency there is no accountability; and without transparency and accountability, there is no democracy.

I am tempted to believe that the most accurate way to gauge the existence or non-existence of democracy in a given society is to determine the extent to which information is accessible to the people. It is indeed true that information is power and every government in the world, without exception, would try as much as possible to control and guard jealously this vital and tremendous power. But one would expect a government claiming to be democratic to have its doors closed only with regard to certain matters of national security. Access to information should be a rule rather than an exception.

THE LAW IN TANZANIA

The Constitution of the United Republic of Tanzania 1977

The positive story regarding access to information in Tanzania begins in 1984 with the Eighth constitutional amendment which introduced in the country's constitution of 1977, a Bill of Rights. My interest is in Article 18 of the Constitution, which says:

‘(1) Without prejudice to the laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right of freedom from interference with his communication.

¹ Dr Harrison Mwakyembe, Senior Lecturer in Law, University of Dar es Salaam, Faculty of Law, PO Box 35093, Dar es Salaam, Tanzania. Paper given at the ‘Information for Accountability Workshop’, Dar es Salaam, Tanzania. March 2000.

(2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.’

Access to information, therefore, is a constitutional right in Tanzania, but a right subject to the ‘laws of the land’ and accompanied by no legal obligation on the part of the government to facilitate its enjoyment. As a result, government ministries, departments, organs, institutions etc, feel not legally obliged to give citizens access to the vital information they hold.

Media Laws

One other way to look at the public’s access to information is to examine the extent to which the mass media which collect and distribute information for public consumption have access to the same. In Tanzania the media’s access to information is not different from that of an individual citizen. The media do not benefit much from Article 18 of the Constitution either, primarily because of the absence of a specific piece of legislation obliging government functionaries to furnish the media with the information they need.

There is the Newspapers Act of 1976 which gives the Minister responsible for information a big stick to silence critical investigative papers which, on account of absence of access to information, are compelled to rely on unofficial sources and even speculation to keep the public in the picture.

The National Security Act of 1970 is also another law inhibiting free flow of information. The law makes it an offence, attracting from ten years up to life imprisonment, for collecting, writing and publishing information that might be directly or indirectly useful to a foreign power or “disaffected” person. This Act is too presumptuous and stretches the net too wide to the extent of cowing the media and individuals into submission. Even where they have access to information they lapse into self-censorship in fear of infringing the national security law.

The Ethics Law

The Public Leadership Code of Ethics Act of 1995 is also an important piece of legislation to look at. It obliges public leaders to declare their assets, which are registered by the Ethics Secretariat. The objective of the Act is to place public leaders in a public spotlight to enable the people to know if their leaders are using their official positions to accumulate wealth. The register of assets declared by public leaders is by law available for inspection by members of the public. It looks quite a healthy avenue to promote access to information. But there are conditions which render access to such information difficult to realise.

- the person wishing to inspect the register must have lodged a complaint with the Ethics Commissioner against a specific public leader
- the Ethics Commissioner must be satisfied that the complaint is genuine, relevant and is in good faith

- the complainant must pay an inspection fee of T.Shs. 1000 (about one pound sterling).

Finally, the Civil Service law we inherited from the British remains a serious impediment to the public to access information. The law still underscores the necessity for secrecy and confidentiality on the part of civil servants even in inconsequential issues relating to, say, the number of female students in secondary schools in Tanzania or the national requirements for pencils in primary schools. Most of the matters, however simple they are, are considered confidential. Access to information is strictly considered an exception rather than a rule.

CONCLUSION

As we look at the government critically to question the openness of its system, we as citizens should also engage in a soul-searching exercise. First of all, there are already in Tanzania many other open doors giving us access to information. To what extent has the press or we ourselves, as individuals, utilised this opportunity?

We have a number of registries that charge a token fee of one dollar and attach no further conditions to inspect their records eg the Companies Registry and the Land Registry. We also have the National Archives at our disposal. But not many people or journalists access information from such sources. We continue feeding on rumours or to maintain a culture of silence. The critical question here may not be the lack of access to information but some kind of indifference to what is happening around us.

Finally, lawyers do insist that he who seeks equity should come with clean hands. We are demanding an open-door attitude on the part of the government. But how open are we as citizens when, say, a crime has been committed in our midst and the government seeks access to the information or evidence we hold? How open are we to government agencies when it comes to singling out renegades and corrupt elements in our midst?

The State of the Law relating to Access to Information in Ghana

Professor Kofi Kumado¹
Faculty of Law, University of Ghana at Legon

INTRODUCTION

Over the several centuries of human existence on this earth, interest in the conditions that enable the human being to live in peace and with dignity has proved to be cyclical. The discourse which provides the framework and context through which this interest is articulated is also repeatedly recycled.

Our contemporary discourse is overwhelmingly dominated by what is labelled 'good governance.' This is the new 'Mecca' for all states, particularly developing countries. Without seeking to breach the late Kwame Nkrumah's 'moral rights' as an author, one can reflect the rediscovery of good governance by noting that new states are counselled thus:

'Seek ye first good governance and all other things shall be added unto you.'

The preceding two paragraphs are not intended to belittle the current pre-occupation with issues of good governance. Rather, the objective is to show that the recurrent nature of the quest should underscore the importance of the product to the human enterprise.

The two key players in this enterprise are the people and the governors. For the enterprise to stand a chance of success, these two players must be placed at the same level. Information is an indispensable ingredient in decision-making. For the people to be able to play their part they must have the information available to the governors.

A sober reflection on Article 1 of our current national Constitution reveals an interesting conception of the institution of government; it is an image which political scientists have tried to educate us on in the past with, perhaps, only partial success. Government is represented in that Article as merely part of the institutional arrangements put in place by the people, the sovereign, to act on their behalf and for their welfare.

Viewed from this perspective, access to information becomes part of the strategy for making government open, accountable and available to the people - a process which enables the people to become more closely involved in the making of the decisions which affect their lives.

¹ Professor Kofi Kumado, Director, Legon Centre for International Affairs, University of Ghana, PO Box 70, Legon, Ghana. Paper given at the 'Information for Accountability Workshop', Accra, Ghana. August 2000.

SCOPE OF PAPER

After reflecting on the time allotted to the Session and the number of speakers listed, two considerations have shaped my present contribution. First, that I am only required to provide a legal inventory, perhaps with some passing commentary, on access to information. Second, I define the key word access loosely as a process whereby or a state of affairs which creates or provides opportunities for the people to get at or receive, either through their own initiative or governmental action, information generated, received, collected or stored by or available to government.² In this context, government refers to all public authorities and public officers.

Operating within the defined scope, the inventory will cover the Constitution, statute and possibly the common law. But perhaps, to assist in a proper appreciation of this paper, it is helpful to point out that, for the present writer, there is a difference between (a) the right to information and (b) the right of access to information. The right to information provides the substantive protection. The right of access to information relates to the vehicle or the means for satisfying what is recognised in substance.

THE 1992 CONSTITUTION

The starting point to our inventorising is the 1992 Constitution. The relevant provisions are Articles 1, 14³, 18, 19, 21 and 135, apart from the structure and spirit of the Constitution.

Article 1 acknowledges that ultimate authority vests in the people. Government has been instituted by the people to act on their behalf and for their welfare. Data or other information held or available to government have been collected with the taxes paid by the people and by the exercise of the authority derived from the people. Therefore, the information in government hands actually belongs to the people. This Article thus makes it difficult to justify holding back information from the people, to whom it belongs.

Until the coming into force of the 1992 Constitution, it was unclear whether our law recognised the right to privacy as such. Article 18 of the Constitution has changed all of that. As formulated, Article 18 can be used both as a shield and a sword by the individual and government alike. Thus access may be denied on the grounds that it will violate the privacy rights of others. On the other hand, one may deduce from the article a right of an individual to know (a) what information government has collected on him/her; (b) why it is collecting it; (c) who has access to this information and (d) who has accessed it. Another issue, which has arisen from the recognition of privacy as a right by the Constitution, concerns the publications by the mass media about the lives of public officials. This relates to the difficult and complex question of privacy versus the public interest. Does holding public office render a person's life an open book to be read and or serialised at all times by all persons?

Two provisions of Article 19 appear relevant here to the present writer. The first provisions deals with the rule against self incrimination (akin to the 5th Amendment plea under the American Constitution). This provision will deny access to information whose disclosure

² I first employed this definition in a paper presented at CDD in November, 1999.

³ Articles 14(2) and 19(2) relate more to the right to information and are therefore beyond the scope of this paper.

will be prejudicial to the officer holding it.⁴ The second concerns the presumption of innocence. The combined operation or effect of these two provisions may prove a formidable barrier to access to information in appropriate cases.

Article 21(1)(a) and 21(1)(f) usually come to people's mind when we discuss information issues. The first recognises freedom of expression and the second, the right to information. The basic strategy provided by the Constitution for the satisfaction of the second is legislative. Indeed the purist might argue that freedom of expression necessarily entails information rights. For it is usual to conceptualise freedom of expression as the right to receive and to impart ideas and information. We can assume that the presence of the two provisions in the constitutional document is to give due recognition to the empowering character of information.

Article 135 deals with access to information in relation to the judicial process and the administration of justice. It gives the Supreme Court the final say where the needs of the judicial process conflict with the desire of government not to disclose information. The Supreme Court is to order disclosure unless, in its opinion, disclosure will be prejudicial to the security of the state or injurious to the public interest. The Supreme Court proceedings for the determination of this issue are to be held in camera. The critical point to note in relation to Article 135 is that disclosure is incidental to on-going litigation. Perhaps, it is helpful to observe that the 1992 Constitution, through the provisions discussed above, has revolutionized the law on access to information in Ghana by elevating the issues of access to the level of constitutional law - the supreme law of the land.

STATUTE LAW

Ghanaian statute law is very restrictive as far as access to official information is concerned. Various pieces of legislation make it an offence to give access to information to unauthorised persons. Factors such as politicisation of the public services, career insecurity and displeasing superiors have conspired to make the public servant, even the most senior, extremely cautious in matters relating to information.

The most important of these pieces of legislation may be listed as:

- 1 The Criminal Code, 1960 (Act 29) especially sections 183 and 185
- 2 State Secrets Act, 1962 (Act 101)
- 3 (a) Civil Service Law, 1993 (PNDCL. 327)
(b) Civil Service (Interim) Regulations, 1960 (L.I. 47)
- 4 (a) Armed Forces Act, 1962 (Act 105)
(b) Armed Forces (Court Martial Appeal Court) Regulations, 1969 (L.I. 662)
- 5 (a) Police Service Act, 1970 (Act 350)
(b) Police Service (Administration) Regulations, 1974 (L.I. 880)
- 6 (a) Prison Service Decree, 1972 (NRCD 46)
(b) Prisons Regulations, 1958 (L.N. 412)
- 7 Security and Intelligence Agencies Act, 1996 (Act 526).

⁴ A High Court Judge (Asare Korang) has held that the rule applies only to criminal proceedings. Whether this view is correct is yet to be established by the Supreme Court.

To underpin the operation of these statutes, PNDCL 327 requires all civil servants to take three oaths namely: Oath of Allegiance, Oath of Secrecy and the Official Oath.

Of these pieces of legislation, the most crippling are the State Secrets Act, the Criminal Code and the Civil Service Law. It may be argued that the Constitution has laid the groundwork for relaxing this restrictive legal regime. However, in the absence of the freedom of information legislation envisaged under Article 21 of the Constitution, the Supreme Court has held repeatedly that these draconian enactments have survived the coming into force of the Constitution by reason especially of Article 164 of the Constitution.

Mention should be made of legislation that seems to have as its primary purpose the regulation rather than restriction of access to officially-held information. Among these may be included (a) the Public Archives Ordinance, 1955 (No. 35); (b) Copyright Law, 1985 (PNDCL. 110) and the High Court Civil Procedure Rules which contain some tools for accessing information generally eg interrogatories.

Discussion of the statutory regime may not be considered complete unless one adds the Evidence Decree, 1975 (NRC 323). This decree creates certain privileges and immunities in relation to certain categories of persons. Briefly (a) between a person and his/her physician or psychologist (s. 103); (b) between a person and a professional minister of religion who has been consulted in his/her professional role as a spiritual adviser (s. 104); (c) in favour of the owner of a trade secret (s. 198); (d) in relation to spousal communication during marriage (s. 110). There is no doubt that the decree creates these privileges and immunities because they are considered essential for the proper functioning of a democratic and civilised society. However, that they also impact adversely on access to information cannot be denied.

A close examination of our statute books reveals then, that one does not need to be a radical to realise that what we have here is a legal environment which is inhospitable to access to information. It is thus not surprising that one of the most frustrating experiences in Ghana today is trying to access officially held information. It is interesting to note that these laws do not only affect the private citizen's access to information. The government machinery itself sometimes suffers adversely. At the First National Governance Forum in 1997, which was held under the auspices of Parliament, it was revealed that the government economic decision-making process is hampered by the unwillingness or inability of the relevant government agencies to share information generated and held by them!

COMMON LAW

The expression 'common law' is used in this paper loosely to refer to a combination of the systems of customary or native law of the respective ethnic groups that constitute modern Ghana and the received principles of law introduced by our British colonial masters. Two areas of law are relevant here - defamation and contract, especially the rules dealing with employment-related confidential information.

CONCLUSION

What the inventory shows is that the state of the law relating to access to information in Ghana today is grim.

Perhaps, the present writer can do no better than repeat the concluding remarks of a contribution in an earlier workshop on the same subject.

‘There are two key words in a constitutional democracy - vote and voice. The vote is a basic and essential element of freedom. The voice makes the exercise of the vote meaningful because it is concerned with our right to receive and impart ideas. We have the vote. For the voice to play its rightful role, access to information must become a routine part of the political menu. Promoting access to information therefore does not only make political sense. It is a constitutional must.’⁵

Thank you.

⁵ Contribution at CDD already referred to.

Fighting Poor Records Keeping in Kenya: The Case of Missing and Lost Files and Documents

Musila Musembi¹

Director, Kenya National Archives and Documentation Services

INTRODUCTION

Poor records keeping in the public service has a very negative impact on an economy. Public servants will fail the accountability test if there are no records to be presented as evidence of their actions. And they cannot prove their transparency if the evidence is lost in disorganised records. We all know that efficiency in a public service will be seriously undermined if records and information, in whatever format or form, are in a poor state. With this in mind, it is surprising that many developed countries have given inadequate attention to this important sector of the public service.

Some of the most costly results of poor record keeping include poor service to the citizens due to missing and lost files and documents, and the inability to retrieve records and information in a timely manner. Clearly, no public service should accept these unnecessary costs on a regular basis. In the last few years, the Kenya National Archives and Documentation Service has carried out a spirited campaign to convince chief executives of public offices that they should not accept disorganised record keeping systems. More significantly, we have gone beyond mere convincing. Action may now be taken against public offices in which records and documents are reported missing and lost. It has, however, taken us a long journey to arrive at this point. This is what I want to share with you.

THE LONG JOURNEY

The Kenya National Archives and Documentation Service has fairly successful records management programmes. An important component of these programmes has been a series of records management seminars for officers who are actually involved in record keeping and also for middle level managers. It is at these seminars that we began discussing with Executive Officers and Clerical Officers the costs of poor records management, and specifically the effects of missing and lost files and documents. In one such seminar organised for heads of parastatal organisation in Kisumu on 18 February 1998, the Director of the Kenya National Archives and Documentation Services observed that:

‘In this time of multi-partyism, guided by transparency and accountability, heads of parastatal institutions should concern themselves with proper record-keeping to demonstrate to the citizens how public funds are utilised’.²

¹ Mr Musila Musembi, Director, Kenya National Archives and Documentation Service, Moi Avenue, PO Box 49210, Nairobi, Kenya

² Daily Nation (Western Edition), 18 February 1998.

And in a similar seminar for senior officers from the Criminal Investigation Department, also held in Kisumu on 25 May 1998, the Director of Kenya National Archives and Documentation Service “warned Government officers that they will be held responsible for the loss, misplacement of, or damage to public records in their custody”.³ He further observed that they ought to be transparent and accountable to the citizens, and at the same time emphasised that,

“They cannot be seen to be doing so when records in their custody are reported missing and lost on a regular basis.”⁴

Now, we have organised very many seminars for public servants of various levels of seniority. On many occasions, the official opening and closing have been covered by the print and broadcast media. The most visible were those organised for the Criminal Investigation Department. The message has been similar: that there is an urgent need to improve records and information management in the Public Service in Kenya. There has been significant improvement in those public offices for which the seminars were organised. There are of course many other public offices which have not yet been covered. However, all Government ministries and departments have received the message. Unfortunately, cases of missing and lost files and documents have continued to be reported by the media once in a while. It therefore became clear that a more drastic action needed to be taken against the chief executive of public offices in which this vice had continued to stubbornly rear its ugly head.

THE BOLD INITIATIVE

For a long time, I was quite concerned about the reported cases of missing and lost files and documents in the Public Service. I was, and still am, keenly aware that records management is not as simple as is often assumed. It is a science. I was also mindful of the fact that very inadequate investments in terms of facilities (equipment) and training have heavily contributed to the unsatisfactory state of affairs we are now experiencing in some of the public offices. I have always appreciated the fact that this Department has a responsibility to improve the knowledge base of records keepers in the Public Service. The Kenya National Archives and Documentation Service is therefore determined to continue with its training programme through seminars. But at the same time, we have been aware that there is another major cause of missing and lost files and documents in public offices: corruption. This is a much more difficult and complex problem to fight. The Kenya National Archives could not effectively fight this vice on its own. It needed the support of the Permanent Secretary under which the Department falls. And since corruption is deep-rooted in the Kenyan society, as indeed in many other societies world-wide, we also needed the support of the Head of Public Service to fight the problem of missing and lost files and documents. Yes, you cannot fight this vice with feeble and weak hands such as those of a Director of a National Archives!!

In the middle of 1998, we developed a draft circular letter on missing and lost files and documents. It was my own idea and I was quite eager to sell it to my superiors. I went over and discussed it with my Permanent Secretary, who gave the idea his full support. During our discussion, it was agreed that the circular should be issued by the Permanent Secretary,

³ The East African Standard, 26 May 1998.

⁴ Ibid.

Secretary to the Cabinet and Head of the Public Service in order to give the instructions contained therein the necessary weight. We took action on those lines and the circular letter was finally issued by that high office in April 1999. Very significantly, this circular letter was headed **Cases of Missing and Lost Files and Documents in the Public Service**. It was addressed to all Permanent Secretaries, the Solicitor-General, and the Controller and Auditor-General among others. In part it stated as follows:

‘Cases of missing and lost records are a common experience in public offices. This has been caused by laxity and poor records management practices in Government Ministries, Departments and Parastatal Organisations. But in other cases, the incidence of missing and lost records is a direct result of corruption among a few public servants. This has adverse effects on the efficiency and effectiveness in the public Service and obviously undermines the integrity of public servants in general. It is for these reasons that Permanent Secretaries, Heads of Departments and Chief Executives of Parastatals Organisations must take immediate and firm measures to correct the situation. You should, therefore, take action as follows:

- (a) You should ensure that public records are properly managed in order to avoid the incidence of missing and lost files and records.
- (b) Firm and immediate administrative or legal action should be taken against officers who intentionally hide, misplace public records or cause them to be lost/destroyed.’

In my mind, I was convinced that the issuance of this circular letter was going to have a major positive effect on records management in Kenya, especially if it was taken seriously. It would, however, appear that I was mistaken to think that the problem of missing and lost files and documents was going to completely disappear over-night. Yes, after all these efforts, I had not completely wiped out the problem, although we have begun to witness successes in a number of cases. On reflection, I now realise that I had completely understated the complexity of the problem. But at the same time, I did not give up. I began searching for additional weapons to fight the problem. This time round, it was not easy. The matter had gone up to the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service. He had taken action as requested. What else could I request him to do on this issue of missing and lost file and documents?

