



# Introduction to the Cayman Islands FOI Law 2007

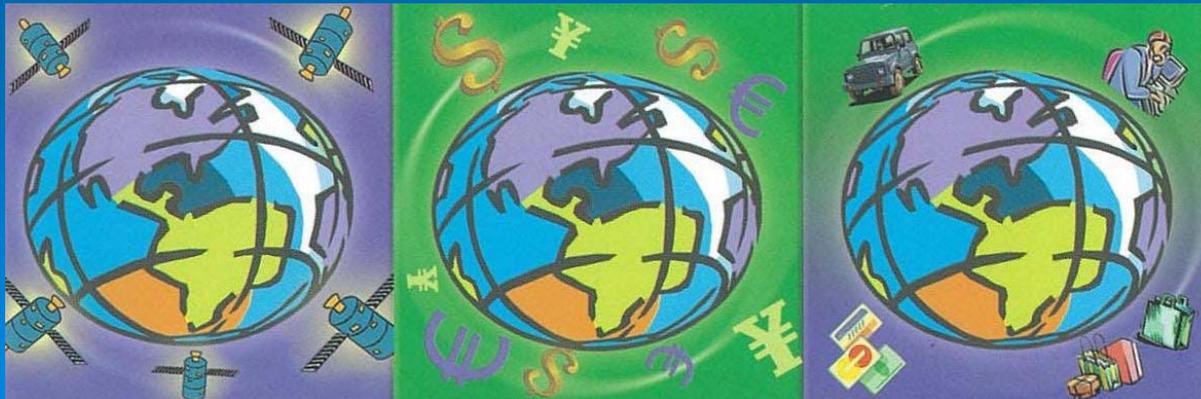
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# Objectives of presentation

- To describe the main features of the Freedom of Information Law 2007
- We will look at:-
  - Context
  - Scope of the Law
  - Right to access records
  - Key Fundamentals
  - Administration
  - Exemptions and offences
  - Internal Review and Appeals

# Context

- We are living in the information age
- Never before has access to information been easier
- Access to Government Information has been traditionally very restricted.



# Context

- Freedom of information has been recognized for nearly 250 years. The world's first FOI law was Sweden's Freedom of the Press Act, approved in 1766.
- In 1789, the French Declaration of the Rights of Man called for the right of citizens to review expenditures of the government.



# Context

- Approximately 70 countries now have guaranteed their citizens the right to know.
- In some countries the laws are dormant/ others actively used.
- Secrecy has increased in some countries because of the war on terrorism.



# Background

- The Cayman Islands Freedom of Information Bill, 2005, was tabled in the Legislative Assembly on 4 November 2005.
- It balances the citizens right to know against government's obligation to preserve confidentiality of certain information contained within exemptions.

# Objects of the Law (s.4) -TAP

*The objects of this Law are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy,*

*(a) transparency*

*(b) accountability and*

*(c) public participation in national decision-making,*

*by granting to the public a general right of access to records held by public authorities*

# Who does the law apply to ?

- The law is applicable to “Public authorities”
- “Public Authority” is defined as :
  - government ministries, portfolios, statutory body or authorities whether or not incorporated, government companies which the government owns a majority share
- The Law states that it may be extended by Order to:-
  - government companies with a minority share or private companies carrying out government services under a contract
  - Any body or organization that carry out services important to the welfare of the Caymanian Society
  - Organisations that receive government appropriations on a regular basis

# Scope of the Law

- A record is defined broadly to mean “information held in any form” (s.2) i.e. in its possession, custody or control
- Applies to all records created by Government regardless of date of creation (s.3)
- Requires the pro-active publication of prescribed information(s.3)
- Any person can make a request, it is not limited to persons living in Cayman



# Scope of the Law

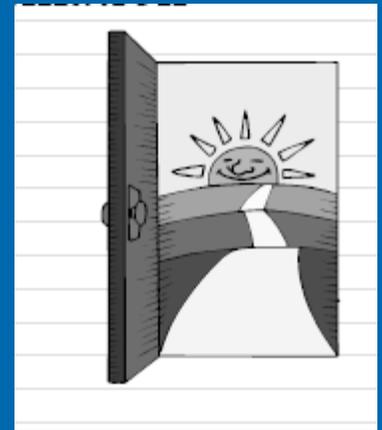
- FOI Law does not amend other legislation that may have more restrictive provisions for access
- Where access is already provided by another means e.g. public register or is available for purchase -no FOI request is to be made.
- Protection of Whistleblowers
- Requires public authorities to make “best efforts” to ensure decisions and the reasons for those decisions are made public.

# Scope of the Law

- The Law wholly does not apply to
- Records held under the Monetary Authority Law s.50
- Exempted Companies under the Company Law
- Judicial functions of a court or holder of a judicial office ( administrative records fall within the law)
- Records relating to the strategic or intelligence gathering information of the police and customs
- Records that belong to the Government of the UK
- Private holdings of the National Archive where there is a contract or other arrangement that restricts access

# What does the law provide to the public?

- The Law will give members of the public a legal, enforceable right to:
  - Inspect, copy or hear official records held by public authorities
  - Ask for personal information held by Government to be changed.
  - Appeal against a decision to refuse to grant access to a record, defer the grant, or where there is a failure to grant timely access to the record.



