



Yes, You Can!

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Look out for more on the new Freedom of Information Law 2007. You can visit the FOI Unit at Elizabethan Square, Building D, or call 244-3609, fax 947-5712 or go online at www.foi.gov.ky

Welcome to the third edition of the Freedom of Information newsletter. We will use it to keep you informed about progress in implementing FOI in the Cayman Islands.

The FOI Unit welcomes feedback from its readers. If you wish to be informed about what's happening with Freedom of Information Implementation, join our Freedom of Information "mailing list" to receive an e-copy of this newsletter. Submit your request to foi@gov.ky

Opening doors to greater participation in government



Good Intentions Need Good Practice

By Kevin Dunion, Scottish Information Commissioner

In Scotland our Freedom of Information Act came into effect only three years ago. The law applies to over 10,000 public authorities ranging from the Scottish Government, the police, hospitals, and universities through to individual general medical practitioners. Any request for information (other than for an individual's personal data) is covered by the Freedom of Information Act. Tens of thousands of requests for information have been made, and there is no doubt that far more information has been released than ever before, on everything from health service contracts down to details of house repairs for local authority tenants. Where people have not received or been refused the information they have requested they have used their rights of appeal. Since January 2005 more than 1500 appeals have been made to me as Commissioner and I have issued over 700 formal decisions.

If I can offer any advice to a new freedom of information regime, I would say that authorities should



Scottish Information Commissioner Kevin Dunion

not presume they can simply carry on business as usual, hoping to accommodate freedom of information requests on an ad hoc basis. This is simply to invite problems. Freedom of information need not disrupt normal functions and it can become part of day to day operations. However

this needs preparation, training and leadership. The extent of this will depend to a certain extent on the culture and practice of authorities. Some might already have strong codes of practice, voluntarily releasing information in response to requests and publishing much more. In Scotland the environmental protection agencies, because of European legislation, already published a mass of information and were able to

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Good intentions need good practice

readily adapt to the new freedom of information requirements. However, by their own admission, other agencies like the police had no culture of public disclosure and had to take a root and branch review of their records management and staff training procedures to cope. (I have to say they are now as a result amongst the best in promptly responding to members of the public.)

Based upon our experience here in Scotland the top tips I would pass on for a successful transition are :

1

Staff training – make sure everyone – from the receptionist to the chief executive knows what the implications of the new freedom of information laws are. Staff dealing directly with the public (and the media) need to be up to speed from day one.

2

Records management – do you know what information you hold and how you would recover it following a request? Do you have a policy to guide staff on how to store or delete information? Finding information in response to requests can be time consuming. Research we

have conducted with public authorities shows that a good records management policy improves general business efficiency as well as allowing a prompt reply to freedom of information requests.

3

Proactively publish – don't wait for a request but publish information which will be of use to the public. This should include material which improves the accountability of authorities in terms of financial spending, performance and efficiency. In Scotland as a result of my decisions some health authorities are now publishing their contracts with private sector providers of services. Some authorities in Scotland have decided that if they receive multiple requests for the same information this will trigger routine publication of the information on their website.

4

Do not use exemptions to try to withhold information as a matter of course - all freedom of information regimes make provision for information to be exempted if there is a sound reason for doing so. In Scotland generally I have allowed certain information to be withheld where policy was still

being formulated or where sensitive decisions were still being discussed by officials. Commercial information was withheld if this related to current pricing estimates provided by companies (however where this information was out of date or not detailed then I have ordered release). However authorities should not stretch credulity when trying to avoid releasing information. Some overstate the harm which might be done if the information was released or they overestimate the cost of providing information. After three years of life with freedom of information in Scotland I now ask authorities to show me evidence of the harm which they fear if information is released. Often despite hypothetical fears evidence actual negative effect is simply not there. Civil servants are still providing advice to Ministers, even though e-mails and memos have been disclosed; commercial activity is unhindered even though some commercial information has been released.

Having a freedom of information law is increasingly recognised as the progressive hallmark of good governance. However the good intentions embodied in the new rights have to be matched by good practice in bringing them into effect. I wish the Cayman Islands all the best with your new regime.

Info Commissioner to Safeguard FOI

With the implementation of the Freedom of Information (FOI) Law only a year away, the Cayman Islands Government is moving to appoint the country's first Information Commissioner. A vital safeguard for freedom of information will thereby be in place.