As I continued to search for a solution to this problem, I came to the conclusion that there was still one more option open to me. Public offices which were continuing to frustrate members of the public through missing and lost files could be reported to a higher and more powerful office. In our case, the Permanent Secretary, Secretary to the Cabinet and Head of Public Service was such an Office. He could then take action against offending public offices. But first the idea had to be sold to him. Once this had been agreed, there was then the need to develop a reporting mechanism in which the offenders (ministries and departments) would be regularly reported to that higher office. However, the big question remained. How was the Kenya National Archives and Documentation Service going to achieve such an arrangement? And would we be able to effectively handle all the complaints, especially if they were in hundreds every month? There was one more question: How would this additional responsibility impact on the already over-loaded Director of Kenya National

Archives and Documentation Service? These questions, and many others kept on coming to our mind. At times, I felt scared and hesitant. But I did not give up the idea.

In a strange twist of events, the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service came to know that his earlier circular letter on the problem had not produced the desired results. He agreed that further measures needed to be taken to deal with the problem of missing and lost files and documents in the Public Service. In this regard, he issued another circular letter to chief executives of public offices. This was soon followed by a **Press Release on Missing and Lost Files and Documents**. The Press Release was issued by the Permanent Secretary in the Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports. It was published in full by two of the leading dailies (the *Nation* and the *Standard*) free of charge, an indication that the matter was of great public interest. Later, in early May 2000, the same Press Release was published by the above two dailies as paid advertisements at a total cost of US \$1,280. We hope, subject to availability of funds, to continue to publicise the same message through the print and broadcast media. The Press Release stated as follows:

“The problem of missing and lost files and documents in the Public Service has often been reported by the media. There must be many other cases which are never reported. Missing and lost files and documents can lead to, and actually do result in, delayed service to the citizens; as well as a poor image on the part of the Public Service. This is costly to the Government. Furthermore, this vice has the potential of distorting or destroying part of the ‘Nation’s Memory’, ie Kenya’s documentary heritage. It has, therefore, been decided to firmly deal with this problem as follows:

- Members of the public, including public servants themselves are invited to make formal complaints in writing to the Director, Kenya National Archives and Documentation Service whenever the service they require is unduly delayed as a result of missing and lost files or documents. Whenever possible, the letter of complaint should give such details as the full name of the person handling the matter, building in which the public office in question is located, and the office number etc. The Director of the Kenya National Archives and Documentation will then take up the matter with the concerned public office.
- The Director will submit quarterly reports to the Head of the Public Service on all reports of missing and lost files and documents for further necessary action.

I am inviting persons seeking service from public offices to help us to document this vice, so that proper analysis is arrived at. In doing so, we must provide correct and honest information in writing to:

The Director,
Kenya National Archives and Documentation Service,
PO Box 49210,
NAIROBI.

This initiative has been taken in accordance with Section 4(1)(a) of the Public Archives and Documentation Service Act Cap 19 which states that the Director of the Kenya National Archives and Documentation Service may “examine any public records, and advise on the care, preservation, custody and control thereof”.

(signed)

Amb. Joshua K Terer
Permanent Secretary”

Ideally, the Press Release should have been much more widely publicised than has been the case. There should have been much more paid advertisements through the broadcast and print media. Unfortunately, we do not have sufficient funds for this purpose. Obviously, this has greatly reduced the impact of this bold initiative. Despite this setback, our efforts have begun to bear fruits. The first report of missing and lost files has been compiled and submitted to the Head of Public Service for his further necessary action. The report contains names of 20 public offices which failed to satisfactorily deal with the allegation of missing and lost files and documents. They will probably not be left off the hook until they do so, or until they promise to take firm measures to deal with this vice.

BENEFITS OF THE INITIATIVE

- Obviously, the most visible beneficiary to this initiative is the common man. They have now a most powerful channel through which they can launch their complains, and of course expect a reply.
- For the first time since the Kenya National Archives and Documentation Service was established, the Department might gain unprecedented visibility. Aggrieved persons are ‘forced’ to find out more about this hitherto ‘obscure’ Department which can now provide a solution to their problem. In the process, many more Kenyans will come to know the functions of the Kenya National Archives and Documentation Service, and also its location.
- No Government ministry, department, and public office would wish to be repeatedly reported that it has lost control of its documentation, and that files and documents in its custody are not easily located whenever needed. They will therefore tend to take measures to improve their records management systems and services. Even more significantly, increased efficiency in records management will result in improved effectiveness in ministries, departments and parastatal organisations. This can only be beneficial to the citizens.
- The initiative gave an excellent opportunity to the Kenya National Archives and Documentation Service to join others to fight corruption. Who would ever have thought that such a “feeble” Department would participate in such a war? As indicated earlier, one of the main causes of missing and lost files and documents is corruption. This Department’s small contribution towards the fight against corruption clearly demonstrates that every public office or professional body can similarly do the same. We are therefore very pleased to be associated with this particular initiative.

CONCLUSION

During an IRMT seminar for Permanent Secretaries and Directors of National Archives from Commonwealth African countries which was held in Nairobi, Kenya in March 1996, it was observed that Heads of National Archives do not often sell their ideas to their superiors. At least not aggressively. Permanent Secretaries expressed their willingness to accept and promote progressive ideas from their Directors of National Archives. They said that they had always been waiting for such ideas. This narrative on how the Kenya National Archives and Documentation Service has been handling cases of missing and lost files and documents in the Public Service is a good example to demonstrate that the Kenyan Permanent Secretary really meant what he said. This is probably also true for other Permanent Secretaries who participated in this seminar. It is up to Directors of National Archives to generate ideas in their particular field of speciality, and then sell those ideas to their superiors. Even more importantly, they must have the courage to persistently sell those ideas to their respective Permanent Secretaries. The results can, at times, be very rewarding as evidenced by our initiative in dealing with missing and lost files and documents in the Public Service in Kenya.

Freedom of Information and the Right to Know: Accessing Government Documents

Professor Thomas B. Riley¹
Executive Director, Commonwealth Centre
for Electronic Governance

INTRODUCTION

Access to public documents statutes have been identified under different names, such as access to government information or public documents, or freedom of information. But the net result is the same - they all grant to the citizen in one form or another a statutory right of access to documents held by government bodies - with limited exceptions - in whatever form. This paper deals with the philosophical premises and a short history of information legislation in Canada as well as some of the issues that arose in debate for these laws. The paper also articulates steps for making requests and gives examples of the types of information being released. The focus here shall be on the Canadian Federal Access to Information Act as a means to discuss issues which are common to all, or most, freedom of information laws around the world. *(Note: This was a paper originally written in 1990, by this author, on Freedom of Information in Canada. The statistical research thus extends only to 1990. However, all the basic principles enunciated in this paper hold true to this day. The final chapter included new observations on the nature of freedom of information today)*

For the purposes of discussion, freedom of information/access to information shall be referred to in this text as freedom of information (FOI) laws. Any discussion or exposition of freedom of information laws should, perhaps, be preceded by an analysis of the evolution of the term and what it has come to mean in today's access regimes. It is important when dealing with the many-sided debate over freedom of information to proffer an explanation of what the phrase 'freedom of information' means.

The term is in many ways all-embracing and has come to mean many things to many people. To those in the media, and to others, especially public interest groups and individuals, lawyers, academics, businessmen and other professionals, it implies the right to publish information and the right of the free flow of information without undue government restrictions. It means their right to inform the public in the way they think is best and without being fettered by regulations which in any way restrict the right.

The area of concern pursued within these pages relates to information held in government files. Some critics have argued that the term 'freedom of information' is far too loose a term and the American Act of that name, the Ontario Freedom of Information and Protection of Personal Information Act, and the Canadian provinces of New Brunswick, Manitoba and Newfoundland Freedom of Information Acts, are in fact improperly named. Perhaps, contend some, the term 'freedom of information' is too all-encompassing, suggesting the

¹ Thomas B.Riley, Visiting Professor, University of Glasgow, Executive Director, Commonwealth Centre for Electronic Governance, President, Riley Information Services Inc. Ottawa, ON, Web <http://www.rileyis.com> e-mail: Tom@Rileyis.com

right to receive information of any kind not only from government but any entity in the private sector. As to the latter there are many who contend that the next logical evolution of access laws is the right to know what private corporations are doing when it affects public policy. But that is an esoteric debate for the future as we continue to struggle with the current laws, which allow a certain access to some information submitted by the private sector.

A more accurate term is 'access to government information' as this limits it to the kind of information being sought, especially those in government files, and implicitly holds that it is this 'access' which is being sought by the individual. The latter philosophy held true for the framers of the Canadian Act, which is called the Access to Information Act. Quebec's Act is entitled, in English, 'An Act respecting Access to documents held by public bodies and the Protection of Personal Information'. This appears to satisfy all the criteria and the title itself accurately reflects, for some, the purpose and intent of the statute.

However, in fact this debate is in many ways moot as the important thing is what is actually meant by the concept not the terminology tacked on to it. What it means is that legislation which provides for this right guarantees to the citizen a right to information, albeit with certain exceptions, with the burden of proof on the government to show why the information, or a portion thereof, should be withheld and the final right of appeal to a body independent of government in the event of denial of information or violation of one of the principles of the Act. It means that a citizen will then be in a position, if one so chooses, to know what the government is doing and why. It means that the citizen, who pays the taxes that finance the gathering of that information, will have the right to scrutinize the information. It means, in other words, that there shall exist the opportunity for any individual or group in society to have the right of access to government information, in whatever form.

Such a law, then, implies that the government of the day shall be accountable for what it is doing and for the policies it implements in the name of the people it is governing. There are many other ways that the government is accountable to the people, such as through the courts, parliamentary committees, Question Time in the House of Commons and Provincial legislatures and assemblies, the Auditor-General and a host of other offices including, naturally, the ballot box, all created to ensure various levels of accountability for the actions of government. Information laws are very much a part of the accountability process. But the central question then becomes: How effective have these laws been? Part of this question is answered through the built in concepts in the legislation.

The framework in which the requestor seeks information is what will determine the efficacy of his or her efforts. The second test is that of usage. The first to be explored are some of the fundamental concepts built into the legislation.

All freedom of information laws have as inherent principles the right of the individual to seek information from any government body, with certain limited exceptions, in a timely fashion with the right to appeal to a body independent of the government agency from which the information is being requested in the event of denial of one's request or a perceived violation of one of the principles of the access laws. Another fundamental principle is that the information be made available in whatever form. The underlying philosophical premise here is that democratic governments are custodians of the information they collect from the people and are themselves creators of information. In theory, the information is in fact, owned by the people themselves as the government is simply the people's representatives.

EXEMPTIONS - WHAT THEY ARE GENERALLY!

It is also recognised that government cannot be run in a fishbowl and thus all legislation outlines information that cannot be released. In the Canadian instance the Access to Information Act not only has 27 exceptions to access,² it also excludes from the legislation any Cabinet documents, or, more formally, ‘confidences of the Queen’s Privy Council’. However this does not apply to records more than twenty years old or to discussion papers of the Queen’s Privy Council if they have already been made available, or after four years if a decision regarding the discussion papers has been made.³ This means that not only can the information be refused, the government official simply declaring it is a Cabinet document, but that neither the Information Commissioner or the Courts can go behind this decision. In other words, the Act does not apply to documents under this category. This is not found in any provincial legislation. This exclusion came about in 1982 as a late change to the Bill originally produced at First Reading.

TYPES OF EXEMPTIONS

The general exemptions found in all pieces of legislation are refusal to grant access on the grounds of:

- (1) national security (not implicitly stated in Canada’s Access to Information Act but an intrinsic part of it, couched in other terms)
- (2) national defence
- (3) cause physical harm or injury to a member of the government, head of state, member of the royal family, a dignitary or diplomat
- (4) interference with the economic interests of the country (or province)
- (5) the personal information of another (unless release would be in the public interest)
- (6) information from an international organisation or another government, if it was given in confidence
- (7) information given in confidence from the federal government to a provincial government (or vice-versa) unless there is agreement the information can be released
- (8) law enforcement records, if an investigation is underway, if it would reveal a source or if the investigation is ongoing and there is a likelihood charges could be laid (this exemption varies statute to statute but this is the fundamental principle governing it)
- (9) intra-department documents or intra-office memos (not applicable under the Federal Act but applies to the US Freedom of Information Act)
- (10) documents which would violate a solicitor-client privilege
- (11) information from a third party given in confidence to a government which is a trade secret or financial, commercial, scientific or technical information.

The Ontario Act states that environmental information which could cause harm to the public or a threat to health should be released in the public interest.

² An Act to enact the Access to Information Act and Privacy Act, to amend the Federal Court Act, and the Canada Evidence Act, and to amend certain other acts in consequence thereof. Consented to 7th July 1982, see Sections 13-27.

³ *ibid*, Section 69

MANDATORY AND DISCRETIONARY EXEMPTIONS

There are two types of exemptions in most legislation, mandatory and discretionary.⁴ A mandatory exemption is just that. If the access co-ordinator, the official within government who handles the requests for information, determines that the information is a mandatory exemption as listed in the Act, it must be withheld, with some exceptions such as in the public interest or if the submitter (such as a third party) consents to the release. If it is discretionary then this means the head of the institution has a right to exercise discretion as to whether or not the information can be released.

THIRD PARTY EXEMPTIONS

When it comes to what is known as third party information, a mandatory exemption takes on an implied significance, if in fact it is not deemed by the head of the institution to fit into this category. Under this exemption when a third party, which could be an individual, a group, church, company or any organisation, submits in confidence information classified as a trade secret, scientific, commercial, financial or technical information and labour relations information in the case of Ontario, the information could be subject to release to a requestor.⁵ Many third parties submit information claiming this but what is clear is that just because there is a claim of confidentiality does not necessarily mean the information shall be withheld.

However, if the information is releasable then there is consultation with the third parties as to whether or not they have any arguments or objections as to why the information should not be disclosed. Though the third party might argue against disclosure the official might still decide on release.⁶ In this instance, the third party is notified, and then has a right to seek a court order (on the Federal level) to prevent release or appeal to Ontario's Information Commissioner or Quebec's Access to Information Commission. Further comments on this process and on ways to protect third party information given to government are discussed further in Chapter 10.

ELECTRONIC RECORDS- INTRINSIC TO ACCESS LAWS NOW

An intrinsic principle in all legislation is that the information being sought, if to be released, is subject to release in the form in which it is requested. This can range from the standard manual documents, microfiche, films, maps, photographs or electronic. It means that the individual has the right to see the information in the form in which it is kept by the government agency. Many statutes, particularly the Federal, Ontario and Quebec, allow on site inspection of records. In Ottawa, all departments must provide readings rooms for reviewing documents sought, as this is mandatory under the Access to Information Act.⁷

⁴ *ibid*, Sections 13-27

⁵ *ibid*, Section 27-28

⁶ *ibid*, Section 44

⁷ *ibid*, Section 71

EMERGING QUESTIONS AND ISSUES

As to availability of documents, with the increase of records in electronic format, the emergence of the preponderance of information and other new technologies, access laws and the storing of information in an electronic format and how it shall be accessed are becoming major issues which will predominate in the decades to come.

On the other hand, many access administrators within government state that the onslaught of automation will make it easier for the requestor as requests become more easily tracked, if they involve multiple submissions between departments or ministries, and searches become easier.

It should be noted here that on 23 August 2000 the Canadian Federal Government announced that an Access to Information and Privacy Act Review Committee was being formed to review both pieces of legislation. Many of the issues raised in this paper will be scrutinised and recommendations for changes and improvements to the law will be made. Part of the reason for the review is the recognition that changes in society and developments in new technologies mandate a review.

CREATIVE USES OF GOVERNMENT INFORMATION

One possible good that could arise with the exponential growth of technology that is affecting all our daily lives making it easier to store, share, manipulate and disseminate data, is that governments could begin to store information by categories once it is released under an access law. In other words, once the request is made and a decision is made to release the information, then it can be assumed this is public information. Thus it could be placed in any number of the databases being developed by governments and become accessible to much wider numbers of people than one requestor. If the information did not fit into an existing database then it could simply be indexed electronically as already being released. This means that when a similar request is made again in the future a check could be made to determine if this information has already gone out. This could act as a substantial savings for both the government agency, in time and personnel resources, and the requestor, who would not be faced with burdensome fees for search and preparation time but duplication costs (or computer time) only. The requestor would also be able to receive the information faster which could be very important. However, there are some problems in achieving a standard to release information on such a basis as records could be updated, some of which could be exempt, and a requestor might word an access request which might be seeking more documents than might be found in a particular database.

The relevance of this debate is that ways to release records faster, more efficiently and economically need to be found. In today's Information Age, in which millions of bytes of data are shared daily at all levels of working society, information can quickly lose its relevance. If information is power, as many rightly contend, then long waits diminish its effectiveness to the requestor directly proportional to the amount of time he has to wait for the desired information. This is going to be a central issue in the years to come and how it is resolved is going to depend a lot on the success of freedom of information legislation and how effectively it serves the needs of society in our information age.

APPEALS AND COMPLAINTS

Another principle found in this type of legislation is the right of appeal to an independent body in the event of the denial of access or violation of one of the principles of the legislation. However, this appeal in the first instance varies from jurisdiction to jurisdiction. Some, such as Ontario⁸ and Quebec,⁹ give the appeals body the right to issue binding orders and, concomitantly, the right to override an order of a Minister or head of an Institution on the complaints filed. Others, such as the Federal Act¹⁰, Manitoba,¹¹ New Brunswick¹² and Newfoundland¹³ only give the right to make recommendations on the complaint leaving the final disposition with the head of the agency or the Minister.

However, with the Federal Access to Information Act there is an appeal to the Federal Court of Canada. The same holds true with the New Brunswick Right to Information Act and Newfoundland's Freedom of Information Act. There is a slight difference with the New Brunswick Act in that the individual may file a complaint directly to the courts.¹⁴ Nova Scotia is unique in that appeals under their legislation are lodged with the legislature and the Ombudsman has no jurisdiction under their Act. In both Ontario and Quebec there is an opportunity to appeal to the courts but it can only be on the grounds that there has been an error in law, not on the facts of the case.¹⁵ The Nova Scotia law was amended in recent years and now has an Information Commissioner.

THE DEBATE- JUDICIAL REVIEW OR NOT?

Thus the principle of judicial review is firmly ensconced in Canada's access laws. This is important as in the early stages of the debate in the 1970s, prior to the passage of any access legislation, there was great political opposition to any form of direct review by the courts. It was a hotly debated argument, which for many years stalled the process of passage of access legislation. Opponents of such a system argued that Cabinet ministers were responsible to Parliament and Parliament alone. If they erred, or erroneously or wilfully withheld information under an access law then they would be accountable to Parliament. This upheld the principle of Ministerial responsibility.

Proponents and lobbyists for access laws argued that this premise was untenable as increasingly the courts were making decisions that reviewed and overturned ministerial decisions. As well, administrative tribunals were beginning to breach the tradition of final decision making by Cabinet Ministers. However, another argument was that going to court would be costly for the taxpayer and would prove too burdensome, thus discouraging requests. This argument held a lot of merit as in the United States, which passed its law in 1966 and was proving to be the role model for legislation in Canada, Australia and New

⁸ See Freedom of Information and Protection of Privacy Act, 1987 (Ontario), SO 1987, c.25, see Clause 54(1)

⁹ An Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information (Quebec), see Clause 123.

¹⁰ *op cit.* Access to Information Act (Federal), see Section 37 (1) (2) (3).

¹¹ The Freedom of Information Act (Manitoba), SM, 1985-6, c.6 (ccsm CF175), see Section 29 (1) (2).

¹² Right to Information Act (New Brunswick), SNB 1978, CR 10.3, as amended by SNB 1979, c.41, S.111, 1982, c.58, SNB, c.67 SNB 1986, c.72, see Section 1.

¹³ The Freedom of Information Act (Newfoundland) SN1981, c.5 as amended by SN 1981, c.85 see Section 12(1).

¹⁴ *op cit.* New Brunswick, Section 7 (1) (a)

¹⁵ *op cit.* See Ontario Freedom of Information Act and Quebec Access to Public Documents Statute.

