



Yes, You Can!

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Opening doors to greater participation in government

Guaranteed: Your Right to Know

The Cayman Islands has joined approximately 70 other countries around the world in guaranteeing a right to information by the passage of the Freedom of Information Law 2007.

This is an extremely important development which should make a difference in the quality of life of every person in the Cayman Islands. Information is crucial to almost every decision made by persons on a daily basis, big or small. Government creates thousands of records yearly whether it is information about roads, housing, and employment, policies on energy, immigration, security, disaster preparedness, planning and environmental protection, health care or education. Information is clearly important for every day life. Openness helps to encourage greater participation in a democracy, it builds public confidence in government decision-making and it can ensure more effective governance. The FOI Law will provide a framework for good governance and institutionalizing the fundamental human right to seek, receive and impart information and ideas.

The FOI Law governs all public authorities including ministries, portfolios, departments, statutory

authorities, and wholly owned government companies or companies that the government holds more than 50% of the shares. It may be extended by Order of the Governor after consultation to organizations that provide public services important to the welfare of the Caymanian society and private organizations which receive government appropriations.

The FOI Law provides a legal right of access to records held by government to the public and a legal duty for proactive publication of information by public authorities. The definition of records is wide and includes information held in different forms including maps, pictures, discs, sound and other recordings (s. 2).

Some government information is excluded from the Law (s.3) that is records containing information that may not be disclosed under the Monetary Authority Law; records relating to directors, officers and shareholders of exempted companies under the



Welcome to the first 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

Message from LOGB, the Hon. Kurt Tibbetts, JP.



In November 2005, I tabled the Freedom of Information Bill as a discussion document in the Legislative Assembly.

This was in direct relation to a campaign promise of greater access to information, the desire for more public participation in decision making and for increased accountability and improved governance in our democracy. It should be noted that the government introduced the bill on its own initiative to promote transparency and accountability in government.

An extensive public awareness exercise was launched in 2006 and included district meetings, talk show events and introductory meetings in the public sector. A web site was developed at foi.gov.ky and various promotional materials were created and produced. The draft bill was posted on line as were other similar FOI material and laws from around the world.

Public feedback was solicited and welcomed. The response was impressive and came from international and domestic civil society groups, as well as from the local private and public sectors. A working group was set up to go through pages of feedback and to consolidate the key recommendations to assist in

revising the bill. I am pleased to say that various international organizations have praised the Cayman Islands for this participatory process.

Creating and nurturing a culture of greater openness and transparency will not be without its challenges.

We have created a small internal FOI Unit within the Cabinet Office to coordinate and lead our readiness efforts and to help the public sector effectively prepare itself for when the law comes into effect. It should be noted that government also recently approved the National Archives and Public Records Law which sets the stage for introducing a new freedom of information regime; new improved technology is also expected to improve records management and retrieval. Government is also establishing an independent Information Commissioner to handle appeals to ensure that the public's rights under FOI legislation are rigorously upheld.

It was with pleasure that I took the Freedom of Information Bill, 2007 to the Legislative Assembly for approval, and we can now look forward to seeing the benefits manifest in our improved democracy in action, for this can only bring greater good and benefit to the peoples of our beloved Islands.

Message from FOI Coordinator, Carole Excell



These are exciting times for the public sector, civil society organizations and media, for

FOI can ensure real participation and public involvement in the working of government.

That's what a democracy is all about. It also benefits the public sector as it aids the achievement of excellence by government via creating and managing information as a valuable public resource.

The old adage 'information is power' is nothing short of the truth. People are able to make better decisions in their lives if they have information. The New Cayman Freedom of Information Law 2007 establishes a presumption that all government information is available to the public, subject only to narrowly circumscribed exemptions, most of which are subject to a public interest test. The Law also includes a requirement for pro-active release of information. Government will likely be assessed on its ability to pro-actively release information to the public. I come to this job from working as an Attorney-at-Law with the Government of Jamaica's Environmental Agency, "the Natural Resources Conservation Authority" for seven years, where access to environmental information about the quality of water and public safety on beaches, new coastal and housing developments and even information on records of the agency's enforcement performance were made public. I thereafter headed an Access to Information Project in Jamaica for two years, working with

The Carter Center to ensure effective implementation of the Access to Information Act 2002 by the Jamaican Government and use by civil society and the media. The Carter Center is an international non-profit organization founded by former US President Jimmy Carter and his wife Rosalyn; it is working in Bolivia, Nicaragua and Jamaica to promote this new and important right to information.