The Information Commissioner's main functions will be to educate the public on their rights under the FOI Law; to ensure access to information as stated under the law and, most importantly, to hear appeals on denied requests.

In reviewing such appeals the Commissioner's office will be empowered to make determinations on whether public authorities have applied the FOI law appropriately in refusing to grant access to certain information; whether there has been a failure to grant timely access or failure to carry out any obligations as stated under the law.

Other powers include the ability to order public entities to publish certain information, to change their record keeping practices, and/or to provide staff with the necessary training to fulfil their duty under the Law. Further, when deciding on the legitimacy of an appeal, the Commissioner may ask staff to stand as witnesses, compel the production of evidence, and/or inspect records of the government agency in

question.

While the Information Commissioner will be appointed by the Governor following consultation with Cabinet, residents can nominate persons for appointment.

"This process of nomination requires the involvement of the public, and their participation is so important that it is enshrined in the FOI law," says FOI Coordinator Carole Excell.

The Commissioner will need to be able to speak on matters concerning freedom of information, and indicate how they will ensure that the appeal process will be fair and consistent.

"This position is high profile and the person appointed Information Commissioner will need to have a great deal of integrity and honesty. Objectivity, impartiality and independence are also imperative to this position," commented Ms Excell.

She reiterated the importance of the public's involvement, urging everyone to be part of the appointment process: "FOI is a law for the people, and if they don't access it or own the process, it will languish," she said.

THE INFORMATION COMMISSIONER'S DUTIES

- To hear, investigate and rule on appeals filed under the FOI Law.
- Monitor and report on compliance by public authorities with regard to their responsibilities under the FOI Law.
- Make recommendations for reform of a general nature and also reform directed at specific public bodies.
- Refer cases to the appropriate authority where it appears a criminal offence has been committed.
- Be proactive in publicising the requirements of the FOI Law and the rights of individuals under it.
- Establish and lead the staff of the Office of the Information Commissioner in accordance with the Public Sector Management Law, 2006 and Regulations.
- Prepare, maintain and operate a fiscal budget for the Office of the Information Commissioner in accordance with the Public Management and Finance Law, 2005 and Regulations.

Source: Freedom of Information Unit.

Information Commissioners: an International Trend

Appointing an Information Commissioner in Cayman is in line with international practices.
See how other countries do it:

CANADA

The Information Commissioner of Canada is an independent ombudsman appointed by the country's Parliament to investigate complaints from people who believe they have been denied rights provided under Canada's Federal Access to Information Act. Each Canadian province also has its own Information and Privacy Commissioner.

Federal FOI Act - www.infocm.gc.com
Ontario - www.ipc.on.ca;
British Columbia - www.oipcbc.org

IRELAND

The Office of the Information Commissioner (Oifig an Choimisinéara Cosanta Sonraí) was set up under the terms of the Freedom of Information Act, 1997, effective April 1998. The Information Commissioner may conduct reviews of public bodies' decisions relative to requests for access to information. In Ireland, the Information Commissioner also holds the position of Ombudsman. Kevin Murphy was the first holder of the office. In March 2003, the Government of Ireland nominated Emily O'Reilly to the position.

www.oic.gov.ie

AUSTRALIA

Australian information commissioners are independent officers who report directly to the territorial parliaments. The commissioners' main function entails dealing with complaints about decisions made by agencies concerning access applications and applications to amend personal information. Other responsibilities include ensuring that agencies are aware of their responsibilities under the FOI Act; ensuring that the public is aware of the FOI Act and their rights; providing assistance to the public and agencies on matters relevant to the FOI Act, and recommending legislative or administrative changes to Parliament that could be made to help the FOI Act objectives be achieved.

www.foi.wa.gov.au
and www.infocomm.qld.gov.au

INDIA

India's Central Information Commission/State Information Commission has four information commissioners headed by a chief information commissioner. This unit is obliged to receive complaints from any person having difficulty in accessing government information.

www.cic.gov.in

UNITED KINGDOM

The Information Commissioner's Office in the UK is responsible for the Data Protection Act 1998 and the Freedom of Information Act 2000.