Zealand, the appeal was directly to the courts. Statistics for 1988 show that of over 394,914 requests made under the United States Freedom of Information Act (with 91% of those, the records were released in full) there were only a little over four hundred cases that went before the courts.¹⁶ This trend, apparent a decade ago, gave cause to the argument that the courts were too costly and proved prohibitive for the average requestor.

The stalemate as to what the form of review would be was finally broken after much discussion. The compromise in Canada came in 1978 from the Joint House of Commons and Senate Regulations and Other Statutory Instruments Committee in direct response to a Green Paper published by the then Liberal Government. The Committee was co-chaired by Senator Eugene Forsey and Conservative MP (Peace River, Alberta), Gerald Baldwin, called by many the father of Freedom of Information in Canada. He first introduced a private member's bill for Freedom of Information in 1968, the second to do so (the first being the late Barry Mather of the New Democratic Party earlier in 1965).

In 1978, as a compromise to the debate over who shall have the right to issue binding orders, a Commissioner appointed by Parliament or the courts, the Statutory and Regulatory Instruments Committee, at the suggestion of Baldwin, recommended that there be appointed by Parliament an Information Commissioner who would investigate complaints and respond and then make recommendations as to whether or not information should be released, or other appropriate measures, or if the department violated one of the principles in the Act. If a Minister failed to act on the recommendation or if there was no recommendation from the Commissioner then the requestor could make an appeal to the Federal Court of Canada. The stalemate over what form the review should take was finally resolved after much discussion.

The theory behind this proposed schematic was that the Commission could act as an ombudsman/arbitrator in disputes and attempt reconciliation. It was felt that about ninety per cent of the requests could be handled this way with the rest going to court. The concept was subsequently implemented in the Freedom of Information Bill (C-15) introduced in late 1979 in former Prime Minister Joe Clark's short-lived Conservative government and then in Bill C-43, introduced by the Liberals, which became law in June 1982 and operational on 1 July 1983: the present Access to Information Act.¹⁷

The subject was widely discussed in Canada and was the theme of one of the sixteen reports produced by the Williams Commission, a Commission to look into a freedom of information and privacy law for Ontario, appointed by the government of Premier William Davis in 1977 and which subsequently reported in 1979. When Ontario finally did introduce a law, when the Liberals came to power in 1985, the whole subject of the courts and type of commissioner became moot in that province as the Act stipulated the Information and Privacy Commissioner would have the right to issue binding orders and thus be able to overturn the decision of a Minister.

The Federal idea of a two-tier appeal has worked fairly well. One other provision implemented in Bill C-43 was the right of the Information Commissioner to take a case to court if the Office made a recommendation for release and it was denied by the Minister, providing the assent of the requestor was given. The Commissioner can appear in court on

¹⁶ *Access Reports/Freedom of Information*. Washington DC: Oct 1989, Harry Hammitt. Vol. 15, No. 20, p.3

¹⁷ *op cit*. Federal Access Act.

behalf of the complainant and, with leave of the court, appear as a party to any review applied for.¹⁸

This has had some benefit for requestors denied information in which the Information Commissioner has taken their case to court. It has meant substantial savings for some requestors as it means the government has been paying the costs for what could be an expensive court process. The flaw in this is that there have been, in the first six years, few requestors who have taken their own cases to court when the Information Commissioner's office has rejected their complaint. Of the 231 cases to be filed with the Federal Court under the Access Act from 1 July, 1983 to 31 March, 1990, 43 were commenced in the name of the Commissioner, 36 by individual requestors and 153 by third parties seeking the withholding of documents under Section 44.¹⁹

The problem in allowing a Commissioner to decide on what cases can be taken to court is that it implies discretion be exercised by that office. Some cases could be taken for their publicity value, or some because they deal with important issues of law, while others are not taken to court as the Information Commissioner's Office did not recommend release or find in the requestor's favour or for whatever reasons. While this section (42) in the Access to Information Act has proven beneficial to many requestors it is, nonetheless, a curious oddity in Canada's Access to Information Act.²⁰

Apart from this anomaly the system has proven quite workable. When Ontario came to implement its Freedom of Information and Protection of Privacy Act,²¹ this concept of arbitration was included. Under this law Ontario's Information and Privacy Commissioner, has the right, as stated above, to issue binding orders, giving the Commissioner quasi-judicial functions. Upon receiving a complaint the onus is on the Commissioner to first attempt to arbitrate a settlement between the requestor and the government ministry who has denied the request or has violated another principle, such as seeking a time extension, asking for too much as a deposit on fees up front or not responding within the proper time limits.

Failing a settlement of this kind then, there is an investigation in which the Commissioner can or cannot hold an inquiry. The Commissioner also has the right, as does the Federal Commissioner, to go into any ministry and inspect any documents and to call witnesses. One problem about laying complaints to the Commissioner's Office is that it must be done within thirty days of receiving a notice from the access official of denial of a request.

The Quebec law requires 45 days notice but, differing from the Ontario statute, states that the Commission may, 'for any serious cause, release the applicant from a failure to observe the time limit'. The Federal Act meets the probable ideal in allowing one year from refusal of the request to file a complaint with the Information Commissioner. However, there is a caveat in that the Act clearly states that the Information Commissioner can investigate the matter outlined in the complaint submitted if there are reasonable grounds.

¹⁸ *ibid.* Section 30 (3).

¹⁹ Information Commissioner of Canada, *Annual Report 1988-9*. Submitted to Parliament of Canada, May 1990, ISBN 0-662-575-15-6. See p.50

²⁰ *op cit.* Access to Information Act, Section 42

²¹ *Supra*, Footnote 7

Similar powers to Ontario's Commissioner reside in the office of the Access to Information Commission in Quebec. Under the law passed in 1982, 'An Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information', members of the Commission (composed of a Chairman and two commissioners) each has the right to issue binding orders, thus having quasi-judicial functions. Each Commissioner can rule on complaints and hold hearings separately. They only meet as a full Commission when there are important issues to be deliberated which have far reaching consequences under the Act.

Thus each of these three statutes contains the fundamental concept of the ombudsman - to attempt to resolve the difficulties of the citizen at an early stage before having to go on to more complex and difficult measures to resolve the dispute.

FEES - SHOULD THE TAXPAYER PAY?

One of the most vexing questions under all access laws is the charging of fees for access requests. This ranges from simply imposing a levy for duplications costs (as in Quebec where this is quite effective) to charging for search, preparation and review time. Fees can thus be minimal or imposing, causing a burden on the taxpayer. Many governments argue that the 'user pay' philosophy should apply here and that if the requestor wants information then it should be paid for. But is this the solution? The question bears exploring as fees, amongst others, is one of the lynchpins of access laws.

The right of access to government information represents a potential political mine field for government. It is through access laws that the government of the day, a department, a ministry, an official, a company (in that they submit information to government which can subsequently be released under the law) or others, can be embarrassed through the release of information. This can have far reaching implications. It is not an easy piece of legislation to deal with and many governments, once the law is passed, come to realise they could well live without it. Attorney-General Ian Scott, when introducing Ontario's Freedom of Information and Protection of Privacy Act in 1985, succinctly stated the premise when he said that governments need to introduce legislation in their first six months of power or it would not get introduced at all. He understood that after a few months in office governments of the day would rather not have a statute that can be used as a tool by its critics to expose the activities of their departments and ministries.

Fees can be the sword with which a government can cut back the effectiveness of an access law. Though they can act as a barrier, this is not to say they are generally. However, there are cases in many jurisdictions where fees have come to be used as a means to discourage requests. Many users have complained about having to pay fees both under the Access to Information Act and Ontario's Freedom of Information and Protection of Privacy Act.

It should be stipulated here that no fees are charged for accessing personal files under most legislation. While Quebec does not charge fees in general, it does charge duplication costs for access to both general records and personal files over twenty pages.

Thus fees, in some instances, can represent a major stumbling block to requestors.²² The Federal Government is considering raising fees for requests on the grounds there is far too little money collected for the costs of administering the laws. As search, preparation and photocopying time can be charged, it is possible for fees for a simple request to mount quickly, even if the first five hours (under Canada's law) or the first two hours (under Ontario's) are free time. Certainly, many argue, fees should be levied if the information is to be used for commercial purposes. But should they be charged at all?

These are important questions worth exploring through comparisons with other jurisdictions. Currently, the average requestor may not necessarily have to be worried about burdensome fees as in some cases they can be waived in the public interest, and often the request is small enough that fees do not mount.

In fact, the 1988 annual report of the Federal Information Management Practices section of Treasury Board Secretariat states that between 1983 and fiscal year ending 31 March, 1988, the average fee collected per request was CDN\$11.50.²³ In the same time period there were 20,100 requests received under the Access to Information Act with 17,812 of them disposed of in the same time period.²⁴

THE U.S. EXAMPLE

The United States Congress in 1986, in amendments to the Freedom of Information Act, set up three levels of fees that could be charged:

- (1) fees for search time and duplication and review time for commercial requestors
- (2) search and duplication costs for all other types of requests
- (3) waiving of fees 'if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor'.

The latter has been interpreted to primarily mean journalists making requests but even here there have been stumbling blocks as many agencies have questioned freelance journalists seeking this fee waiver. In some instances they have asked for proof the material they are applying for under the Freedom of Information Act will actually be used for publication. This standard is difficult to meet as often a freelancer is gathering material to later sell a story. Another problem under the US system is determining how big a publication should be to qualify for a fee waiver. These are some examples of the stumbling blocks that have been encountered in the attempts to set fair criteria on fees.

Most legislation, in requiring the payment of fees, reflects the 'user pay' philosophy now predominant and very popular in these times of fiscal restraint, burgeoning deficits and attempts at cost cutting by all governments.

²² Jean Claude Demers, Assistant Deputy Minister, Information Law, Department of Justice. 'Access and Privacy: What Lies Ahead' in Department of Justice, *Inter Pares*. January 1990, p.12

²³ *Annual Report: Access to Information Act, 1987-8*, compiled by Administrative Policy Branch, Information Practices Branch, Treasury Board Secretariat, June 1989. p. 15

²⁴ *ibid.* p.10

The same philosophy was applied in Australia where in 1987 amendments to the Freedom of Information Act (passed 1982) resulted in a substantial increase in fees (AUS\$30 an hour for search and preparation time alone). Though the government of the day pointed with pride to the amendments and the savings passed on to the taxpayer, the one to suffer was the consumer. The annual report for 1987-1988 of the Commonwealth Attorney-General showed that in the first year of operations of the new fee structure the number of requests per annum dropped 2,451 from 29,880 in 1987 to 27,429 in 1988.²⁵

The same report also shows that in 1987-88 the total fees collected in all government agencies was AUS\$312,870 as opposed to AUS\$21,977 in 1984-85.²⁶ Yet, the same charts indicate that the total cost of administering the Act was AUS\$11.5 million.²⁷ Thus, this reflects a doubtful saving when the ones to suffer were the requestors who did not have the financial resources to make the request because the fees became prohibitive.

The Treasury Board of Canada's Summary of Operations for the period 1 July, 1983 – 31 March, 1988 indicates that in this time period there were a total of 20,100 requests under the Access to Information Act of which CDN\$204,854 in fees were collected.²⁸ In the same time period the cost of operations of the Act came to \$18,352,977.00 (this does not incorporate the operational costs of the Information Commissioner's Office or the legal services provided by the Department of Justice or advice and guidance from Treasury Board). In fact, a study done by the Bureau of Management Consultants for Treasury Board on actual costs of processing and administering costs for access requests, found that the real costs were higher than those reported by the departments. In the period 1 July, 1983 to the end of fiscal year 1986-87, a survey of 40 institutions responsible for 90% of all requests found that the reported costs were CDN\$14,347,096 but there was an additional CDN\$19,652,904 in estimated costs not reported previously.

It is apparent that fee collection is almost minimal, even in Australia, when set against the actual costs of operating such legislation. Fees should be abolished except for photocopying costs. This is the sensible solution to the whole problem, not the raising of costs as some have suggested, in order to align fees with the actual operational expenses. There are persuasive arguments as to why this would be of benefit, especially to the requestor and those interested in making requests, as such legislation was designed for them in the first place. The answer is not to raise fees, as Australia did, in an attempt to bridge the gap between moneys collected and operational costs, but to abolish fees altogether.

It is the taxpayer who often provides much of the information in the possession of government and, if it is not, then it is mostly information produced with taxpayers dollars. Arguments are made that commercial users should be charged as they potentially stand to gain by it. True. But then what criteria shall be set that do not at one point become arbitrary? Where shall the line be drawn? Shall journalists be charged for this, as newspapers profit from increased circulation of their newspapers from the exposés they create in their stories? Shall researchers who plan to write books or get grants for their work, be charged when often

²⁵ *Annual Report of the Attorney-General of Australia*. Commonwealth of Australia: Australian Government Publishing Service, Canberra, p.1

²⁶ *ibid.* p.1

²⁷ *ibid.* p.1

²⁸ *op cit.* Access to Information Act. p.10

what they do is of historical importance or potentially valuable to society? These are just a few of the questions raised by the fees issue.

In the final analysis, access legislation should be there to help the average person, the actual consumer who can see this type of legislation as a means to get behind what government is doing and why. This holds particularly true at the municipal level where people are more involved with their government than at perhaps any other tier of government. Perhaps, a solution is to set regulations where only duplication costs of photocopying can be charged with a maximum of 25 cents per page. To handle requests that involve tens of thousands of pages, then a threshold could be set where, after a certain number of pages, some costs could be levied. But the criterion to be avoided is one proposed by the Federal government in 1987 when the then Justice Minister proposed a clause which would prohibit access if the request were considered trivial and vexatious.

The province of Quebec charges for duplication fees only and it does not appear the government has suffered financial hardship. There is no need for governments to charge for access requests. All governments spend millions, in some cases billions, on their public relations programmes letting the people know about their good deeds, upcoming programmes of benefit to citizens as well as providing essential information on basic government services.

Citizens are not required to pay for a host of other public programmes which serve the common good and neither should they have to pay for accessing information which, essentially, they as taxpayers already own. In the final analysis the question to be asked is: what price democracy?

THE VALUE OF ACCESS LAWS!

Freedom of information is an integral right given to people. It is only in recent times that this idea has entered the democracies (with the exception of Sweden, whose legislation goes back to 1776). It is a law that shall come to be fully appreciated with time as its effects on our whole democratic system become apparent. Freedom of information is the quiet revolution of our times and it is only proper that individuals should have the capability to fully exercise that right without financial encumbrance.

USAGE OF ACCESS LAWS

The test of the efficacy and quality of any access law is the amount of information that is being released. The first criterion is an examination of the statistics which gives a fair idea of how much information is actually being released. But these can be misleading as the statistics also reflect partially released documents. Also, the percentage of records not released might be low but not reflect that the information withheld because it could have been potentially embarrassing to a third party (which could be the ruling political party of the day, a government official, private interests in the case of their information submitted to government or any number of reasons due to pressure brought from some quarter.) Thus, the second criteria, which is the litmus test of the true worth of access legislation, is an examination of the actual documents being released. The reason this is the test of the law is that when information is sensitive, many tests can be applied which could come into play, preventing release.

Canada's Access to Information Act came into operation on 1 July, 1983 nearly twenty years after the idea was first floated. It is really a piece of legislation born out of the seventies when events in the United States, such as the Watergate scandals, brought home to many the importance of open government. Resulting developments in technology, numerous scandals in Canada, and an overall cry for more openness resulted in the current legislation. Though Nova Scotia, New Brunswick and Newfoundland had enacted statutes prior to Ottawa, their usage has been minimal compared to the Federal law. There have literally been thousands and thousands of requests in the first seven years of operation of the Federal law.

As was expected the initial number of requests was low. The Act was implemented with little fanfare, a simple press conference by the then Minister of Justice and President of the Treasury Board in June 1983. Registers of government programmes and how to apply under the Act were prepared, directives and guidelines were put forth by Treasury Board and pamphlets explaining how to use the Act were printed for distribution in major post offices and libraries across Canada. But the word of the actual law itself, apart from features in some of Canada's major newspapers, was never actually widely disseminated.

Gradually, more and more Canadians have become aware that there is now a statute which allows them to peek into the dusty corners of government offices and the spanking new, bright computers now efficiently storing more information than the government might know what to do with. The potential goldmine for those who want to creatively use the legislation to their best advantage is now beginning to come to the fore of the consciousness of many Canadians.

WHO USES ACCESS LAWS?

As stated above, according to statistics produced by the Treasury Board Secretariat, between 1 July, 1983 and 31 March, 1988, there were a total of 20,100 requests made under the Access to Information Act and of these 17,812 were completed. In the first year there were 1,513, then 2,229 the following year, jumping in subsequent years to 3,607, 5,450 and 7,301 respectively, which represents a healthy annual increase.²⁹ It also indicates the word is spreading that there is an Act which can be useful.

What is most interesting is that Canada is following the lead set by the United States in that the business community has become the largest percentage of users of the Access to Information Act. In 1985/86 there were only 683 (18.9%) of the total 3,607 requests made by the business community. But by the year ending 1988 this had risen to 3,516 (or 48.2%) of the 7,301 requests filed with the Federal government. It is clear that corporations, independent business people and entrepreneurs alike have caught on to the benefits of the legislation.³⁰

The percentage will undoubtedly grow. In the United States it has been estimated that between 60-65% of all Freedom of Information requests come from the business community. Many have sought not only information on their competitors, an aggressive undertaking by many businesses who creatively use the legislation, but also take advantage of the multitude

²⁹ op cit. *Annual Report*, Treasury Board, p.10

³⁰ *ibid.* Table A

of reports and studies done by the government which could range from economic forecasts for a region to environmental impact studies. Considering that in 1988 there were 394,914 requests filed with federal agencies, with an estimated 256,700 coming from business, this means there is a lot of advantage being taken of the Freedom of Information Act. In Canada, though the private sector is gradually becoming aware of this legislation and usage increases annually, there is still a long way to go. Those who have yet to try the legislation should go ahead and file a request.

Of the 17,812 requests made in Canada, 6,045 were disclosed in full (33.9%) while 5,634 had some of the documents disclosed.³¹ This figure means the requestors received portions of the document, which could mean that sections of documents were exempted, or whole parts of the record were exempt.

Though statistics indicate usage of the Access to Information Act is growing, the best way to get a flavour of the type of information you can request from government is to review some of the types of information that have actually been released over the years.

What is startling about Canada's access laws is the diversity of requests received by government. A scanning of requests for the past seven years shows people have sought a wide range of information mirroring almost every conceivable interest in society. Information has been released on Cruise missile testing over Alberta, meat inspection reports, surveys done by governments, consultant contracts, information from successful bids of companies vying for company contracts, data on drug testing, audit reports on product safety.

These are but just a few of the examples of how Canadians have used this legislation to help them in whatever activity they are participating. Though business and the media are big users of access laws it is clear that others, such as researchers, academics and public interest groups and individuals, make good use of the Act. There are problems with this type of legislation but on the whole it does work. It is an avenue worth exploring, a tool to be used to reach into the darkest corners of government and extract secrets or even just routine information. It is an Act to be used.

THE SHAPE OF INFORMATION TO COME: DEMOCRACY'S BEST TOOL³²

As the Internet takes hold in our daily lives, and begins to take a new and ubiquitous shape and form, the need for governments to develop information policies to suit the changing nature of these technologies is becoming more evident. In much of the developed world, the Internet is a communications force that is growing. According to NUA plc, a company in Ireland that tracks the growth of the Internet and the implication of our growing information technology infrastructure, as of the end of the year 2000 60% of the population in the United States and Canada will have some form of online access to the Internet.³³ This can be in the office, the home, an educational institute or some public space, such as libraries, community halls, Internet cafes and other public venues.