# Key fundamentals

- A person does not have to give a reason for their request
- The burden of proof is on the public authority to show why the record is exempt not on the applicant
- Disclosure is the GENERAL RULE not the exception
- There is no requirement to state that a request for information is made under the FOI law
- A public interest test must be applied in prescribed circumstances
- All persons have equal right of access
- FOI does not require the creation of a document although may require the collation of information

# Information Managers

The provisions of the law are implemented through the designation of an “information manager” in each public authority

- “information managers” under s. 49 are required to :
- Promote in each public authority best practices in relation to record maintenance, archiving and disposal
- Receive requests for records, assists individuals seeking access and receive complaints about the performance of public authorities



# Publication Schemes



- The Chief Secretary is required to publish :
  - (1) a code on minimum standards and best practices regarding publishing information (s.51)
- All public authorities will be required to **publish** extensive information about themselves in the *Official Gazette (s.3 & the Schedule to the Law)*.
- This information should include details on anything administered by the agency. This includes interpretations, rules, guidelines, practices or precedents used; published information must be made **available to the public** for inspection or purchase.

# Code of Practice – Records Management

The Chief Secretary is required after consultation with the Director of the National Archives to issue a code of practices relating to the keeping and disposal of records and transfer to the Archives (s.51)



# Right of access



- Anyone can apply for access to information by writing, email or fax but not via telephone.
- FOI Regulations will define the Fees to be charged – no application fee, waivers will be considered
- Information Manager will be required to assist the applicant

# Timelines

## Mandated timely response:

- A decision must be given on each request not later than 30 calendar days after receipt.
- Agencies may extend this period once for another 30 days only in instances of “reasonable” cause.
- If a request has to be transferred to another agency, this must be completed as soon as practicable but no more than 14 days



# Transfers (s.8)



- If an application is made to a public authority but the
- (a) record is held by another public authority or
- (b) the subject matter is more closely connected to the functions of another public authority- the application may be transferred
- It must be done as soon as practicable but no later than 14 days

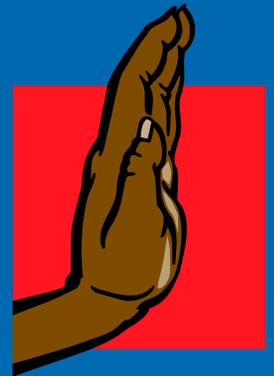
# Grant or refusal

- Public authorities may:
  - (1) Grant Access
  - (2) Extend the time for response
  - (3) Refuse Access
  - (4) Defer access to a record
- BUT
- They must give a reason for the decision if they defer, extend or refuse access and inform the applicant of the right of internal review or appeal
- They can grant partial access to part of a document and sever the exempt part (s.12)



# Exemptions

- A refusal must be based on an exemption
- Exempted documents will generally become available after 20 years s.6 (2)
- The exemption for release of information that amounts to an unreasonable disclosure of personal information is without limitation of time
- The exemption for disclosure of information which could result in damage or destruction of historical, archaeological or anthropological resources is 75 years
- A certificate of exemption may be issued for some exemptions which makes the decision outside of the review of the IC



# Exemptions

- There are 11 Sections on exemptions they are under part III of the law and one in s. 9 of the law
  - They may be listed in the following categories
    - Security, defence and international relations
    - Enforcement
    - Legal privilege, breach of confidence and privileges of parliament
    - National economy
    - Deliberative process of Cabinet
    - Deliberative advice relating to public affairs\*
    - Commercial interests
    - Heritage sites and endangered species
    - Personal information
    - Health and safety
    - Vexatious requests/ diversion of public resources
- \* Decision made by Minister or Chief Officer

# Exemptions

- Most of the exemptions are not “Absolute Exemptions”.
- Seven (7) of the exemptions in the Law are subject to a public interest test (s.26).
- Most of the exemptions require a standard to be assessed i.e. they require the assessment of “reasonableness” or “prejudice”
- E.g. records relating to law enforcement are exempt from disclosure if their disclosure would or could reasonably be expected to endanger any persons life or safety OR
- the disclosure would prejudice the security ,defence or international relations

# Public Interest test

- The public interest test provides that even if a record is exempt but on balance the factors favoring disclosure and non-disclosure are equal it may be released if it is in the public interest. (s.6 (5) & s. 26).
- The public authority has to balance the harm that may be caused if the record is disclosed, to the public interest in disclosure
- The term “Public interest” is not defined in the law but may include information which would:
  - promote public debate of important issues or information
  - address accountability in government,
  - Address public safety concerns
  - have a wide public impact.

# Internal Review (s. 33)

- An internal review of any decision to refuse access, defer or grant partial access, or charge an unlawful fee may be conducted by the responsible Minister or the Principal/ Chief officer
- The review and subsequent decision must be made within 30 days of the application for a review.

# Appeals



- Appeals may be made after Internal review to an Information Commissioner who
- May hear, investigate and rule on appeals
- Monitor and report on compliance
- Make recommendations to specific public authorities
- Refer criminal cases for prosecution
- Publicize the requirements of the law and the public's right

# Appeal

- A person may appeal on the basis that :
- An agency gave no response, or failed to make a decision
- Failed to communicate information within timelines
- Refused a request on the wrong basis
- Failed to comply with an obligation under the law
- Obligations of agencies are wide e.g. transfers, publication schemes

# Powers of the Commissioner

- Make any decision that could be made on the original application; Refer matters to a disciplinary authority
- Orders :- publishing of information, change in practices of record-keeping, provision of training, disciplinary authority
- In coming to decision may- compel witnesses or production of evidence, inspect records
- His/ Her decision is subject to judicial review by the Courts
- The Commissioner may refer a matter to the court to find that a public authority has acted in contempt of court if his/her decision has not been followed

# Offences (s. 55)

- A person commits an offence if in relation to a record for which there is a right of access
  - (a) Alters or deface
  - (b) Blocks or erases
  - (c) Destroys or conceals the records with the intention of preventing its disclosure
- Liable to summary conviction of \$100,000 or 6 months

THANK  
YOU