I believe I have an understanding of the challenges that this law brings to a Westminster system of government which often has a tradition of official secrecy that becomes almost inherent in the way civil servants are expected to do their jobs. But the culture of secrecy must change as we realize that government information belongs to the public and is held on trust by government for the people.

The Freedom of Information Unit has been designated as the responsible department to manage implementation activities. It will co-ordinate implementation within the wider public sector through extensive training and awareness programs, development of standards and procedures to provide access and associated training materials, public education activities to keep the public involved, and development of a network of information managers to allow discussion and resolution of common problems and sharing of information and expertise. We plan to be ready by January 2009 for all public authorities to be prepared to receive their first FOI request from the public. I have already met a number of persons who have worked on Freedom of Information and I am impressed with the level of preparation thus far, especially in the area of records management. It will be a time to work co-operatively together, to share ideas and information, learn from one another and embrace change and I look forward to working with everyone to make our FOI regime a success.

Putting FOI in Motion



The FOI Steering Committee with LOGB at the first meeting.

The inter-agency Freedom of Information Steering Committee began a schedule of regular meetings on Thursday, 21 June to develop a strategy for the implementation of the Freedom of Information Law.

Members include representatives from the FOI Unit, all government ministries and portfolios, specialised departments such as the National Archives, Computer Services, the Legal Department, Government Information Services, the Immigration Department, District Administration in the Sister Islands and one government company, Cayman Airways.

Tasked with developing ways to make FOI work, the committee will monitor progress toward implementation; identify challenges and suggest solutions to address the needs of specific agencies; and develop a strategy for long-term training of information managers. Committee members will further deal with technical aspects, such as identifying the appropriate IT system.

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Guaranteed: Your Right to Know

Companies Law; the judicial functions of a court or the holders of judicial office; and intelligence gathering operations of the security services.

An application for information must be made in writing but can be made electronically to the public authority which holds the record. Once a Freedom of Information request is received by the public authority the law provides a thirty (30) calendar days time period for a response to the request which can only be extended by one additional period of thirty (30) days (s. 7). Fees can be charged for a request but they must not exceed the cost of searching and reproducing the records (s.13). Fees will be outlined in FOI Regulations.

Access to a record may be granted, refused or deferred. If access is refused it must be based on an exemption listed in the law. Exemptions are mentioned in Part III of the Law and include:

- **Information the disclosure of which will prejudice international relations, defence, or security;**
- **Records relating to law enforcement that would endanger the life or safety of any person or effect investigations;**
- **Information that is subject to legal professional privilege;**
- **Opinions, advice, or recommendations prepared for Cabinet and a record of consultations or deliberations;**
- **Information that would have a substantial adverse effect on the national economy;**
- **Information revealing information of a commercial value which would be diminished by its release or trade secrets;**
- **Information that could damage or destroy heritage sites or interfere with the conservation of endangered or threatened species;**
- **The unreasonable disclosure of personal information;**
- **Information that may endanger the life of**

safety of any person or affect the conduct of investigations.

Most of these exemptions before being utilized require the public authority to have found that disclosure of the information will cause harm to an interest e.g. prejudice the security of the islands. In addition if a request is vexatious, has been made repeatedly to the public authority or would unreasonably divert the resources of a public authority the public authority does not have to respond to this request. If part of the information is exempt and the other part of the information in a record is not, it can be severed and released (s.12).

Seven (7) of the exemptions in the law are subject to a public interest test (s.26). 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. The public authority has to balance the harm that may be caused if the record is disclosed, to the public interest in disclosure (s.6 (5) & s. 26). The term "public interest" is not defined in the law but may include information which would promote public debate of important issues or information which addresses accountability in government, public safety concerns or relates to decisions of public authorities that have a wide public impact. This term will be defined in FOI Regulations.

A person has a right of internal review to the chief officer or principal officer, or the responsible minister (s.34) if they are refused access to a record, provided only some records within their request, their access is deferred, or fees are charged in contravention of the law.

An Information Commissioner is established under the law who may hear appeals of decisions on internal review or where there is a failure of a public authority to comply with its obligations under the law. The Information Commissioner is independent, responsible

to the Legislative Assembly and has duties to hear, investigate and rule on appeals, monitor and report on compliance with the law and publicize the law and rights of individuals. (Part VI (6)). An appeal may be made to the Information Commissioner if:

- **Access to a record is refused;**
- **There is no response to a request at all;**
- **No response within 30 calendar days;**
- **There is a failure to provide reasons for the refusal;**
- **A public authority charges a fee in contravention of the law;**
- **There is a failure by a public authority to comply with an obligation imposed under the law.**

The law also includes a provision on whistle blowers which protects public servants who release information on wrong doing or release information that would disclose a serious threat to health, safety or the environment if it has been done in good faith. The law further requires public authorities to make best efforts to make decisions and the reasons for their decisions public unless the information that would be disclosed is exempt under the law.