³¹ *ibid.* p.10

³² Paper presented to InfoEthics2000, UNESCO, 13 November, 2000

³³ See NUA plc, <http://www.nua.ie>

In the United Kingdom, over 50% of the population now enjoy some kind of Internet access.³⁴ There, much of the growth of the Internet has been stimulated because many companies offer Internet access free. The citizen pays only for local calls. In Europe, the whole question of measured rates is a serious issue, as many contend this impedes not only access to the Internet but, even if there is access, then the individual has to be careful about how long one is online. This is because the cost factor can act as an inhibitor to accessing the Internet and the amount of time spent online. However, despite these problems, there are now over 200 million people online around the world.

We are now awash with information in our new cyber environments. There are currently billions of pages out on the World Wide Web. There is so much information that no single search engine can go out and suck up all the information an individual might be seeking. In fact, there is such a proliferation of information that many search engine companies now do not give total access to everything that is on the web. What some of the search engine companies are now doing is giving priority to companies who pay to have their company or organisation show first on a search, when a given topic or key word is entered into their search engine. This is now giving an edge to those who can afford to pay the necessary fee to be at the top of the list.

The World Wide Web is now so big that some web sites are not even getting joined to the network of networks because there might be a connection problem in their local area. Also, government and private organisations are now building web sites that can only be accessed through their own Intranets, or by having a specific address for a web site with a password to enter. The world is at the fingertips of the citizen, but the new challenge is actually finding what is out there. The freewheeling, widely democratic, open, ubiquitous, and accessible Internet is still there, but the shadows of secrecy are beginning to move in. The danger exists that corporate dominance, with the economic rules of the market force at play, could inherently impede the free nature of the Internet over time.

When entering cyberspace, the challenges for the citizen who wants an open and accountable society, both from government and the private sector, are now many. The success of our new information technology environments is going to depend on how much say and control citizens will have on information in the decade to come.

Information is shaping our world. We now live in the Digital Age, in which information, in a global knowledge economy, has become the supreme commodity. Information is not only a piece of barter for the business world to use for competitive and commercial value. Information is now a precious commodity for the citizen.

In our new Internet environments, citizens are increasingly demanding more privacy rights to protect their personal information. However, there is also a contradiction here, as at the moment citizens are sharing and using personal and aggregate information more than ever before. But in a cyberspace environment, the citizen is becoming increasingly sophisticated in understanding the impact that information can have on one's life. The individual wants to ensure that one's own personal information is not abused. The individual wants the ability to control his/her personal information environment in cyberspace. At the same time, the individual wants unfettered access to all manner of information. But the sheer amount of information available, the ability to communicate information, and the value that individuals

³⁴ *ibid*

put on information, is bringing a new understanding of the nature of information itself. This understanding is also what is driving the new forces for change in the growing democracy online movement around the world.

Thus, on the side of freedom of information, the public is starting to demand more information for all facets of their lives. We see more data on labels of commercial products; shareholders demand more information about the activities of the companies in which they are investing (not just the usual 'hyped' good news about the company's activities in the past year). Citizens are demanding and seeking more information about many activities in society. The Information Age appears to be bringing more demands for accountability. In the years to come, the public will come to expect more and more accountability, in the form of enlightening information from private sector organisations. The Internet is an open network, which has created open environments. With this openness has come a demand for certain rights, to ensure the inherent democratic nature of the Internet is maintained. This idea is now spreading into society as a whole, resulting in demands for more and more accountability from all our public and private sector organisations.

Thus, it appears that the next wave of information rights will spread out to the private sector. As the average citizen becomes armed with more knowledge (or at least has the capacity to be armed with knowledge), then it will be private sector organisations, along with governments, who are going to have to become more forthcoming about the information held in their organisations. The private sector here means not just large corporations or businesses, but rather all organisations including non-profits. Just as privacy moved into the domain of the private sector thirty years ago, when Sweden passed the first data protection law in the world, so will freedom of information become a part of the private sector domain. The shape and form it takes will be different, but the providing of more information to society will occur.

We currently live in an age of individuals' rights, because in our current climate of the citizen as consumer, the individual is paramount. This will change, as the recognition dawns that it is also aggregate rights that strengthen the citizenry as a whole. As this idea flourishes, then privacy will now hold the same sway, and demands for information on a more sophisticated level will grow. Privacy will become a part of civil society's infrastructure. As the knowledge economy grows, and the knowledge professional comes to be seen as a powerful force in our society, so will the demands for wider swathes of information grow. It might seem at the moment that we already live in a world with too much information. This change of demand for information will be for "organised" information that informs, not overwhelms, the citizen.

Information is now an issue in a new form. Governments are also going to be subject to pressures from emerging information forces in society. For example, the secrecy of governments, at the moment, is defined by the degree that information is shared with the public. The lack of efficacy of a freedom of information law is shown by the narrowness with which government exempts information from the public. Canada's information law is currently under review because of the criticisms that the statute too much favours the public sector and too much information is withheld on specious grounds. Another reason for a review of the Canadian Access to Information Act is that it was developed in the late seventies, and passed by Parliament in 1982, before the emergence of new information technologies. But the challenge of governments now is not just to pass or amend freedom of

information laws. In our new environments, we have to look at information as the force it has become in society. Changing environments bring different attitudes.

For example, as governments go online with electronic service delivery, more content is going to become available to the public. But it is not going to be enough to put information up on a web site. Any information is going to have to be organised. In many cases, there is too much information on a web site, which makes the site virtually unusable by the citizen. Thus, information management is rising as a discipline within government. This is vital, so that policies can be evolved which ensure citizens are getting the information they need and want (not what someone 'thinks' the public want), while at the same time protecting individual privacy. Once governments put content online, a policy issue will immediately emerge. The private sector learned this in the early days of the web. The growth of online marketing and e-commerce brought with it major privacy and copyright issues. For the citizen, who is going online for government information, if a request is rejected, the issue will become: why can't I have access?

In an information-intensive society, citizens want more from both governments and the private sector alike. The above is simply an overview of the emerging issues and problems. Solutions need to be sought, as these new technologies become even more persuasive forces in our society.

POSSIBLE SOLUTIONS: INFORMATION AS A PRACTICAL TOOL

There are numerous ways that governments at the local, regional and national level can facilitate these new forms of democracy that are emerging. One is to take the example of Canada. The Canadian government, through its Community Access Program (CAP) has a goal to establish over 10,000 public access sites in rural and urban communities across Canada. Launched in 1994, CAP has already established over 4,200 sites in approximately 3,000 rural and remote communities and is a key component of the government's 'Connecting Canadians' strategy - aimed at making Canada the world's most connected nation. The programme is now being expanded to include urban centres with populations over 50,000.

CAP matching funds of up to \$17,000 per site are available to eligible applicants such as educational institutions, public libraries, community organisations, and municipal and territorial governments. The community funds can include cash or 'in kind' contributions such as facilities, equipment and staffing of public access sites.

This is a good model to be followed not only by national governments but international organisations. If we are to handle the digital divide between those who have the opportunities to be online and the vast numbers of people who cannot necessarily afford the costs of going online, it is going to be essential to level the playing field. In any populist democracy it is important that initiatives embrace all the people. At the moment it is estimated there are only between 150 and 200 million people online. These are small numbers where our world population has exceeded 6 billion people.

International organisations could also provide programmes to educate people on usage of the Internet. Education then leads to individual usage. It will, naturally, vary from individual but, through knowledge of how to use the Internet, people can be participants in this new

trend in democracy as they see fit. Such programmes can embrace many peoples around the world and ensure that the users who most benefit are not just those in the affluent, industrialised countries.

National Government should seek ways to engage their citizenry in the process of government. They can do this in many ways such as:

- making more information available online from government itself to ensure there is an informed citizenry
- providing web sites that seek input from people on all manner of government programmes and issues
- developing listservs and discussion groups on important national issues and other means to engage the citizenry
- providing grants to organisations seeking online democratic activities
- developing local community projects that embrace all levels of society from the academic world, to businesses, large and small, to non-profit and volunteer organisations; this can encompass governments in developing countries
- develop web sites that allow citizens easy access
- ensure information on web sites is easily attainable, in a form understood by the citizen and can easily be downloaded
- provide search engines and hot links to ensure the citizen gets what he or she wants in the right format from the right agency
- in developing countries where access to the Internet is limited, work to develop information policies that encompass all citizens
- develop programmes to teach local leaders in the communities to become information facilitators
- UNESCO to form a working group to develop a set of best Information Practices that can be applied and used in developing countries.

As indicated above, the Internet is a medium that has allowed people to involve themselves in the democratic process in new and unique ways. Governments at all levels and international organisations will increasingly be impacted by these changes. Thus, there is also a need for awareness building within governments and international organisations of the changes that are occurring. This can be accomplished through educational and training programs.

CASE STUDIES

MKSS, Rajasthan: A case study of public participation¹

Lasani is a small village which is part of Rawatmaal panchayat (village council) in Rajasthan's Ajmer district. According to the panchayat records, Rs 56,000 was recently spent to construct water channels linking the village talab (pond) with the fields. The water channels, however, exist only on paper.

Extract from 'For Development and Democracy' by Bela Bhatia and Jean Dreze, taken from Transparency International Newsletter, September 1998

The Mazdoor Kisan Shakti Sanathna (Rajasthan) (MKSS)² has been instrumental in India in using information as a weapon against corruption and a means to empower local people. They are a small organisation without formal funding, however the organisation has been successfully involved in struggles over land and wages, women's rights, prices and sectarian violence. Their aim is twofold – to provide citizens with information on how they are governed and to encourage participation in auditing their representatives.³ They have been successful in articulating the demand for information and ensuring that this is seen as having a direct impact on the lives of ordinary people.

Key to the activities of MKSS, and a formula that others have attempted to copy, is their use of information to help the poor by confronting officials with evidence of their wrongdoing. They believe that the people have a right to know - that is "the fundamental right of people to information, about all acts and decisions of the state apparatus." They have demanded the right to copies of all documents related to public works, in order to make these available to the people for a people's audit. These documents include the muster rolls, bills and vouchers relating to purchase and transportation that provide the essential evidence of the corruption of local officials.

Having obtained these documents, MKSS has pioneered a method of public audit through *jan sunwais* (public hearings). At these hearings expenditure statements are read to local people and discrepancies are identified through the testimony of individuals.⁴ This provides local people with the evidence needed to confirm their suspicions of malpractice and to demand redress. The demonstration of collusion between local politicians, government officials and private contractors has increased the participation of citizens normally excluded or reluctant to become involved in political activity.

This method has met with resistance from local officials who have continually withheld documents, even in spite of direct orders from senior officials. In such cases, they have largely escaped prosecution or punishment. This has limited the number of *jan sunwais* as the copies of documents have not been available.

¹ Further information on MKSS can be obtained from Village and PO Dev Dungri, Via Kabeda, District Rajasmand, Rajasthan, India. Special thanks go to Nikhil Dey of MKSS for providing the information for this case study.

² Association for the Empowerment of Workers and Farmers

³ Rob Jenkins and Anne Marie Goetz, 'Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India', *Third World Quarterly*, vol 20 no.3 (1999), pp 603-22

⁴ Rob Jenkins and Anne Marie Goetz, 'Constraints on Civil-Society's Capacity to Curb Corruption: Lessons from the Indian Experience', *IDS Bulletin*, vol. 29 no.4, October 1999

However, the movement to make documents available at *panchayat* level has been a great success, exposing corruption in various localities. The local audits have exposed corruption on a small scale that may not be detected in larger-scale formal audits where the loss may not be considered material. However, if the level of loss encountered was multiplied by the number of localities it can be seen that the sums are enormous. Above all, it has raised the profile of the 'access to information' debate, attracting support from the media, and the National Academy of Administration (the civil service training college). Their success can partly be attributed to the use of informal networks to obtain information and apply pressure. In 1996 a National Campaign for People's Right to Information was formed out of an alliance of anti-corruption bodies. Attempts have been made, unsuccessfully to date, to introduce a national freedom of information act. The state of Goa passed a Freedom of Information Act in 1997. Initially intended as an anti-press law it was revised under public pressure and is India's only legislation guaranteeing rights of access to information.

As well as the *jan sunwais*, MKSS adopted a parallel strategy of large-scale protests, aimed at bringing about legal reform that would give citizens the right to photocopies of public sector documents on request. Despite an announcement by the Chief Minister in the state legislature in 1995 that copies of official documents relating to development works would be available for a fee, little legislative progress has been made. This order was delayed for a year, and then only rights of inspection were granted. The continued resistance by local government officials is reported to the authorities and the press by MKSS. In 1999 an official committee was appointed to develop a non-statutory system for improving the access to information although, according to Jenkins and Goetz, the intention is that secrecy rather than disclosure should be the norm.⁵

⁵ *ibid*

OPEN: Transparency in government in Seoul, Korea¹

Korea is committed to reducing corruption to enable it to pursue its goals of democracy, market economy, social justice, national security and reforms. Seoul Metropolitan Government has launched various initiatives to fulfil this and to try to improve transparency in government through the increased participation of citizens. One successful venture, part of their anti-corruption programme, has been the development of the Online Procedures Enhancement for civil applications (OPEN) system. This system, developed in April 1999, enables citizens to monitor administrative procedures relating to civil applications for permits or approvals relating to housing, construction, economy, industry, traffic regulations and the environment. Not all applications are made public – the criteria for choosing the administrative fields include applications:

- that have caused scandals in the past due to irregularities
- likely to give rise to irregularities due to complexity in handling procedures
- where making them public would prevent requests for concessions.

Development of the system involved setting up a team of public officials to diagram the procedures and the different stages involved in each of these. Following the system design was a comprehensive programme of training for employees across the city in maintaining the database. The city government also tried to increase the participation of citizens by presenting gifts to the 100,000th, 300,000th and 500,000th visitors to the database. Development came under the auspices of the audit department as part of a package of initiatives by government to combat corruption.

The procedures for applications are published online at the Seoul Metropolitan Government website (www.metro.seoul.kr). The aim is to improve access to the information and to provide citizens with the necessary tools to obtain information on the application process. It is intended that the increased level of monitoring possible, both by citizens and the city audit department, will reduce corruption, unfairness and delays in processing applications. The monopoly on information held by civil servants is removed in this system, reducing the opportunities to capitalise on their position.

Under OPEN the different stages of any application can be tracked:

- government employee in charge of an application - deputy director, director, director-general or vice mayor (for important policies)
- the stage of processing the application has reached

¹ Further information about the OPEN project can be found on the Seoul Metropolitan Government website at www.metro.seoul.kr/eng/smg/online.html Special thanks go to Chan-gon Kim, Director, Audit and Inspection Division, Seoul Metropolitan Government for providing the information for this case study.

- expected date of next action
- relevant regulations
- public opinion columns where citizens can add their comments.

Access to the information on applications is improved as it is available 24 hours a day from any PC with access to the Internet, rather than being restricted to office opening hours. In recognition that not all citizens have access to the Internet, free access is provided at local government offices including City Hall, district offices and ward offices. The audit department compares the dates information is entered with the dates application was processed to ensure that the database is kept up to date.

The success of the project has been assessed through polls of users and staff. The majority of city employees thought that the number of telephone calls and visits had decreased. Opinion polls of users registered strong support for the system, with over 80% of those polled believing that the system had enhanced transparency, improved the handling of cases by public officials and improved the resolution of inquiries.

Citizens' Report Cards

Public Affairs Centre, India¹

The Public Affairs Centre (PAC), Bangalore has developed a system of identifying problem areas in public services by performing objective studies of citizens' experiences in obtaining services. The results are then published as a report card, and can be useful advocacy tools for reform, highlighting corruption and poor management. They aim to give the users of the service, traditionally those with the least impact and involvement in the political process, a voice and means of participating. The system has been extremely successful and has been subsequently employed by a number of organisations.

It aims to provide the means to focus attention on corruption, and to quantify the costs of this to ordinary citizens. Report cards can enable comparisons between agencies and locations. The results can be used by civil society to demand greater accountability, using the Report Card data as evidence in support of their case. They can also provide a catalyst for the organisation of citizens.

The methodology of the report card has the following objectives:

- obtaining citizen feedback on the quality of services
- developing an instrument for measuring the dimensions of public service within a community
- catalysing citizens to be pro-active in demanding accountability, accessibility and responsiveness from service providers
- producing a diagnostic tool for service providers
- encouraging agencies to adopt client friendly practices and policies, introduce performance standards and improve transparency in operations.²

The different components of the report card methodology are:

- selecting households through random sample methods
- designing questionnaires
- surveying selected households

¹ Further information about the Public Affairs Centre can be obtained from 578 16th B Main, 3rd Cross, 3rd Block, Koramangala, Bangalore 560 034, India, Tel: +91 80 5520246/5525453/ 5525452, Fax: +91 80 5537260, e-mail: pacblr@blr.vsnl.net.in

² K. Gopakumar, 'Citizen feedback surveys to highlight corruption in public services – the experience of Public Affairs Centre, Bangalore', *TI Working Paper*: Kuala Lumpur, September 1998.

- organising focus group discussions and mini case studies
- documenting information provided to the public by services.

The first use of the methodology in India was a study carried out in Bangalore in 1993. This looked at the experience of citizens with different services, looking at levels of satisfaction with the services encountered most often, specific strengths or weaknesses in these services, and costs attached. Studies revealed that a high proportion of users paid bribes for services, the proportion increased for more complex services. Another study - of healthcare in Bangalore - carried out in 1998, further illustrated the high incidence of soliciting bribes for services (see Annex 1 for an example of data obtained).³

The report card method can provide a means of charting improvements in public services over time. For example a second study of public services was carried out in Bangalore in 1998. This showed that the overall level of satisfaction with services was still extremely low and that corruption, in the form of bribes, had increased as had the number of people affected by it.⁴

Report cards have helped to raise public awareness of the poor performance of services. The press has been particularly responsive in helping to publicise the Report Card findings. The adverse publicity also helped to encourage agencies to respond to the findings and tackle the problems within their organisation. Some have commissioned studies of their own to help them to identify remedies. Another positive result reported is the increasing organisation of citizens to influence service developments. And the use of Report Cards by other NGOs and civil society organisations to develop and target effective strategies for improving public services.

However, the methodology is questioned by sceptical observers.⁵ They argue that public agencies are already aware of the endemic problems with services and that the focus should be on raising awareness of these issues and motivating citizens to pressure for change.

Seoul Government Initiative⁶

The Seoul Metropolitan government has adopted the report card as part of a package of anti-corruption measures initiated in 1999. The 'Corruption Report Card to the Mayor' is intended to obtain information directly from citizens who have experienced corruption in the process of civil applications, either by public officials or businesses. Cases are investigated by the Mayor and, if the case is substantiated, penalties are imposed on those involved.

³ *ibid.* This included bribing attenders in Corporation Maternity Homes to see one's own baby.

⁴ Samuel Paul and Sita Sekhar, *The Second Report Card on Bangalore's Public Services*.

⁵ See Jenkins and Goetz, 'Accounts and Accountability: Theoretical implications of the right-to-information movement in India', *Third World Quarterly*, vol. 20 no.3 (1999), pp 603-22.

⁶ See Seoul Metropolitan Government website at www.metro.seoul.kr/eng/corrupt_fr.html for further details of their anti-corruption initiatives.

Cards are sent to all citizens that have dealt with the government in the preceding month. A copy of the card is also available on the government website to ensure access is made easy (see Annex 2 for a printout of the card taken from the website). The results of investigations are communicated to the citizen making the complaint. Not only is the system intended to identify corruption, it is aimed at preventing it by establishing a system where corrupt officials are aware that any irregularities will be reported the following month.

Annex 1

Details of Bribes Paid to Various Agencies in Bangalore⁴

Agency/Service	Proportion in sample claiming to have paid	Average payment per transaction (Indian Rupees)
Electricity Board	11%	206
Water Board	12%	275
City Corporation	21%	656
Hospitals	17%	396
Regional Transport Offices	33%	648
Telephones	4%	110
Development Authority	33%	1850
Average	14%	857

⁴ Cited in K. Gopakumar, 'Citizen feedback surveys to highlight corruption in public services – the experience of Public Affairs Centre, Bangalore', *TI Working Paper*: Kuala Lumpur, September 1998.