www.ico.gov.uk

SCOTLAND

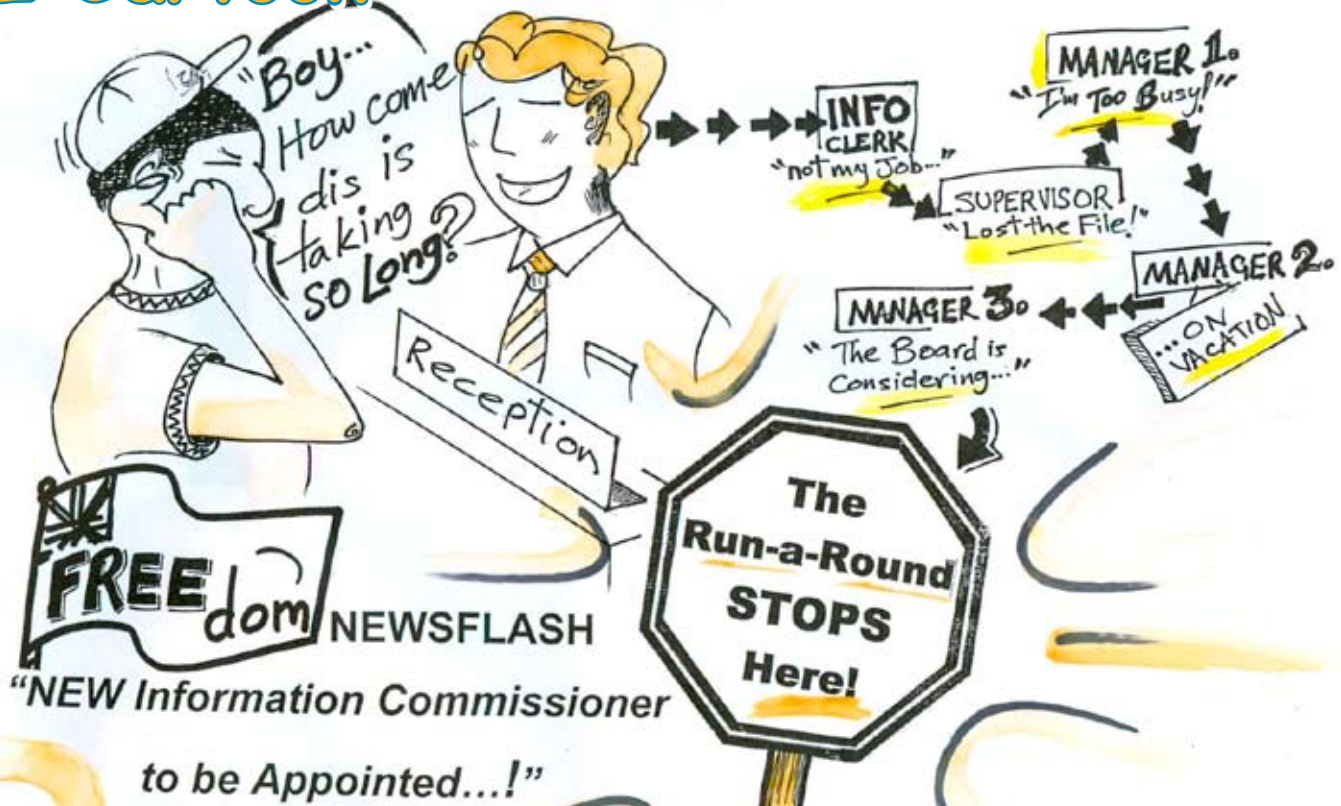
The Freedom of Information (Scotland) Act 2002 is the purview of the Scottish Information Commissioner.

www.itspublicknowledge.info

OTHER EUROPEAN STATES

All other countries of the European Union and EEA have equivalent officials created under their versions of Directive 95/46. The website of the UK IC gives links to counterparts around Europe. (From www.wikipedia.com)

FOI Cartoon





GOVERNOR OF THE CAYMAN ISLANDS

EXPRESSIONS OF INTEREST ARE INVITED FOR THE POSITION OF:

INFORMATION COMMISSIONER CAYMAN ISLANDS

REF: V026 /08

SALARY: \$99,456 - \$121,188 PER ANNUM

His Excellency the Governor shall appoint an Information Commissioner, under the Freedom of Information Law, 2007 after consultation with Cabinet. The Governor invites nominations of suitably qualified candidates to submit their resumes for consideration. Nominations may be made by individuals on their own behalf or by members of the public. Where nominations are on behalf of another person, that person must endorse the nomination in writing. Nominations should be made on the prescribed form.

Nomination forms are available on the FOI website www.foi.gov.ky and at the FOI Unit, Elizabethan Square Building D, George Town.