It is expected that the Cayman Islands Freedom of Information Law, once signed by the Governor will become operational in January 2009. This is typical as time is needed for preparation of FOI Regulations, the proactive publication of government information, training of government officials, and the institution of improved records management systems to allow the quick retrieval of records.

The law will be promoted within the public sector and is expected to create a culture change of more openness. Implementation will require the buy in and support of key agencies and individuals within government and also the support and interest of the general public.

SUNSHINE WEEK 24–28 September 2007

International Right to Know Day – Friday, 28 September

The FOI Unit will be celebrating your right to know from 24 – 28 September by bringing Sunshine Week to the Islands for the first time. Sunshine Week is a US-based initiative to open a dialogue about the importance of open government and freedom of information. An international FOI expert Ms Laura Neuman will attend and make presentations at the different events organized by the FOI Unit. The week's events will draw to a close commemorating International Right to Know Day (Friday, 28 September). These activities will help launch FOI to the civil service and communicate the message of what FOI means and how the unit will support the work of government and include the public in the process.

26 September, Wednesday 10: 00 am	Official opening of the FOI Office, Elizabethan Square
4:00 pm	FOI visits Cayman Brac
27 September, Thursday 10:00 am	Special meeting of the FOI Implementation Steering Committee, The Brasserie Conference Room, Cricket Square
12:00 noon -1:30 pm	Lunch seminar with media civil society organizations and community groups, The Brasserie Conference Room, Cricket Square
5:00 pm - 6:00 pm	Seminar for all civil servants on FOI at the Mary Miller Hall, Lighthouse School
28 September, Friday International Right to Know Day 7:00 am	Daybreak 1 hour special show 7am – 8 am
9:30 am - 3:30 pm	Full day meeting with chief officers, heads of statutory authorities and government companies on FOI and its implementation.

Freedom Of Information: A Building Block of Democracy

by Billy Adams

Parliamentary Democracy vs. Participatory Constitutional Democracy

The Freedom of Information (FOI) legislation in the Cayman Islands is a small step towards participatory constitutional democracy and a great leap away from our secretive and authoritarian parliamentary democracy governance model.

In parliamentary democracy governance systems, parliament rules supreme over the governed, with few checks and balances in place. Politicians are compelled to follow the electorate's wishes in one area only – the immediate outcome of an election. Once elected, they are not bound to follow the wishes of the electors in any matter, and when manifestos are not followed, there are no penalties. Peoples in too many countries have come to know – and too often to accept – that having a constitution and elections does not ensure democracy. Fortunately for the Cayman Islands, the draft FOI Law is one step on the road to change all this. Section 4 of the Draft Law states:

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

The advent of FOI will help to bring about a fundamental change – towards constitutional democracy. This fundamental and exciting development is the harbinger of a new era in the Cayman Islands. This is because constitutional democracy is based on the precept that the wishes of the people – and law – must reign supreme over parliament. It also means that a system of checks, balances and separation of powers must be the mediating force generating the power in governance.

Participation in Governance by the Governed

FOI is consistent with the United Kingdom's (UK) Constitutional Modernization Check-list which requires Overseas Territories (OTs) to propose constitutional changes that promote:

"2. The proposals should promote more open, transparent and accountable government..."

6. Proposals should promote representative and participative government and help enable all sectors of the community to influence government policy and practice.

10. Proposals should promote freedom of expression, opinion and association and the right to information, including improvements necessary for their delivery."

FOI is a building block of democracy. It will be a radical departure from our parliamentary democracy form of governance which is also based on a policy of withholding information from the governed. In contrast, the sharing of information with the governed is a sharing of power. Both the elected and civil service arms of government now have to accept a reduction in, and the sharing of, power. The electorate's newly acquired knowledge will empower

them to participate in matters affecting their well-being.