Corruption Report Card to the Mayor⁵

Use this card to report corruption cases by public servants including bribery. We promise to secure secrecy of your information.

Check mark where applicable.

- Bar permit and inspection
- Housing/Building
- Tax
- Fire prevention and control
- Construction
- Other
- Bribery
- Unreasonable Delay or Return
- Request for Unnecessary Paperwork
- Other Unreasonable Treatment

Description

When

.....

Where

.....

Who (Department/Name)

.....

Type of civil affairs you intended to deal with

.....

Specify what was requested of you (money and other valuables/entertainment)

.....
.....
.....
.....
.....

Please write down other complaints or suggestions regarding administrative processes.

⁵ Seoul Metropolitan Government, <http://www.metro.seoul.kr/eng/corruption/online.html>

‘Confidential’ documents in Tanzania: A case study of Adam Mwaibabile¹

In Tanzania, documents stamped ‘confidential’ pass through the government administrative system much more quickly than documents that do not have this stamp. The result of this is that a significant proportion are marked ‘confidential’. It is a criminal offence for unauthorised individuals in Tanzania to be in possession of a ‘confidential’ document.

Adam Mwaibabile, a journalist, was jailed for one year on 28 February 1997 for possession of a document marked ‘confidential’. This was a letter addressed to the Ruvuma Regional Trading Officer from the Regional Commissioner, Nicodemus Banduka, directing him not to issue a trading licence to the journalist. Mwaibabile was seeking a renewal of his stationery business licence. The sentence was condemned by journalists associations across Tanzania. It was argued that, under the National Security Act 1970, possession of the letter threatened national security.

In April 1997 the ruling was overturned by the High Court. The judge ruled that the document had nothing to do with state security and that to fall within the scope of the Act, it must relate to espionage, sabotage and activities prejudicial to the welfare and interests of the state. Additionally the copy slipped under the door to Mwaibabile did not bear the name and address of the sender and differed materially from the original. This was not presented as evidence in court, contrary to the Evidence Act of 1967.

¹ Special thanks go to Mr Anthony Ngaiza, Executive Secretary of the Tanzania Media Commission, for providing the information for this case study.

ACCESS TO INFORMATION MECHANISMS

Freedom of Information (FOI)

Access to information legislation provides citizens with a statutory 'right to know'. In practice the specific provisions of the legislation as well as the government's commitment to administer requests will determine the extent to which citizens are able to obtain access to records of government activities. The intention is to provide access whenever a request is framed within the provisions of the Act, not for public officials to use the legislation as a secrecy law.

Key points of freedom of information laws are that they:

- confer legal rights on citizens that can be enforced
- seek to change the culture of secrecy within the civil service
- provide access to records not just information
- define exemptions
- require agencies to identify their reasons for withholding information
- provide an administrative appeal process for challenging denials.

RIGHT OF ACCESS TO INFORMATION

In many countries the principles of freedom of expression and free exchange of information are enshrined in the constitution. However, specific freedom of information legislation is required for citizens to exercise these rights. For example, the 1996 Constitution of South Africa contains provisions for the rights of access to information, requiring that these rights be enabled by specific legislation. The Promotion of Access to Information Act was passed in February 2000. The Act sets out its aim in the Preamble:

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights

RECOGNISING THAT -

- *the system of government in South Africa before 27 April 1994 ... resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations ...*

AND IN ORDER TO -

- *foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;*

- *actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.*

Many countries that have introduced FOI are seeking to replace the ‘culture of secrecy’ that prevails within civil service with a ‘culture of openness’. FOI laws are intended to promote accountability and transparency in government by making the process of government decision-making more open. The intention is to make disclosure the rule, rather than the exception. Although some records may legitimately be exempt from disclosure, exemptions should be applied narrowly (see section on exemptions below).¹

FOI serves to make government more accountable to the legislature as well as directly to citizens. By making information on executive programmes more accessible, the members of the legislative branch of government will be able to exercise their monitoring role more effectively. By making FOI requests or utilising the information published by governments under the FOI legislation, the legislature is better informed and can ask more searching questions of government. This does not replace the formal checks and balances built into the balance of powers, rather it enhances their role.

SCOPE

The jurisdiction of FOI legislation varies a great deal and it should be determined by the structure of government in the particular country. For example, in the USA the federal FOI Act applies only to the executive branch of the federal government. Most US states have supplemented the federal law by enacting their own ‘sunshine’ laws to apply the principles of FOI to state and local government. However, in Ireland, as in many other countries, the Freedom of Information Act applies not only to the executive, but also to local government, companies that are more than 50% state-owned and even to the records of private companies that relate to government contracts.

FOI laws can, but do not have to, be applied retrospectively. Many countries have adopted a non-retrospective law, adopting a progressive ‘rolling back’ approach. This means that only records created after the date the Act becomes effective fall under the jurisdiction of the Act. However, others, for example South Africa, have adopted fully retrospective acts. This provision does not normally apply to information held on individuals (see section on Privacy Acts).

RIGHTS OF ACCESS TO RECORDS

Under freedom of information laws citizens usually have the right to request copies of documents, not just the information contained within. Many FOI laws provide that, where only part of the information may be disclosed, agencies should provide a copy of the document excluding (redacting) the exempt information rather than refusing access. Fees may be charged for the provision of information but they should not be prohibitive. For example, in the USA charges are levied for lengthy requests but these are usually restricted to cost-recovery.

¹ See Annex 1 for a list of countries that have freedom of information laws.

In the USA the government disseminates a lot of information at no cost. To aid this programme the World Wide Web is utilised. However, in addition, agencies can levy reasonable charges for search, review and copying. Different classes of users may also be charged different scales of fees, ie academic use as against commercial use.

Time limits for responding to requests and appeals should be set out in the FOI Act. These are legally binding. Failure to comply with these should constitute grounds for appeal to the Act's external monitors, as would the imposition of unreasonable charges.

It is important to note that under many FOI Acts requests for information must be made in writing, whether by mail, fax or email. Requests made over the telephone often do not constitute FOI requests.

PRIVACY ACTS

Some freedom of information legislation incorporates provisions for accessing records held on individuals. Alternatively this aspect may be dealt with separately in a Privacy Act. This is the planned approach in South Africa.

Unlike the access provisions for general records of government in many FOI laws, access to personal records held by government agencies is usually applied retrospectively. However the legislation is structured, access to personal information is usually restricted to records held within a system of filing and that are retrieved by some form of personal identifier, ie personal name, number, index, etc. For example, the Canadian Privacy Act established the requirement that personal information should be managed throughout its life cycle, that is from its creation through to its ultimate destruction or preservation in the National Archives. Along with the right of access to these personal files, a key provision of some privacy laws is that citizens should have the right to have incorrect information amended.

In the USA the right of privacy only extends during the lifetime of the individual concerned. Individuals have the right to access their own files; however, after death, their file may be requested by anyone.

RECORDS MANAGEMENT

Even legally enforceable rights of access to information are meaningless if government records are chaotic. Even where the information would be available in principle, if it cannot be found then it cannot be made available to citizens. Not only does this limit government accountability and their credibility in the eyes of their citizens, it has a serious impact on the capacity of government to discharge its duties efficiently.

Records management issues should be addressed by an FOI law and ideally improvements implemented prior to its introduction. One of the provisions of most FOI laws is that agencies must publish lists of the records series that they hold. Therefore series must be organised and captured within a record keeping system. In Canada, in addition to the requirement that descriptions of records are published, there was a commitment to the introduction of policies, standards and best practice as well as systems to ensure that

information was managed through its life cycle. This was in recognition of the fact that without such procedures, FOI could not be successfully implemented.

Sound records management principles must be adhered to if governments are to successfully implement the requirements of access laws. Poor records management practices should not be allowed as an excuse for lengthy replies and sub-standard document searches.

APPEALS

The right of appeal against a withholding decision is one of the most important provisions of a Freedom of Information Act, protecting against undue secrecy by providing a mechanism for the scrutiny of decisions. Without this safeguard, the effectiveness of FOI would be minimised. Laws usually require agencies, when denying requests, to notify requesters of their rights of appeal and the procedure to be followed. These are then legal rights and are enforceable.

If access to records is denied the agency concerned should notify the requester of the reasons for the refusal, and cite the exemption that covers the records. Sanctions for non-compliance should be provided for in the legislation.

Most freedom of information legislation provides for a two-stage appeal.

- Firstly, there is an administrative appeal to the agency concerned. Citizens can lodge an appeal requiring the agency to conduct an internal review of the decision. This appeal should be heard at a more senior level than the original decision-maker. If the denial of access is upheld it is important that citizens then have recourse to an independent arbitrator.
- The second stage of the appeal process under most existing FOI Acts is to an independent Ombudsman or Information Commissioner. Alternatively the second appeal stage could be for judicial review as is the case in the USA. In the US, if an administrative appeal fails, complainants can apply to the district courts. This is made easier by allowing the individuals seeking access to file their suits either in the district in which they are resident, or in the district in which the records are lodged. In some countries the Ombudsman could also take the complaint to the courts.

Whichever option is chosen, the key point is that there is an effective provision for impartial review. However, the power of the appeal process lies in the sanctions that can be applied for non-compliance. See the paper, *The Role of the Ombudsman*, for a fuller discussion of their powers.

EXEMPTIONS

There are legitimate exemptions to the freedom of information provisions. One of the criticisms of many existing FOI laws is that categories of exemptions are defined quite broadly and may therefore be used to preserve secrecy. The intention should be that exemptions are defined as narrowly as possible, whilst protecting the public interest, to ensure maximum disclosure. Typical categories of exemptions are:

- national security
- records relating to the formulation of government policy
- law enforcement and security
- confidential and commercially sensitive information
- personal information (unless related to the person making the request)
- information exempted by other statutes.

EDUCATING CITIZENS

Freedom of information legislation not only establishes the citizen's legal right of access to information, it also confers on government the obligation to facilitate access. The law should include provisions requiring agencies subject to FOI to publish information relating to:

- their structure, functions and operations
- the classes of records held by the body
- arrangements for access
- the internal procedures used by the agency in the conduct of its business.

Monitoring the extent of compliance with these requirements should be part of the remit of the Ombudsman. Governments should be required to actively inform citizens of the rights conferred on them by FOI and privacy legislation. This demonstrates their real commitment to openness and increased accountability.

Annex 1

Countries with freedom of information legislation

Sweden	1766
USA	1966
Denmark	1970
Norway	1970
Holland	1978
France	1978
Australia	1983
New Zealand	1983
Canada	1983
Hungary	1992
Belize	1994
Ireland	1997
Thailand	1997
Korea	1998
Israel	1998
Japan	1999
South Africa	2000

Code of Practice on Access to Government Information

A Code of Practice is a method of promoting and regulating access to information. As such it is a flexible tool for making government more open and accountable. The intention of a Code of Practice should be to make information available to the public unless good reasons are explicitly communicated as to why it should be withheld. It is not intended as an instrument for withholding information unless that information is legitimately exempt. However, without the force of legislation and the powers of enforcement this implies, it is possible that its impact may be limited.

Key elements of a Code of Practice are that it:

- does not require legislation
- provides access to information not documents
- defines categories of exemptions for information
- defines an appeals procedure
- determines performance criteria.

The UK Code of Practice commits those departments and agencies that come under its jurisdiction to:

- publish facts and analysis of facts that the Government considers relevant and important in framing major policy proposals, usually when policies are announced.
- publish explanatory material on dealings with the public, including rules, procedures, internal guidance to staff, administrative manuals etc, except where publication would breach an exempt category.
- give reasons for administrative decisions to those affected
- publish information on how services are run, how much they cost, who is in charge and what complaints procedures are available and how to access these
- publish comparable information about services provided, performance targets set and results achieved.
- release, following requests, information relating to policies and actions in their areas of responsibility.

NON-STATUTORY CODE: A CASE STUDY FROM THE UK

A non-statutory *Code of Practice on Access to Information* was adopted by the United Kingdom in 1994, and subsequently revised in 1997. The provisions of the *Code* are subject to any restrictions imposed by both existing and subsequent legislation.

Scope

The extent of the application of a Code will vary. The extent of coverage may be related to the existing jurisdiction of an Ombudsman as is the case in the UK or, if a new Ombudsman is to be created to oversee the Code, it may be determined by the administrative structure of government. For example, in the UK the jurisdiction of the *Code of Practice* extends to central government departments and their non-departmental public bodies only, including private firms under contract to a department for information related to that contract. Implementation of a Code could be phased to allow more effective training and impact assessment, perhaps extending initially from central government to the districts; or from line ministries through to their executive agencies and associated branches.

Purpose

In essence the UK *Code of Practice* seeks to promote open government by introducing procedures and performance targets for providing access to government information rather than an ad hoc system that relies on the attitudes of individual civil servants. It could be incorporated into, or used as support to, a civil service-wide Code of Conduct. Such Codes of Conduct are intended to improve service delivery and an essential part of that is the accessibility of information. Therefore prior to the introduction of a Code, government must be committed to citizens' rights of access to information.

In the UK the declared aims of the Code are to:

- improve policy-making by extending access to the facts and analyses on which policy is based
- ensure that reasons are given for administrative decisions
- support and extend the principles of public service
- protect the privacy of personal and commercially confidential information
- preserve confidentiality where disclosure would not be in the public interest.

Use

Citizens can use such a Code as a means to gain access to government information. This applies not only to private individuals and businesses, but also to interest groups and the media. A Code will also provide a mechanism for members of the legislature to obtain information on government programmes.

ACCESS TO INFORMATION NOT DOCUMENTS

The UK *Code of Practice* is explicit in restricting provision of access to *information* and not necessarily to the document in which it is contained. There is no requirement to provide copies of any government documents. For example, salient information provided in a document may be summarised and presented to a requester, however, a photocopy of the document will not necessarily be provided. If a copy were provided, requesters would be able to see if some parts of the document had been redacted. In addition, government departments are not required under the Code to acquire information they would not normally hold or to provide information that is already published elsewhere.

A fee may legitimately be applied for the provision of information; this should not be prohibitive. Existing charging policies in UK departments tend to apply a sliding scale, many departments offering the first four or five hours work on a *Code* request free of charge, then recovering the cost of staff time or applying an hourly rate for enquiries that take longer to deal with. Departments are free to determine their own charges although, if these were deemed to be excessive by enquirers, an appeal could be made to the Ombudsman as described below.

EXEMPTIONS

There are many legitimate exemptions to information disclosure that are necessary to protect the privacy of individuals and the ability of Ministers to govern. Typical categories for consideration may include:

- national security or defence
- the conduct of international relations
- law enforcement and legal proceedings
- public safety/order
- immigration and nationality
- effective management of the economy/collection of taxes
- effective management of the public service
- time-consuming or unreasonable requests
- individual privacy
- information given in confidence
- disclosure prohibited by statute.¹

¹ For further details see the *UK Code of Practice on Access to Information*, 2nd edn., 1997.

However, even where information falls within an exempt category a ‘harm test’ is applied to ascertain whether the potential damage from release outweighs the public interest in disclosure. A Code of Practice is not intended as a protection for corrupt or inept officials. It should be clear that where the only harm from the release of information would be the embarrassment of a public official that the information should be released as requested.

WRITTEN GUIDANCE

In the UK written guidance is offered to both citizens and staff about making and handling requests. This guidance is intended to ensure that

- citizens are aware of their rights
- staff are aware of their responsibilities
- citizens can get the most from the *Code*
- best practice for handling requests is identified.

Providing such information for citizens and staff is an important method of improving the effectiveness of implementation. As stated above, the intention of a Code of Practice is to promote open government and officials are supposed to encourage access rather than scouring the Code for relevant exemptions. Providing guidance to staff minimises the risk that staff will not make information available because they are unclear what can be disseminated and what is legitimately restricted. The Code is intended to provide a clear and comprehensive framework to support disclosure.

APPEAL PROCEDURES

Procedures for reviewing decisions to refuse requests for access to information should be included in a Code of Practice. The UK *Code of Practice* provides a two stage review as follows:

- i) internal review at senior level within the department
- ii) appeal to the Parliamentary Commissioner for Administration (the Ombudsman) through a member of Parliament.

It is good practice for those reviewing cases internally not to have been involved in making the original decision. If a request is again refused the petitioner may appeal to the Ombudsman but only through a Member of Parliament. However further investigation is at the discretion of the Ombudsman and he may not take the complaint any further. There is no recourse beyond the Ombudsman under the *Code*.

This external check on the actions of government is important for the effective implementation of the *Code*. It lessens the risk that applicants who have been refused information on spurious grounds from being unfairly treated. However in the UK this process is weakened as the Ombudsman does not have the power to order and enforce the

release of information, his influence is limited to the negative publicity for government attached to adverse decisions.²

MONITORING COMPLIANCE WITH THE CODE

It is important for policy development that there are some means of monitoring the performance of the Code so that government can see whether it is working and, if not, identify where it is failing. Useful measures include:

- target response times for:
 - ◊ dealing with requests
 - ◊ holding inquiries
- annual statistical returns by departments of:
 - ◊ total number of requests under the Code³
 - ◊ number of requests refused and exemption cited⁴
 - ◊ number of departmental inquiries and outcomes
 - ◊ number of inquiries by Parliamentary Ombudsman and outcomes.

Minimum targets, with which departments ought to comply, are laid out in the Code. Many departments in the UK have chosen to adopt their own more stringent performance targets. For example, the UK *Code of Practice* sets a target response time of 20 days for *Code* requests, the Department for Education and Employment employs its own target of 15 days for dealing with simple requests. Their performance is then assessed against these more stringent targets.

Annual reports are compiled that correlate statistics from agencies covered by the Code and these are made publicly available. This is an important mechanism for helping to deliver accountability of government departments to citizens for service delivery.

² See paper on Ombudsmen for more information on the ombudsman system.

³ NB In the UK this only includes requests that refer specifically to the *Code*.

⁴ NB In the UK this applies to all requests for information regardless of whether the *Code* is cited.

Where to find more information:

See UK Home Office, *Open Government: Explaining the Code of Practice on Access to Government Information and Guidance note on handling openness cases under the Code of Practice on Access to Government Information*.

UK Home Office, Freedom of Information Unit, <http://www.open.gov.uk/index.html>

The Role of the Ombudsman

An Ombudsman's role is to investigate complaints by citizens against agencies of government. This paper will focus principally upon the role of the Ombudsman in promoting access to information; in this paper the terms *Ombudsman* and *Information Commissioner* are used interchangeably. Freedom of information (FOI) legislation often establishes an ombudsman as the external monitor. Depending upon the particular country concerned, there may be a different Ombudsman to regulate this specific area or the Office of the Ombudsman may cover the whole spectrum of government, including FOI.

Key points regarding the role of the Ombudsman are that they:

- are established by law
- are independent
- act as mediator between citizens and government
- have powers to investigate complaints
- may have powers to enforce rulings.

RESPONSIBILITIES

The Ombudsman is usually given responsibility for the monitoring of government services, ensuring that the minimum standards for public service are observed. This should not be restricted to determining whether the exercise of government decision-making power complies with the law, but also whether their duties were administered fairly according to accepted standards of civil service conduct. The responsibilities of the Ombudsman under FOI usually include:

- investigating complaints
- promoting the following of good practice and agencies' compliance with the Act
- publishing reports – annual reports to the legislature and investigations of complaints
- encouraging the dissemination of information by agencies subject to FOI, and by their own office
- assessing whether an agency is following good practice.

In Australia the job of monitoring the FOI legislation has been given to the Commonwealth Ombudsman. They, along with Canada, have chosen to establish a separate Privacy Commissioner to safeguard the rights of individuals to privacy under the FOI laws.

Canada's Information Commissioner has observed:

“A culture of secrecy still flourishes in too many high places even after 15 years of life under the Access to Information Act. Too many public officials cling to the old proprietorial notion that they, and not the Access to Information Act, should determine what and when information should be dispensed to the unwashed public.¹”

INDEPENDENCE

The position of Ombudsman must be established in law, usually through an Ombudsman Act. It is important that this provides for the independence of the office from government. It is clear that, if the Ombudsman is to be effective as a government watchdog, it cannot investigate its own master.