The Government of the Cayman Islands is committed to the advancement of greater openness and transparency in Government and has recently passed a Freedom of Information (FOI) Law. The Law gives to the public a general right of access to records held by public authorities. An essential element of the Law is the appointment of an Information Commissioner to provide independent oversight of the implementation of the FOI Law, 2007 and subsequent Regulations. The Commissioner will serve as an appellate body to investigate complaints and appeals lodged under the Law and as well to promote general awareness of the FOI Law and the public's rights. In the exercise of her/his powers the Information Commissioner is responsible to the Legislative Assembly.

The Information Commissioner's principal functions are:

- To hear, investigate and rule on appeals filed under the FOI Law.
- Monitor and report on compliance by public authorities with regard to their responsibilities under the FOI Law.
- Make recommendations for reform of a general nature and also directed at specific public bodies.
- Refer cases to the appropriate authority where it appears a criminal offence has been committed.
- Be proactive in publicising the requirements of the FOI Law and the rights of individuals under it.
- Establish and lead the staff of the Office of the Information Commissioner in accordance with the Public Sector Management Law, 2006 and Regulations.
- Prepare, maintain and operate a fiscal budget for the Office of the Information Commissioner in accordance with the Public Management and Finance Law, 2005 and Regulations.

Qualifications, Skills and Experience: The Information Commissioner is a high profile position and candidates must be of the highest calibre of integrity and honesty with a proven background which demonstrates they can be both entrusted with significant responsibilities and hold the confidence of the general public. The postholder must be able to demonstrate objectivity, impartiality and independence and as such must not hold office or be an employee of a political party or hold a position in central or local government, elective or otherwise. A person currently employed by central or local government may be considered for the position, but would be required to resign if appointed.

A sound knowledge of the Cayman Island Government and FOI Law is required. The postholder should ideally have previously held a senior position in the public or private sectors and have proven experience in senior leadership and management. A post graduate degree is preferred although a lower qualification with the commensurate experience would be considered. The postholder is required to operate in a strict statutory and legal environment and would preferably have relevant and proven experience in this regard.

Benefits will be determined in accordance with the Personnel Regulations (2006), Public Service Pensions Law (2004 Revision) and CINICO Health Insurance Plan.

PLEASE SUBMIT NOMINATIONS ON THE PRESCRIBED FORM & RESUME TO:

**The Governor of the Cayman Islands,
4th Floor AALL Bldg
Or MAIL to :
The Governor's Office
PO Box 10261
Grand Cayman
KY1-1003**

APPLICATION DEADLINE: 29TH AUGUST 2008

What is an Information Commissioner?

An Information Commissioner is an independent office-holder appointed by the Governor to enforce the Freedom of Information Law that governs access to government information. The overall purpose of the Information Commissioner is to provide independent oversight of the implementation of the Freedom of Information (FOI) Law and subsequent regulations and in particular to serve as an independent appellate body to investigate complaints and appeals lodged under the FOI legislation as well to promote general awareness of the FOI Law and the public's rights under it. The Information Commissioner is independent of government and reports directly to the Legislative Assembly.

What are the functions of the Information Commissioner?

The Information Commissioner is responsible to:-

1. Hear, investigate and rule on appeals filed under the FOI Law. Appeal of the Commissioner's decision can be made to the Grand Court by way of judicial review.
2. Monitor and report on compliance by public authorities with their obligations under the FOI Law. The Information Commissioner can require that the public authority take such steps as may be necessary to bring it into compliance with the Law.
3. Submit various reports to the Legislative Assembly, some of which require the compilation of information provided by public authorities in accordance with the FOI Law.
4. Make recommendations for reform both of a general nature and directed at specific public bodies.
5. Refer to the appropriate authorities, cases where it appears that a criminal offence has been committed.
6. Publicize the requirements of the FOI Law and the rights of individuals under it.

How is the Information Commissioner appointed?

The Information Commissioner is appointed by the Governor after consultation with Cabinet and in accordance with Regulations made by the Governor in Cabinet. The process for appointment has to include participation by the public in the nomination process. Also important is that the process is transparent and open. The FOI Law requires the publication of the short list of candidates. A person may nominate themselves or be nominated by any member of the public. Consent is needed by the proposed applicant. A selection panel is appointed by the Governor which should include a member of the opposition and a member of the public. The Commissioner once chosen shall hold office for a term of no more than 5 years and may be appointed to serve a maximum of two terms.

**Our readers have their say...
Let us have your view too, write to foi@gov.ky.**