High Expectations for "Open Government"

As recognized in the UK Constitutional Modernization checklist, the governed increasingly demand a break with the traditional secretive decision-making processes of parliamentary democracy. Newly awakened citizens demand a process in which the governed can hear open meetings live, and can readily obtain copies of minutes and documents on which to formulate decisions. In the broadest construction of FOI and "Open Government", the new model of governance opposes the overuse of exemptions based on "national interests and good governance" to avoid the release of information. The people of the Cayman Islands will have to be vigilant to ensure our experience is different from that of many other countries – including the UK – where some believe that there is undue use of exemptions to refuse the release of information. The business of government and state administration must be opened at all levels for Open Government to work, and "...open, transparent and accountable..." governance to thrive.

Information Free of Cost

In this electronic age, information distribution costs have been reduced to insignificant levels.

Once existing documents are scanned and uploaded on a website, the cost of responding to subsequent electronic requests will be negligible.

As future documents are created they must be automatically available on a website, in a

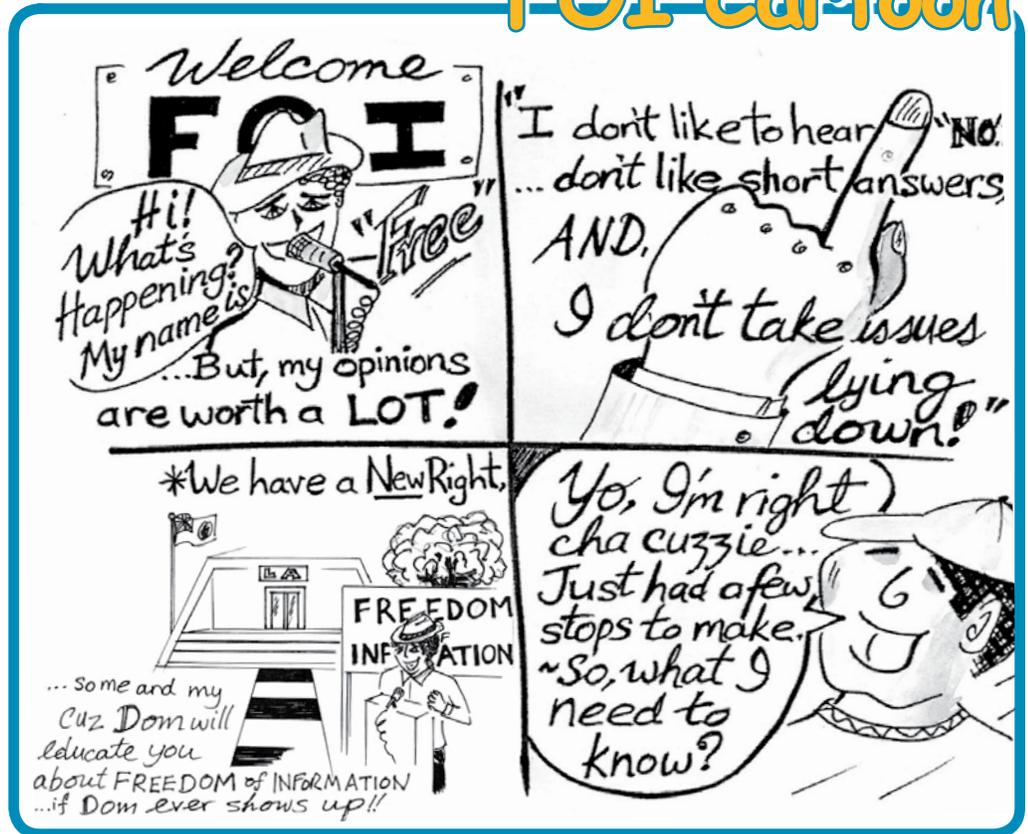
downloadable electronic format. Distribution costs will be minor because in such an IT-savvy environment, users of FOI would automatically access documents, no longer needing to engage in tedious and time-consuming manual processes.

Costs to supply information will remain prohibitive only if government does not truly buy into the principles of FOI and Open Government. Hopefully this will not become a ploy by some who may wish to surreptitiously block access to information by charging high fees. FOI legislation must ensure that cost never becomes a prohibiting factor in accessing information about our government. There should be no cost for applicants – many of whom will hopefully include our young people, who presently clearly feel disconnected from the political decision making process. Free access to information must become a right in the new milieu of participatory Cayman Islands governance – and why not? After all, is it not the governed that fund the government?

In the new Cayman, "he who pays the piper, will – and must – call the tune." And it will be a melody that reverberates throughout the country.

Our readers have their say...
This is a contributed article. Let us have your view too, write to foi@gov.ky.

FOI Cartoon



IN THE NEXT ISSUE OF...



Yes, You Can!

Look out for more on the new Freedom of Information Law 2007. You can also contact the FOI Unit 244 3607.

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