SCOPE

The scope of the Ombudsman will be determined by legislation, ie an Ombudsman Act, given the size and structure of government in a particular country. Their powers of investigation may be limited to the executive or, as in Ireland, be extended to include local government and associated agencies. Their role may also be limited to responding directly to formal complaints or they may also have wider scope to investigate the conduct of public agencies on their own initiative.

As with other access to information mechanisms, these are of limited impact without a programme of awareness-raising for citizens and government officials. Publication of the services offered and details of how to access them will increase the use of the Ombudsman by citizens. This demonstrates government commitment to the office. In addition awareness-raising in departments ensures that officials are aware of their obligations to respond to the ombudsman's requests for information and to remediate poor practices once highlighted.

MEDIATION

One of the most important points regarding the role of an Ombudsman is that they act as mediators between government and their citizens. They offer an alternative to an adversarial approach through the judiciary where government and citizens become hostile opponents.

To perform this role effectively they must be seen to be:

- easily accessible
- offer their services at no cost

¹ Quoted in Snell, Rick. Administrative Compliance and Freedom of Information in Three Jurisdictions: Australia, Canada and New Zealand. Paper presented at *Freedom of Information - One Year On*: Dublin. 23 April 1999.

- fair in their dealings with both complainants and public agencies
- effective in resolving complaints.²

As well as protecting the rights of citizens, the Ombudsman can help to protect public officials. For example, one of the roles of the Office of the Ombudsman in Hong Kong, China is ‘indicating the facts when public officers are unjustly accused.’³ Providing a service for the resolution of complaints about public services is an important mechanism for maintaining public confidence. In many countries there are no private sector alternatives to services provided by the government, therefore the role of the Ombudsman as mediator can be particularly vital.

POWERS OF THE OMBUDSMAN

Although the office of Ombudsman is a statutory body their powers are often quite limited. Typical strengths are that they have the power to:

- examine the records of an agency under investigation
- require the attendance of witnesses
- sequester documents
- enter any premises in connection with an investigation
- publish reports.

However these must be offset by the usual restrictions on the weight of adverse rulings by the Ombudsman. There are three models for the powers of enforcement usually allocated to them, as follows:

- making decisions binding on ministers
- making decisions binding, subject to ministerial veto or judicial appeal on a point of law
- making recommendations.

The most common option chosen is to limit the power of the Ombudsman to recommending disclosure. This is the case under the Code of Practice on Access to Information in the UK, and under the FOI legislation in Australia and Canada. The argument in favour of this is that ultimately accountability should reside with an elected minister who is directly responsible to the legislature and the electorate, rather than with an appointed official. It is also argued that, in practice, ministers would rarely ignore the recommendations of an Ombudsman because of the negative publicity this would generate.

² Kevin Murphy, Ombudsman and Information Commissioner Designate, Ireland: ‘Accountability and the Citizen’, Address to the *Annual Conference of the IPA*, Dublin, 7 Nov 1997.

³ Office of the Ombudsman, Hong Kong, China: *Vision, Mission, Values and Roles*, http://www.sar-ombudsman.gov.hk/english/about_ocac/vision.htm

In Canada, although the Information Commissioner's decisions are not in themselves binding, they also have the power to take a case to the courts. The decision of the court in these cases carries all the weight of the rule of law. This is an important tool for the Commissioner whose position may otherwise seem relatively weak. Relationships with the judiciary built into Ombudsmen legislation can have a significant impact on their powers.

However proponents of strengthening the powers of the Ombudsman point to the example of New Zealand. Contrary to claims that decisions of the Ombudsman would not be overturned, in the first six months of the operation of their FOI law, a ministerial veto was used 7 times. The law on the use of the veto was subsequently amended in 1987, making any decision to use the veto a collective Cabinet decision requiring an Order in Council, which is subject to judicial review. Since that time it has not been used.⁴

The Ombudsman can play an important role in facilitating access to information for citizens and encouraging and monitoring openness in government. The extent to which they can be effective varies according to the powers they have been awarded. By acting as mediators, they serve to reduce the adversarial nature of business between government and citizens.

⁴ Maurice Frankel, Campaign for Freedom of Information, UK: Seminar, UK London School of Economics, 16 Feb 2000.

Citizens' Charters

Citizens' Charters are documents that summarise details of the services provided by government agencies, how to obtain these services and what to do if services do not meet expectations. They aim to introduce measurable standards of service, arrived at through consultation with both staff and users. Their purpose is to increase accountability through the publication of information about and requirements for government services. They may be introduced at central government or local government level, and at the level of national or local services. Key points of a Citizen's Charter are that they:

- are non-statutory
- are intended to increase citizen participation
- define standards of service
- require publication of information about services.

SCOPE

Citizen's Charters may be drawn up as part of an overall strategy for improving government services or as a means of addressing localised problems within a particular sector. They define the services that will be provided and the minimum standards that citizens should expect to encounter. However it is important that these provisions are set out clearly to enable their easy application in practice. If definitions are vague and general then civil servants will be unclear as to the targets they are expected to meet, and user satisfaction will be reduced.

There must be effective mechanisms to ensure that public sector staff are aware of the charter provisions. One way to ensure this is to incorporate the standards into the staff's contractual commitment. Not only does this raise awareness within government, but also confers an obligation on staff to adhere to the principles.

STANDARDS

Key principles of public service are embodied by citizens' charters. One example is the charter programme in the UK that identifies nine principles for public service delivery, as below:

- set standards of service that are:
 - ◊ relevant
 - ◊ simple

- ◊ measurable
- ◊ monitored
- ◊ published
- ◊ reviewed
- be open and provide full information – about costs, performance, availability, etc.
- consult and involve both staff and users
- encourage access and the promotion of choice
- treat all fairly
- put things right when they go wrong
- use resources effectively
- innovate and improve
- work with other providers.¹

These guiding principles can then be applied to particular services and performance targets.

Some easily measurable targets include:

- number of requests handled/processed/denied
- response times
 - ◊ for written enquiries
 - ◊ for complaints
- waiting times for appointments
- charges and fees.

Charters seek to change the culture of service provision by ensuring that users are consulted and their needs and apprehensions are addressed by the system. Standards should be drawn up after consultation with members of the public and staff. This process identifies the needs of users and the realities faced by those delivering the services. This should help to ensure that these are more closely matched.

¹ UK Cabinet Office, *Service First*, 1998.

COMPLAINTS

Charters set out the procedure for making complaints. The intention is to shift the emphasis from complaints as something negative which are to be avoided, to viewing complaints as an important form of communication and feedback. Citizen's comments can then be analysed for targeting improvements in public services in areas seen to be failing.

The complaints process should include provision for an internal review and also external impartial adjudication, perhaps to an Ombudsman (see paper on *The Role of the Ombudsman* for more information). However, it is important to note that failure to meet the performance targets laid out in a Charter, whilst constituting grounds for complaint, does not normally carry any sanction in law.

MONITORING

Charters should provide the means for monitoring public sector performance. One key aspect of this is the requirement for agencies to publish information about their performance. Agencies are required to collate and publish statistics as set out in the charter, allowing citizens and the legislature the opportunity to assess the performance of the service. If the charter applies across a national service, eg schools or hospitals, the performance of local units can be compared by using this process. As well as identifying problem areas, this provides an opportunity to identify areas of strength and to track improvements in services. In particular, they can be used to identify and promote best practice.

ACCESS TO INFORMATION

Charters can be used to support freedom of information (FOI) legislation. These laws usually require the publication of information regarding the structure, functions, and operations of public sector agencies. Even in countries without FOI laws, charters can be used to establish a provision for the disclosure of such information. Information should be made widely available using all available means; these may include the media, public libraries or information technology.

Citizens' charters are intended to improve public sector accountability as well as service delivery. For example, in India citizen's charters are being used to tackle low level corruption by providing citizens with access to information about services where bribes were often levied. These charters describe the services that the government will provide, the time frame for each service, the government officer who should be contacted and a remedy should the service not be provided.²

² SD Sharma, 'Mobilising Civil Society: NGO initiatives to fight corruption and promote good governance – in the Indian context', Paper presented at the *Workshop on Promoting Integrity in Governance* at the *World Conference on Governance*, Manila, Philippines, 31 May-4 June 1999. This initiative is the result of co-operation between Transparency International India and central government.

Citizens' Advice Bureaux

Citizens' Advice Bureaux (CABx) comprise a network of offices that provide free advice and information to those who need assistance on issues such as housing, debt, homelessness, and obtaining benefits. Key points about CABx are that they:

- have their own mandate and structure
- disseminate information on public services
- provide free and independent advice to citizens
- provide a two-way channel of communication between citizens and government.

SCOPE

CABx should extend over the whole country, both urban and rural areas, guaranteeing the principle of equal access to their advisory services. Each office should adhere to the central mission of the CABx service. A key feature of CABx is that the advice they give is free of charge. Often they are staffed by trained volunteers.

Impartiality is key to the role of CABx. Although they may be funded by government, the CABx must retain some independence to ensure that the service they provide is seen to be impartial. For example, in Mauritius the Ministry of Urban and Rural Development runs the CABx. In the UK they are run by the National Association of Citizens' Advice Bureaux in England and Wales, and its sister organisations in Scotland and Northern Ireland – these bodies are registered charities. However, much of their funding is provided by statutory grants as well as charitable donations.

AIMS

Citizens' Advice Bureaux advise on the typical social problems encountered by ordinary citizens. Their aims are twofold as illustrated by those of the New Zealand CABx service:

- 1 *To ensure that individuals do not suffer through ignorance of their rights and responsibilities, or of the services available; or through the inability to express their needs effectively.*
- 2 *To exert a responsible influence on the development of social policies and services, both locally and nationally.¹*

¹ Glen Innes, Citizens' Advice Bureau, New Zealand: <http://www.geocities.com/SoHo/Veranda/2934/cabgi.html>

INFORMATION PROVISION

Governments may be required by freedom of information legislation, or other provisions such as Citizen's Charters, codes of practice, etc, to publish and disseminate information about government services. The CABx can provide an effective means of reaching citizens through their national offices, thereby helping government to fulfil its obligations. In New Zealand local CABx distribute a whole range of guidance leaflets produced by the government. However, it is important to note that this role is limited by the availability of resources.

Information could be made available on:

- what services are available
- how to obtain them
- how to make complaints
- how to obtain redress.

Information technology is being utilised by the National Association of Citizens' Advice Bureaux in the UK to make their advisory service more accessible. Local CABx are using email to deal with enquiries, and there is a national *Advice Guide* available through the Internet. This draws on the information sources used by the advisers. In New Zealand local CABx are also developing web sites to make their services more accessible and in Mauritius information about the CABx service can be found on the government website.

ADVICE

The CABx provide advice on a whole range of issues that concern services provided by both the public and private sectors. In this paper we will focus upon their role relative to government services.

CABx advice is usually delivered through personal consultations where advice is given in response to a particular enquiry. They identify the citizen's legal rights and advise on how these can be upheld, the services available to assist them, and what to do if these services have not met expectations.

As well as providing an advisory service for citizens, the CABx also provide valuable advice to government on the development of services and the common grievances of citizens, providing a useful channel of communication for government.

In countries where Freedom of Information legislation has been enacted citizens have the right to request access to public sector information, subject to exemptions provided under the law. However, in practice citizens require a mediator between them and government as the obstacles, both practical and cultural, may restrict requests by citizens. CABx do not currently provide this service but they may be best placed to act as mediator. In the USA, the National Security Archives performs this role. There is no equivalent to this organisation elsewhere. It may be a gap the CABx could fill. Again this would require the investment of substantial resources.

COMPLAINTS

It is important to note that CABx cannot act for citizens when they wish to obtain redress for grievances. They are able to provide information on the process that must be undertaken, but they do not usually handle the cases themselves. They may also provide information about civil society organisations that can directly assist with cases where the citizen involved may not have the resources (money, education, travel) to act themselves.

They can provide advice on the choices available for obtaining redress, and the necessary steps. CABx acknowledge that the recognition that citizens' have rights is difficult to enforce without specific enabling legislation, for example, anti-discrimination laws, a minimum wage, etc. The CABx can advise on how to use the enforcement mechanisms that are built into legislation for the protection of citizens. Alternatively they can act as a pressure group for change in government programmes.

As well as providing guidance on complaints about public services, they can inform the government about problem areas, enabling the government to target limited resources on the programmes that most need them. They can also provide valuable information to government about local needs and complaints about conditions that are not directly impacted by government services, but that should be addressed by the public sector.

For example, in Mauritius an important function of the network of Citizens' Advice Bureaux is to provide a channel of communication from citizens to government regarding attitudes to local developments and planned projects. In the UK feedback from citizens enquiries is channelled from the local Bureaux to the national association through *Bureau Evidence Forms*. These are completed for enquiries that represent an example of a wider social problem. This information then forms the basis for widely-distributed published reports.

GLOBAL DISCUSSION: SUMMARIES

Introduction

A global electronic discussion on the topic of access to information and accountability was conducted by the Rights and Records Institute between November 1999 and January 2000. Participation was by invitation. Participants included a range of professionals with experience in public management, information management, financial management, development, the media, anti-corruption, etc. They were drawn from Africa, Asia, South America, North America and Europe.

A total of six questions were posted for comment. Responses were summaries and distributed to the discussion group at the end of every topic. The questions for discussion were:

QUESTION ONE

If the purpose of government is to serve the public interest, then the government must be open to the public. The fundamental rule should be that meetings and records are open and accessible. While there are understandable and legitimate exceptions to that fundamental standard, we must guard against the exceptions swallowing up the rule.

Virginia Coalition for Open Government

- What is your understanding of open government?
- How important do you think it is?
- What impact does open government have on the lives of citizens?
- Is the lack of open government an obstacle to development?
- In countries where famine and disease are real problems, can we expect citizens to consider openness in government to be a priority or is open government a luxury that only rich countries can afford?

QUESTION TWO

There is a perception that governments only give up information when they are forced to do so and that information that is surrendered willingly is self-serving. This opinion is supported by an article that appeared in The Times, UK on 11 November 1999:

Ministers were yesterday accused of suppressing information for 'spurious reasons' as a Commons committee demanded a clear explanation as to why they blocked hundreds of parliamentary questions tabled by MPs. The ...Public Administration Committee says that ... departments should detail why they refuse to answer questions and state the section of the

code of practice on access to government information that allows an exemption...[M]any questions appeared to be blocked on spurious grounds...

- What do you think needs to happen to change attitudes in government?
- Can this be created by external pressure?
- Who needs to be involved and what roles should they play for this to be successful?
- How far can restrictions on access to information be attributed to:
 - ◊ the legacy of British administrative systems (the culture of confidentiality)
 - ◊ the influence of one party states
 - ◊ political inertia
 - ◊ a non-functioning bureaucracy?

QUESTION THREE

Lasani is a small village which is part of Rawatmaal panchayat (village council) in Rajasthan's Ajmer district. According to the panchayat records, Rs 56,000 was recently spent to construct water channels linking the village talab (pond) with the fields. The water channels, however, exist only on paper.

Extract from 'For Development and Democracy' by Bela Bhatia and Jean Dreze, taken from *Transparency International Newsletter*, September 1998

There is an assumption that more information leads to less corruption. How far do you agree with this? Can this be demonstrated or measured? If so, how?

Some of the solutions discussed so far implied a 'top-down' solution, for example, civil service reform, access to policy information, access to the published national accounts, etc. Others, as in the quotation above, advocate a grass roots approach. In a situation where resources for reform are limited, what should be the priority?

QUESTION FOUR

Donor agendas emphasise that recipient governments must demonstrate greater accountability and transparency. How much is this a donor issue and how much is this government-owned?

Given the high priority accorded to accountability by donors, how can provisions for access to information be built into the Civil Service Reform Agendas? How can performance be measured and by whom?

In an environment where recipient governments may pay more attention to donor agencies than to their citizens, how far are donors supporting civil society or actually displacing citizens by taking a lead role in developing accountability and transparency?

QUESTION FIVE

Options for accessing government information:

Donors and governments are giving a higher priority to improving service delivery. Can services be effectively improved if the public do not have access to information about those services and if there are no mechanisms for the users to voice complaints?

To address this issue, different methods have been adopted in various countries as measures to improve access to information. For example, Freedom of Information legislation is being implemented in South Africa. The UK has a less formal Code of Practice for government departments and a Citizens Charter. In Korea an on-line civil applications system (OPEN) has been set up so that citizens can have access to application procedures and monitor the progress of their application. Please provide examples of localised models you have come across which address access to information.

Through these mechanisms governments may allow access to information in principle, however, in practice is information any easier to obtain? Are policy instruments effective in and of themselves? What other obstacles need to be considered?

For example, national accounts may be publicly available but are never in stock or prices are too high for ordinary people to afford. Should governments be allowed to charge for the provision of information and what controls should be in place to ensure that this is not misused?

QUESTION SIX

It has been generally acknowledged throughout the discussion that:

- citizens have a right to know
- open government is key to combating corruption, and building democracy and sustainable development
- civil society is a stakeholder in public sector reform, along with government and donor agencies
- information plays an important role in delivering accountability.

On the whole, it appears that public demand for information, particularly in the form of records, remains low in spite of the key role we believe information plays in ensuring good governance.

If this is true, how can the issue of information access and management be further integrated into the reform agenda? What do you feel are the obstacles preventing this from being considered as an important component of public sector reform? How should these obstacles be overcome?

The responses to each question are summarised below.

Discussion Group: Week 1

The topic for discussion in the first week was the meaning and importance of open government, its effect on citizens and its importance in countries struggling with famine and disease. I would like to thank all participants for their contributions. Submissions from experts in record keeping, public administration, audit and other fields were received from Europe, North America, Africa, Australia and Asia. The discussion is summarised below.

The main points that emerged from the debate were:

- the recognition of citizens' right to know
- the role open government plays in combating corruption
- the necessity of open government for democracy
- the necessity of open government for sustainable development.

RIGHT TO KNOW

There was a general feeling amongst participants that citizens have a 'right to know' and that this right is central to providing accountable and transparent government. However, this is based on an acknowledgement by government that they are there to serve the people, not the other way round and that they are accountable to citizens for their actions. It was argued that in some countries this relationship was not recognised by those in power.

However, citizens can only claim their rights if they know what these are and participants talked of the need for education and increased awareness to enable people to assert their rights. It was argued by some that Freedom of Information legislation was necessary to ensure that access was achievable. It was also pointed out that records management was the key to this as governments must know what information they hold to make it available.

OPEN GOVERNMENT AND COMBATING CORRUPTION

Information is power and when a culture of secrecy prevails it is difficult to shed light on corrupt activities. Open government and a system of widened access to information represents a threat to those who control the information because they can no longer use this to their own advantage or to cover-up malpractice. If government activities are more open to scrutiny then there is an opportunity to measure their performance against their promises.

One participant provided an example from Seoul, South Korea where an on-line system has been developed to allow the public to monitor civil applications by checking on their progress, reasons for decisions, who has handled them and the time action has taken.

Another example provided was the use by the Asian Development Bank of the IMF's Code of Fiscal Transparency as a standard for measuring financial accountability. Whilst it was accepted that the requirements of the Code fell below all that was desirable, it offers a minimum level of accountability needed for the effective functioning of government. Examples were given of the performance of one country in the region measured against the Code.

PARTICIPATORY DEMOCRACY

It was generally agreed that open government can only exist in a democratic political system enshrined in a constitution. Adherence to the relationships set out by the constitution is essential to preserve democracy. The very nature of democratic government implies accountability and transparency, a free press and other democratic checks. It was made clear that that democratic government must be a participatory process where citizens have input into decisions that affect them. For citizens to be willing to play their role they must have access to information that will enable them to evaluate the performance of government.

The role of the media as a conduit for disseminating information about public programmes was discussed. Examples of the development of the independent press in two African countries were provided. This development was seen as significant for promoting openness as governments were then less able to control the media. One participant made the point that citizens are more likely to act through the media or political parties rather than directly and emphasised the need for opposition politicians to be able to access information.

SUSTAINABLE DEVELOPMENT

All participants who offered comment were agreed that open government was important, even for countries in crisis, and that it had a significant impact on citizens. It was argued that without open government, development was not sustainable as the prerequisites were security and stability, leading to democracy and from there to development. One participant argued that where disease and poverty was rife there was a need for open government to allow government and society to work together to address the problems, and also to allow civil society to access information about government strategy to deal with these problems. Another contributor made the point that if there had been more openness in government, it may have been possible to limit the evolution of problems like disease and famine, and that the introduction of openness would allow a new beginning.

Discussion Group Week 2

The topic for discussion in week 2 was the general unwillingness of governments to give up information and how this situation had evolved. Ways to change this and the roles of key players were also discussed. I would like to thank all participants for their contributions. Submissions were received from experts in public administration, record keeping, the legal system and anti-corruption strategies from Africa, Europe and North America. The discussion is summarised below.

The main points that emerged from the debate were:

- the potential for legislative reform
- the combination of factors that lead to a culture of secrecy
- managing change in the civil service
- records management as key to enabling access to information.

LEGISLATIVE REFORM

It was argued that many countries are undergoing public sector reform and that this may extend to legislative and constitutional reform. One of the aims of these reforms is to provide more accountable and transparent government that addresses the rights of citizens and improves public services. One participant argued for the importance of defining these terms, pointing out that open government covered a dual role, encompassing on the one hand the government voluntary undertaking to make information available and on the other hand the statutory right of access to information about government decision-making.

One aspect of legislative reform in many countries is the introduction of Freedom of Information legislation. Again it is argued that this can represent as much of an obstacle to accessing information as a protection. The example of the weak Freedom of Information bill in the UK was cited to demonstrate how legislation, as well as voluntary codes of practice, can be made discretionary rather than creating a regulatory environment by containing many exemptions and lack of enforcement provision.

CULTURE OF SECRECY

It was argued that the culture of secrecy that prevails across public service is a result of a combination of factors. The legacy of the Official Secret's Act in Commonwealth countries ensures that the civil service is used to operating in a regulated environment that punishes openness. In addition, one-party states behave secretively to protect themselves. Even when the political system has become democratic, the civil service may have neither the confidence in their independent position nor have the will to operate more openly. Corruption also plays

a role because civil servants protect the information they hold in order to supplement their income by levying charges for access.

Even when information is made available under a Freedom of Information Act, disclosure is usually left to the discretion of the civil servant. As one participant suggested, before FOI can work, perhaps a civil service has to reach a threshold of professional confidence and independent standing.

CHANGE MANAGEMENT

It was agreed that effecting change in civil service attitudes and behaviour was key to promoting open government. Corruption can thrive where public administration is weak. As well as the problem of maximising income, there is also the issue of patronage, ie where a civil servant feels that they owe their position to the support of a particular individual and hence does not question their actions. It was argued that improving the education and pay of civil servants would provide an incentive for change.

One participant suggests the implementation of a planned change management process to shift the culture of the civil service. This includes changing the behaviour of senior management, ensuring ownership of reforms by involving all staff, and providing appropriate training to give staff the skills they need to effect openness in government, and introducing performance measures to chart this. The importance of an internal communications strategy for departmental staff training was also mentioned.

An example was given of an initiative in 1997 by Transparency International, Denmark to change attitudes amongst schoolchildren, students, and through them, their parents and teachers. The objective was to give the young people the tools to resist corruption in the future and to reach their teachers and parents through the children. This method works to change attitudes and create a new public service culture from the bottom-up. A strategy and action plan for implementing 'global action attitude' were presented.

RECORDS MANAGEMENT

There was recognition that records management underpins access to information and, as such, has a real significance. Without records even a statutory right to FOI cannot work as the records demanded may not exist or, if not systematically managed, cannot be found and made available to the public.

One contributor urged information handlers to take advantage of the public service reform environment to push for a regulatory framework that guarantees records management and citizens' rights of access.

Discussion Group Week 3

The topic for discussion this week was the relationship between information provision and corruption, and also the merits of ‘top-down’ and ‘bottom-up’ approaches. It was noted that no comments were offered on the very difficult task of how to measure the relationship between access to information and corruption.

I would like to thank all participants for their contributions. Submissions were received from experts from Africa, Europe and North America. The discussion is summarised below.

The main points of the discussion were:

- Public exposure is a deterrent to corruption
- Accountability requires a strong political framework
- Importance of raising awareness at the grass roots level
- Need to increase access to education
- The possible impact of electronic government.

PUBLIC EXPOSURE IS A DETERRENT TO CORRUPTION

Participants were agreed that the role of the media is critical in exposing corrupt practices to public censure. Increasing the risk of discovery will reduce the potential and likelihood of corruption as the public will demand corrective action against public officials caught misbehaving. However, in many countries investigative journalism is weak and journalists require training in order to be able to fulfil their watchdog role.

ACCOUNTABILITY REQUIRES A STRONG REGULATORY FRAMEWORK

Governments can only be held accountable if there are clearly laid-down rules and procedures to which public officials must adhere. It was argued that to this extent a ‘top-down’ approach is essential in ensuring that a policy framework is in place to support reforms, and that the legislature and the judiciary are able to uphold a system of checks and balances on executive power. Without these supporting pillars such an approach would be ineffective.

One advocate of the ‘top down’ approach pointed out the necessity of targeting those in positions of authority who have the opportunity to be corrupt. It is the transformation of these officials into ‘servants of the people’ that would be key to reform.

IMPORTANCE OF RAISING AWARENESS AT GRASS ROOTS

Without a demand for information by the citizens, governments cannot be held accountable. One participant suggested that there was a lack of demand and that this was the result of a number of factors – complacency, untrained media, the complex formats and content of government reports, and a tendency to oversimplify complex concepts which rendered them less meaningful and thus reduced credibility.

Civil society has a key role to play in combating corruption; however, they must be trained to play this part. The production of a Citizen's Charter by Transparency Mauritius is one effort to work towards this. Another example, provided last week, was the 1997 initiative by Transparency International, Denmark to change attitudes to corruption amongst schoolchildren, students, and through them, their parents and teachers.

NEED TO INCREASE ACCESS TO EDUCATION

Two participants made the point that education was key to developing an informed society that is able to hold government accountable. It was argued that therefore the reduction of illiteracy should be the priority for reform programmes as a society with high levels of literacy will be an informed and progressive society. It was suggested that in turn this would have an impact on the economic system and therefore lead to sustainable development.

IMPACT OF ELECTRONIC GOVERNMENT

One contributor presented a view of the possible changes an 'on-line' environment will bring to government and citizens. When citizens can use the Internet to access government services, apply for benefits and licences, etc the relationship between citizens and government will become closer. The citizen becomes an integral part of the business process. This is likely to result in higher expectations of government, both on the part of citizens and the public servants who are trying to serve them, particularly for service delivery and access to information. Citizens will expect that the justification for decisions and the information it was based on to be available to them on-line. A rapid response to any queries or complaints will be demanded, a figure of four hours was given as the average tolerable delay in response.

It was pointed out that records management has traditionally been rooted in a 'top-down' approach to record keeping that focuses on policy and law. It is projected that the introduction of electronic government will shift that emphasis onto the citizen whilst maintaining some of the importance of the top-down framework. Accountability will be better understood and acted upon as citizens become more aware of their role in government and their rights.

Discussion Group Week 4

The topic for discussion this week was the issue of ownership by recipient governments of donor agendas emphasising accountability and transparency. Questions were raised about how to ensure that access to information is built into Civil Service Reform agendas and how to measure the success of these provisions. The role of donors in supporting or displacing civil society was also questioned.

I would like to thank all participants for their contributions. Submissions were received from experts from Africa, South America and North America. The discussion is summarised below.

The main points of the discussion were:

- Role of donors, governments and civil society
- Need for institutional reform to support accountability
- Role of information.

ROLE OF DONORS, GOVERNMENTS AND CIVIL SOCIETY

Accountability can only be assured when donors, recipient governments and civil society work together to ensure the appropriate controls are in place to monitor expenditure. It was also suggested that this information should be made available to the public, one contributor suggested that the Internet would be a good mechanism for dissemination. Participants agreed that it is legitimate for donors to expect recipient governments to account to them for their expenditure. However, it was argued that the multiplicity of reporting requirements required by donors puts a strain on the capacity of recipient governments to comply.

It was suggested that the pursuit of accountability by recipient governments should be part of their overall political framework. This comprehensive accountability strategy would encompass the needs of donor accountability. The ability of governments to deliver this accountability is dependent upon their institutional capacity.

Civil society must be involved in these processes to ensure openness. Recipient governments are not only accountable to donors but also to their people. If awareness is not raised by the involvement of civil society in the planning process then, should problems develop during a project, the government may have an incentive to conceal information to avoid criticism.

NEED FOR INSTITUTIONAL REFORM

As described above, recipient governments are responsible to their people and to the donor agencies. It is recognised that many countries have inadequate control mechanisms and that these need to be strengthened. One contributor argued that, although donors support

capacity-building for specific areas of accountability, they do not often support the broader arena of aid management. An example was given of the types of reforms supported by UNDP Programme for Accountability and Transparency (PACT). Their mandate is to promote institution building in the civil service, public administration, and the renovation and automation of financial management systems.

However, it was also argued that to succeed reform strategies must focus on the people not the donor agenda. Development can only be sustainable if it is locally driven and locally owned. Reform strategies must include the education and strengthening of civil society.

ROLE OF INFORMATION

Information is critical to the accountability process. As mentioned earlier, when problems arise governments may conceal information to avoid criticism. Donors and civil society can only assess performance if information on activities is available and accessible. One contributor pointed out that information must be structured to be useful, providing the useful warning that ‘the best way to hide a tree is in a forest’.

An example was provided of a World Bank initiative to include a small records management component in each future project, perhaps 1% of the total budget. This aims to guarantee that, as a minimum, each project unit will have a records management programme, and that ideally implementing ministries or agencies will establish a records management programme. Another part of this initiative is the preparation of distance learning programmes to sensitise World Bank task managers, project officials and government officials to the benefits of records managers.

Discussion Group Week 5

The topic for discussion this week was the different options available for accessing government information. Examples of local solutions were requested. In addition the focus of governments on improving service delivery was questioned in the light of a lack of information about services and the lack of adequate complaints procedures.

I would like to thank all participants for their contributions. Submissions were received from experts from Africa and South America. Examples were provided of the situation in Brazil and Zimbabwe. These are summarised below.

BRAZIL

Brazil is the 10th economy in the world, and has over 160 million inhabitants divided between 20 states. It was pointed out that none of these states provide access to information even if they had the capability. For example Sao Paulo, the richest state, has a central computerised system for monitoring government expenditure. However, citizens are not allowed access to this information.

The weakness of the press was highlighted. It was argued that the Brazilian press do not demand more information and are content to publish any information that can be attributed to a source, whether or not it is accurate.

Brazil receives World Bank funding and it was suggested that the levels of accountability with regard to these loans was even less than for ordinary budgetary allocations. These funds are more prone to large-scale and high level corruption because World Bank rules are more lenient than those within Brazil. This corruption is widely ignored by the press.

If information is really the principal asset of persons and corporations, it should be valued accordingly. Therefore it was proposed that independent bodies should be set up to provide access to information even though they may expose information that does not agree with the government view. This exposure may stimulate government and the press to improve their own information handling systems.

ZIMBABWE

Zimbabwe is currently undergoing a process of constitutional revision. The draft constitution contains a section relating to information as below:

Everyone has the right to access information which is held by any person, including any organ or agency of the State or Government, or local government, if the information is required for the exercise or protection of any right or in the interest of public accountability.

Although the provisions of the revised Constitution have not yet been voted on in a referendum, it is argued that this section raises the issue of access to information and this question can no longer be ignored.

The current programme of Public Service reforms required government departments to draw up mission statements and service charters. Reforms require that these are made publicly available in the major languages of Zimbabwe. This facilitates the Charter of the Public Service Commission which provides for citizens to address their complaints directly to the Commission if they do not receive satisfaction from the responsible department.

By the end of 1998 most mission statements and service charters had been published in English, however, progress on translation into other languages was slow. In addition it was recognised that these must be made more widely available. The Ombudsman, who should provide citizens with an avenue for complaints as well as to information, is constrained by lack of resources and authority. The only real strength of the Ombudsman is the publicity that follows their involvement in a case.

More positively, it was suggested that in Zimbabwe the legislature has become more vocal in demanding accountability from the executive. Civil society groups are also growing in strength, and the National Archives provides an easy source of public information. However, the need for the education of civil society to enable them to make use of opportunities for access to information was highlighted.

Discussion Group Week 6

The topic for discussion this week was the question of how to integrate issue of access to information into the reform agenda, and to identify and suggest ways to overcome obstacles.

I would like to thank all participants for their contributions. Submissions were received from experts from Africa, South America, Europe and North America. The discussion is summarised below.

The main points of the discussion were as follows:

- the role of information
- the role of donors and developed countries
- the obligation on citizens to use information responsibly
- access requires good record keeping
- the use of the Internet to make information available
- the decline of the State.

ROLE OF INFORMATION

There appeared to be consensus on the importance of information. Information is power and, it was suggested, can also mean money to those who control access. In an environment where civil servants are paid little and resort to informal means to supplement their income, efforts to improve access to information are contrary to the interests of officials who control that information.

Any attempts to change this situation must look at training civil servants in methods of openness, and must also develop the incentive framework for civil servants, looking particularly at pay. There must be a move away from an environment where civil servants will rarely volunteer information without clearance from seniors. Some media policies require Ministerial clearance before information can be released.

ROLE OF DONORS

It was argued that donor agencies and developed countries can make a large contribution to increasing openness and minimising corruption by making access to information a prerequisite of lending (eg financial information about loans and donations, or the personal financial records of senior officials). Donors themselves have an obvious vested interest in ensuring that their funds are not misappropriated and should encourage practices that safeguard their funds.

However, this argument is countered by the secrecy practised at home by many lending governments. This raises serious questions about the moral authority of developing countries to play a role in enforcing access to information that they themselves may not make available. In addition it is often the colonial legacy of secrecy that has led to such restrictive practices.

OBLIGATION ON CITIZENS

The public has a 'right to know', however, it is accepted that there are some legitimate restrictions on this right. Individuals have a right to privacy, and any information made available must be used with common sense.

It was argued that the possible misuse of information by the media is a deterrent to making information about officials public. Journalists may misrepresent information in pursuit of a better story. The use of informal networks by the press, whilst useful, should not replace official channels as such sources require verification. However, it was argued that the culture of secrecy may be to blame for this style of journalism and one can hope that further openness may encourage a change in journalistic style. It is clear that good investigative journalism will uncover information and may influence policy to the benefit of citizens.

Citizens rarely demand access to information. They are often unaware of their rights and of the existence of information. The lack of demand is also seen as a legacy of poor governance - a public made apathetic by years of abuse and not used to seeing itself as a 'customer' of government is unlikely to be vocal in demanding information. Any demands usually come from an elite, aware of their needs and prepared to lobby for them. There is a need to educate citizens to raise awareness. Changing the process of policy formulation would facilitate this as citizens are currently excluded. Making the process more participatory would help to make citizens aware of their right to efficient services.

GOOD RECORD KEEPING

As one participant said, the right of access to information is meaningless if the records are chaotic. Improving government record keeping is key to making information available. Institutional change should be accompanied by changes to secrecy laws and codes, and training to alter the civil service culture.

USING THE INTERNET

It was suggested that the Internet could be a vital tool for disseminating public sector information. For example one participant suggested making financial data about loans and donations available on the Internet - to accommodate different formats, a broad template should be defined. Although large amounts of data presented in this way may be impenetrable to many ordinary citizens, it is hoped that specialists and NGOs would be able to interpret and make use of the data.

DECLINE OF THE STATE

One participant raised the issue of the declining role of the state in many developing countries, particularly in relation to multinational corporations. This has a negative effect on efforts to combat corruption and removes legitimacy from government. This decline has been attributed to the philosophy of economic liberalism which limits the role of the state in economic affairs. It is argued that in underdeveloped countries this doctrine represents a serious obstacle to accountability and transparency as the state has less power than corporations operating within its borders.

Question 6: Additions to Summary

The topic discussed was the integration of access to information into the public sector reform agenda and the obstacles to this integration. Further contributions were received from participants in Africa and North America and a brief summary of the discussion is provided below. The main areas discussed were

- improving literacy
- increasing civil society participation – a case study of Campo Elias was provided.

IMPROVING LITERACY

It was argued that making more information available is irrelevant unless accompanied by efforts to increase literacy that will enable people to use it. Reforms should also focus on providing electricity and telephone links for schools and rural areas so that they can make use of the information. This should be accompanied by an advertising campaign to raise awareness of what information is available and how to obtain it.

CIVIL SOCIETY PARTICIPATION

One problem highlighted is the collusion of both the judiciary and civil society with corruption. Even when corruption is identified, those responsible are rarely prosecuted, nor is this pressed for by the public. One participant argued that in some countries levels of corruption were so high that it was perceived as normal. In such cases legislative and constitutional reforms should be a priority as freedom of information is only meaningful where people value the rule of law.

CAMPO ELIAS – A CASE STUDY

A World Bank funded programme to build participatory civil society – local government institutional frameworks was implemented between April 1998 and December 1999. The methodology of the project merges participatory approaches to build consensus. This was illustrated by a case study of participatory reform in the municipality of Campo Elias in Venezuela.

In this instance, the World Bank Institute worked with civil society and local government to build transparent and efficient systems. Problem areas were identified and working groups including civil society developed an action plan to implement solutions. One of the measures implemented was free access to public information. As a result perceptions of government performance were shown to have improved and the tools developed by the project have since been exported to more than 400 municipalities.

SELECT BIBLIOGRAPHY

Annotated Bibliography of Select Sources

Tanya Karlebach
International Records Management Trust

‘Enhancing Accountability Through the Media: More Hype than Substance? Regional Workshop for Asia and Pacific.’ [Summary Report from Workshop 4] *9th International Anti-Corruption Conference October 1999, Durban, South Africa* (New York: UNDP, 1999). [http://www.transparency.org/iacc/9th_iacc/] Programme for the workshop addressing the role of the media in strengthening accountability.

‘Building on the OAS Convention: Next Steps to Implement a Regional Approach to Fight Corruption in Latin America and the Caribbean.’ [Summary Report from Workshop 3] *9th International Anti-Corruption Conference October 1999, Durban, South Africa* (New York: UNDP, 1999). [http://www.transparency.org/iacc/9th_iacc/] Includes a draft programme for the conference, proposed sessions on corruption strategies in Latin America and the Caribbean. Also includes as an Annex the *Inter-American Convention Against Corruption*.

Agere, Sam, Victoria Lemieux and Peter Mazikana. *Better Information Practices: Improving Records and Information Management in the Public Service.* (London: Commonwealth Secretariat 1999). A general overview of records management issues in Commonwealth governments, including basic guidance on key steps in managing current records.

Aziz, Tunku Abdul. *Malaysia: Living with Perceptions – The Importance of Transparency.* A Transparency International Working Paper (Berlin: Transparency International, 1998). Discusses the negative impact of perceptions of corruption on the economy. Argues for the role of the private sector in combating this perception and fighting corporate corruption.

Benjamin, Peter. ‘Community Development and Democratisation through Information Technology: Building the New South Africa.’ In *Reinventing Government in the Information Age: International Practice in IT-enabled Public Sector Reform*, Richard Heeks ed. (London: Routledge 1999). A case study of how information management technology has been used in South Africa to improve government communication with citizens, including the passage of Access to Information legislation.

Cannon, Anita. ‘Finding Canadian Government Information on the Internet: A Look at four Principal Sites and Their Initiatives.’ *Government Information in Canada* 2, no. 4 (Spring 1996). This paper provides a review of Internet sites that provide Canadian government information.

Center for Institutional Reform and the Informal Sector (IRIS). *Governance and the Economy in Africa: Tools for Analysis and Reform of Corruption.* Funding provided by Dakar Senegal US Agency for International Development. (College Park, MD: University of Maryland, 1996). This book provides a practical introduction to the issues of corruption and its impact on governments and economies. It includes case studies from Africa on combating corruption and several tools for assessing levels and environments of corruption and suggestions for effectively inhibiting corruption.

Chalker, Lynda. ‘External Donors: How Can They be Part of the Solution?’ *8th International Anti-Corruption Conference September 1997 Lima, Peru.* The paper focuses on ways in which corruption can be combated and in particular on the importance of institutional capacity building.

Commonwealth Foundation. *Citizens and Governance: Civil Society in the New Millennium.* Report prepared by the Commonwealth Foundation in partnership with CIVICUS. (London: Commonwealth Foundation, 1999). The report emphasises the need for citizens to be active participants in the governance process and the need for citizens to be aware and well informed of government activities in order to do so.

Dawes, Sharon, Theresa Pardo and Ann DiCaterino. ‘Crossing the Threshold: Practical Foundations for Government Services on the World Wide Web.’ *Journal of the American Society for Information Science*, 50, no. 4 (April 1999): 346-353. Provides a report on a project that tested how the World Wide Web could enhance delivery of information services to the public. Examines the importance of both the technical infrastructure and user’s capabilities in making this a successful tool for providing access to information.

Eigen, Peter. ‘Civil Society in the Fight Against Corruption.’ *8th International Anti-Corruption Conference September 1997 Lima, Peru.* The paper argues for developing partnerships between government, civil society and the private sector in order to combat corruption.

Florini, Ann. ‘Does the Invisible Hand Need a Transparent Glove? The Politics of Transparency.’ *Annual World Bank Conference on Development Economics Washington DC, USA, April 1999.* Discusses the growing demand for transparency in economic, financial and business fields as a result of increasing globalisation. Emphasises the benefits to both markets and governance of transparency and the role of information in making this possible.

Kisubi, Mohammad. ‘Corruption in the Context of Decentralisation.’ *European Development Fund, Government of Uganda, 1999.* A case study of how corruption impacts the decentralisation of government in Uganda.

Korac-Kakabadse, Andrew and Nada Korac-Kakabadse. ‘Information Technology’s Impact on the Quality of Democracy’. In *Reinventing Government in the Information Age: International Practice in IT-enabled Public Sector Reform*, Richard Heeks ed. (London: Routledge 1999). This chapter focuses on how democracy may be affected by the use of information technology to enhance citizens’ involvement. It touches upon issues of access and accountability.

Kpundeh, Sahr and Irene Hors eds. *Corruption and Integrity Improvement Initiatives in Developing Countries*. (New York: United Nations Development Programme 1998). A collection of papers suggesting possible means of reducing and eventually eliminating corruption including the role of civil society, strengthening public ethics and the need for a strong political will.

Langseth, Petter, Damian Kato, Mohammad Kisubi and Jeremy Pope. *Good Governance in Africa: A Case Study from Uganda*. EDI Working Paper (Washington, DC: The Economic Development Institute of the World Bank, 1997). This paper is comprised of three sections, demonstrating the creative partnership that can and should be developed between a government, civil society, and (where appropriate) a development agency. The sections focus on: a) capacity building with result orientation and integrity; b) containing corruption and building integrity; and c) enhancing and sustaining a result orientation within the public service.

Martin, Robert and Estelle Feldman. *Access to Information in Developing Countries*. (London: Commonwealth Secretariat and Transparency International 1998). Examines the importance of access to information as a principle of democracy and a basic human right. Looks particularly at the need for access to information in developing countries to empower citizens and make governments accountable.

McMahon, Tom. 'Access to Government Information: A New Instrument for Public Accountability' *Government Information in Canada* 3, no. 1 (Summer 1996). This paper provides an analysis of the Canadian Access to Information legislation and how it complements other legislation and procedures. Discusses the impact of new technologies on enhancing the dissemination of government information.

Mendel, Toby. 'Freedom of Expression and Investigative Journalism.' In *New Perspectives on Combating Corruption*. (Washington: Transparency International and The International Bank for Reconstruction and Development, 1998). This paper examines the relationship between the press and the accountability of government. Key to this relationship is the availability of government information.

Ngouo, Leon. 'Responsibility and Transparency in Governmental Organizations in Cameroon: A Review of Institutional Arrangements.' *International Review of Administrative Sciences* Vol. 63 (London: Sage Publications): 476-492. The author reviews the measures taken by the Government of Cameroon to enhance the responsibility and transparency of its institutions.

Outer Circle Policy Unit. *A Consumers' Guide to Open Government: Techniques for Penetrating Whitehall*. 1980. Provides guidance on how to access information from the UK government in the absence of access to information legislation. Discusses relevant legislation and policy initiatives.

Pazyuk, A. 'Privacy of Data Subject in Ukraine' published by Privacy Ukraine. Discusses the legislation in the Ukraine that deals with personal information and protection of privacy, primarily in the context of computerisation.

Polzer, Tara. ‘The Connection Between Freedom of Information and Curbing Corruption.’ *Transparency International Newsletter* September 1999. A brief discussion of the role of FOI legislation in holding governments accountable, enhancing civil society’s role in governance and in limiting opportunities for corruption.

Public Concern at Work. *Consultation Paper on Mr Richard Shepherd MP’s Public Interest Disclosure Bill.* 1997. Discussion paper on private member’s Bill to protect whistleblowers in the UK.

Ranerup, Agneta. ‘Internet-enabled Applications for Local Government Democratisation: Contradictions of the Swedish Experience.’ In *Reinventing Government in the Information Age: International Practice in IT-enabled Public Sector Reform*, Richard Heeks ed. (London: Routledge 1999). The article discusses the role of Internet technology in making government information more accessible and transparent to citizens.

Republic of Tanzania, Presidential Commission of Inquiry Against Corruption. *Report on the Commission on Corruption Volumes 1 & 2, 1996.* Official government report on the general state of corruption in Tanzania and within specific ministries and departments. Final part of the report addresses ways in which corruption can be fought.

Sharma, S.D. ‘Mobilising Civil Society: NGO Initiatives to Fight Corruption and Promote Good Governance in the Indian Context.’ *Workshop on Promoting Integrity in Governance at the World Conference on Governance 31 May – 4 June 1999, Manila, Philippines.* Provides examples from India about how government and civil society have developed mechanisms to fight corruption including establishing independent commissioners, the significance of access to information and codes of conduct.

Snell, Rick, ‘The Effect of Freedom: is FOI a Benefit or Threat to Records Management Practices’, Paper delivered to 10th National Convention of Records Management Association of Australia, Hobart, Australia, (Monday 6 September) 5-8 September 1993

Sprehe, Timothy. ‘Government Information: From Inaccessibility to Your Desktop and Back Again.’ *Journal of the American Society for Information Science*, 50, no. 4 (April 1999): 340-345. The article argues that while Freedom of Information and other factors have greatly increased public access to government information, a counter trend exists where access to some information is more restricted due to pressures to protect privacy, proprietary rights etc.

State of Missouri, Office of the State Auditor. *Audit of Compliance with Sunshine Law Requirements. Report 99-104, November 1999.* Audit report on investigation into government bodies’ willingness to comply with the state’s access to information legislation. Over half of the sample did not respond in accordance with the legislation.

Steen, Anki. ‘A & RM in Sweden: The Amazing Right to View Public Records’ *Records Management Bulletin* no. 96 (19): 3-8. Describes the various legislation and structures in Sweden that govern the management of records and information and the public’s access to that information.

Tapscott, Don, David Agnew. ‘Governance in the Digital Economy: The Importance of Human Development.’ *Finance and Development* 36, no.4 (December 1999). Discusses the impact of the Internet and other technologies on governments. Emphasises the benefits of transparency and openness for businesses and the growing role of citizens in government.

The Netherlands, Ministry of the Interior. *Towards the Accessibility of Government Information: Policy Framework for the Increasing the Accessibility of Government Information through Information and Communication Technology.* (The Hague: 1997). Policy memorandum on how technology can assist in making government information more accessible to citizens and in turn lead to a greater involvement of citizens in the democratic process.

Thurston, Anne and Piers Cain. ‘Records Management as a Public Sector Accountability Function’. *In Combating Corruption: Are Lasting Solutions Emerging? Transparency International Annual Report* (Berlin: Transparency International, 1998). Discusses the role of documentary evidence in ensuring accountability. Looks at the impact of information technology and the significance of government record keeping in managing finances and personnel.

Toughig, Don. *Launch of the Public Interest Disclosure Bill.* Press release from Don Touhig MP. 1996. General information about the proposed Bill and the impact it will have on ensuring greater government openness.

United Kingdom, Advisory Group on Openness in the Public Sector. *Report to the Home Secretary* December 1999. The report offers a number of recommendations on how to increase openness in the public sector including, Freedom of Information legislation, raising public awareness regarding rights of access, developing training programmes for FOI, implementing publication schemes and addressing record-keeping issues.

United Kingdom, Department for International Development. *Good Government Assessment Framework.* The Framework makes available an assessment tool for determining the quality of a national governance system. One of the measures used is Transparency and Information; the extent to which government information is available and that decisions and actions are subject to scrutiny.

United Kingdom, Public Record Office. *Access to Public Records: A Manual of Guidance.* Consultation Draft March 1999 (London: Public Record Office, 1999). This manual provides UK government guidance for civil servants on public access to government records. Provides descriptions of what public records are, relevant legislation and explains when and how to provide or refuse access.

United Kingdom Public Record Office in consultation with the UK Home Office and other government departments. *Lord Chancellor’s Code of Practice on the management of Records under FOI.* Working Draft (London: Public Record Office, October 1999). This code of practice provides guidance to all public authorities and other bodies on the practice to follow in connection with the discharge of functions under the Freedom of Information Act.

van Ham, Margit. ‘**Journalists for Integrity**’ *9th International Anti-Corruption Conference October 1999, Durban, South Africa (New York: UNDP, 1999)*. This paper suggests a proposal for journalists to form a group working with civil society to promote awareness about anti-corruption strategies and tools and thereby broaden the base for public pressure.

Wolfensohn, James. ‘**The State and Civil Society in the Fight Against Corruption: Defining the Challenge.**’ *8th International Anti-Corruption Conference September 1997 Lima, Peru*. General overview of the impact of corruption in developing countries and the need for both civil society and the private sector to work with governments to combat corruption.

RECOMMENDED WEBSITES

Recommended Websites

Carol Eden
International Records Management Trust

Legislation

Australia

Ombudsman Act 1976

http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/

Freedom of Information Act 1982

http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/

Canada

Access to Information Act 1982

<http://canada.justice.gc.ca/FTP/EN/Law/Chap/P/P-21.txt>

Privacy Act 1983

<http://canada.justice.gc.ca/FTP/EN/Laws/Chap/A/A-1.txt>

Ireland

Freedom of Information Act 1997 (edited version)

<http://www.irlgov.ie/finance.FREE1.HTM>

South Africa

Promotion of Access to Information Act 2000

<http://www.polity.org.za/govdocs/legislation/2000/index.html>

UK

Data Protection Act 1998

<http://www.hms0.gov.uk/acts/acts1998/19980029.htm>

Freedom of Information Bill 1999

<http://www.publications.parliament.uk/pa/cm199900/cmbills/005/2000005.htm>

USA

Privacy Act 1974

<http://www.usdoj.gov/04foia/foiastat.htm>

Freedom of Information Act 1968

<http://www.usdoj.gov/04foia/privstat.htm>

Codes of Practice

European Union

Code of Conduct concerning public access to Commission and Council documents

<http://europa.eu.int/en/comm/accdoc/code.html>

Hong Kong Code of Access on Information
<http://www.info.gov.hk/access/code.htm>

UK Code of Practice on Access to Government Information, 2nd edn.,
1997
<http://www.homeoffice.gov.uk/foi/ogcode981.htm>

Citizens Charters

Australia Office of the Commonwealth Ombudsman
http://www.comb.gov.au/publications/service_charter/Charter2.html

Canada Canadian Charter of Rights and Freedoms
<http://insight.mcmasters.ca/org/efc/pages/law/charter/charter.text.html>

India Reserve Bank of India, Exchange Control Department
<http://ns.securities.ru/Public/Public98/RBI/PR/char980604.html?all>

UK Charter for Inland Revenue taxpayers
<http://www.inlandrevenue.gov.uk/pdfs/irl67.htm>

Citizen's Charter for Northern Ireland
<http://www.ni-charter.gov.uk/charter.htm>

The Public Record Office Citizen's Charter Statement
<http://www.pro.gov.uk/readers/charter.htm>

Government

Ireland: <http://www.irlgov.ie/finance/>

Canada: <http://canada.justice.gc.ca/>

Ghana: <http://www.ghana.gov.gh/>

South Africa: <http://www.polity.org.za/>

UK: <http://www.hmso.gov.uk/acts>

United Republic of Tanzania: <http://www.tanzania-online.gov.uk/>

USA: <http://www.usdoj.gov/>

News sites

Africa Confidential: an impartial newsletter, established in 1960, written by network of correspondents analysing the situation throughout Africa. <http://www.africa-confidential.com/>

Africa Online: a premier provider of internet communications and news services throughout Africa. Electronic newsletter available. Africa Online is headquartered in Nairobi, Kenya. <http://www.africaonline.com>

AllAfrica, incorporating *Africa News Online*: daily postings from more than 60 African publications highlighting politics, business, sport, music, book and entertainment news. <http://allafrica.com>

BBC World Service: international news, analysis and information in English and 42 other languages. <http://www.bbc.co.uk/worldservice/index.shtml>

eCommonwealth Commonwealth Institute site for individuals, communities, organisations and businesses to promote their activities, conduct business, keep informed on Commonwealth and world affairs. <http://ecommonwealth.net>

Gambia News: daily postings from Gambian newspapers. <http://gambianet.com>

Gemini News Service: a weekly subscription-based global news-features service producing reports from journalists writing about events and issues in their own countries. <http://www.oneworld.org/gemini/>

Ghanaian Chronicle: <http://www.ghanaian-chronicle.com.gh>

The Index on Africa: A comprehensive guide to resources on Africa on the Net, sorted by country, subjects and news sources. Daily news digest (Mon-Fri), from news sources in Africa. Free online subscription/unsubscription to the e-mail version of the daily news digest. <http://www.africaindex.africainfo.no/>

Index on Censorship: the bi-monthly magazine for free speech, widens the debates on freedom of expression with some of the world's best writers. Through interviews, reportage, banned literature and polemic, Index shows how free speech affects the issues of the moment. http://www.oneworld.org/index_oc/

Africa News Update: free twice weekly news digest service from the Norwegian Council for Africa. Index on Africa. <http://www.africaindex.africainfo.no/pages/>

Mbendi news site: a leading South African based business website based on an extensive relational database. <http://www.mbendi.co.za/cyaf.htm>

The Nando Times: 24-hour global news site. <http://www.nandotimes.com/global/>

OneWorld: international non-profit network that aims to harness the democratic potential of the Internet to promote sustainable development and human rights. Its supersite, is a leading portal on global justice and a gateway to over 700 NGOs worldwide. The OneWorld UK centre is part of Panos London. <http://www.OneWorld.net>.

UNESCO *Top 50 African websites*: a new report on the best African web sites in the fields of education, science, culture, public information and community development: <http://www.woyaa.com/topweb/top50report.html>

Political comics

World Comics, <http://www.worldcomics.fi/>

Global Finland, <http://global.finland.fi/>

Kenyan comics by GADO, with link to Kenya Daily Chronicle - www.GADOnet.com

Access to information

AccountAbility based in the UK is an international membership organisation committed to strengthening the social responsibility and ethical behaviour of the business community and non-profit organisations. <http://www.accountability.org.uk/>

African Information Society Initiative (AISI): the African mandate to use information and communication technology to accelerate economic and social development in Africa. <http://www.bellanet.org/partners/aisi/>

FOI org: list of USA organisations and resource centres. <http://web.syr.edu/~bcfought/foiorg.html>

Free Access to Information and Freedom of Expression (FAIFE): FAIFE is an initiative within IFLA (International Federation of Library Association and Institutions) to defend and promote the basic human rights defined in [Article 19 of the United Nations Universal Declaration of Human Rights](#). <http://www.faife.dk/>

General Audit Office: List of reports of The United States General Accounting Office. <http://www.gao.gov/reports.htm>

The Global Knowledge Partnership (GKP) an informal partnership of public, private and not-for-profit organizations committed to sharing information, experiences and resources to promote broad access to, and effective use of, knowledge and information as tools of sustainable, equitable development. <http://www.globalknowledge.org>

The Michigan Freedom of Information Committee: offers information, advice, workshops to Michigan citizens regarding FOIA and OMA issues. Publishes newsletter, The Informant <http://www.mfoia.org/>

Missouri Freedom of Information Centre: <http://web.missouri.edu/~foiwww/>

National Freedom of Information Coalition (USA): <http://www.nfoic.org/>

PANOS Institute: website is a source of news, opinions and perspectives from developing countries on subjects often complex, controversial and neglected by the mainstream media. <http://www.oneworld.org/panos/>

Public Affairs Centre (PAC), India: a non profit society established in 1994, dedicated to improving governance in India by strengthening civil society institutions in their interactions with the State. <http://www.pacindia.org>

Respondanet: Newsletter of USAID funded, The Americas' Accountability/Anti-Corruption Project (AAA Project). A regional project raising awareness amongst American citizens of the need to fight corruption and foster transparent, accountable government taking advantage of the opportunities provided by democratic processes. <http://www.respondanet.com/>

SANGONeT: South African regional electronic information and communications network for development and human rights workers. <http://www.sn.apc.org>

Seoul Focus, Seoul Metropolitan Government site, includes information on Anti-Corruption Programmes. <http://www.metro.seoul.kr/eng/index.html>

UK Campaign for FOI: <http://www.cfoi.org/>

UK Home Office, *Report of the Advisory Group on Openness in the Public Sector* - <http://www.homeoffice.gov.uk/foi/advgrpfr.pdf>

University College Cork, Ireland FOI Law page:
<http://www.ucc.ie/ucc/depts/law/infolaw.html>

University of Tasmania Law School, FOI home page, with copies of papers and bibliography on access to information issues around the world: <http://www.comlaw.utas.edu.au/law/foi>

Transparency International

Internet Centre for Corruption Research: (joint site between Goettingen University and Transparency International). <http://www.uni-goettingen.de/~uwvw>

TI-Bangladesh: the Bangladesh chapter of Transparency International. <http://www.ti-bangladesh.org/>

Transparency International: a civil society organisation dedicated to curbing both international and national corruption. <http://www.transparency.de> with links to local sites.

Transparency Mauritius: <http://transparencymauritius.intnet.mu/> including Mauritius Citizen Charter "No to Corruption, Yes to Integrity".

World Bank Development Forum: online discussions on development issues sponsored by the World Bank and its partners on behalf of the development community. <http://www.worldbank.org/devforum/>

Accountability/Anti-Corruption

1999, Anti-corruption Conference, South Africa:

Conference materials available from <http://www.worldbank.org/wbi/gac/durban.html>

Citizens' Circle for Accountability www.magi.com/~hemccand/cca.html Website that encourages citizens to hold those in positions of authority accountable. Provides an introduction to the concepts and principles of accountability and has a large section devoted to examples of accountability questions for various areas of society.

Transparency World. Transparency Ethics Course. www.learnwell.org/eth14.shtml An online course that focuses on managerial ethics, this module discusses transparency, accountability and corruption.

World Bank Development Forum/Anti-Corruption: dialogue site on anti-corruption strategies arising out of the 9th International Anti-Corruption Conference in Durban, South Africa. http://www.worldbank.org/devforum/comm_anti.html

IMF: <http://www.imf.org/>

World Bank: <http://www.worldbank.org>

Bretton Woods Project: <http://www.brettonwoodsproject.org/>

Reports on human rights abuses by Canada <http://ww.web.net/~ngoun98/>