

Address Delivered by
THE HONOURABLE D. KURT TIBBETTS, JP, MLA
Leader of Government Business
to the Legislative Assembly upon Tabling the
Freedom of Information Bill 2007
August 2007

Madam Speaker and Members of the Legislative Assembly, I wish to lay before this Honourable House the Freedom of Information Bill, 2007.

One and a half years ago I stood before the House and reminded members that in 1998, as a Member of the Opposition, I seconded a motion urging Government to enact freedom of information legislation. I challenged the Government of the day to, and I quote: "Get on with it immediately."

Today, Madam Speaker, I am proud to be the leader of the Government that presents this Law to this Honourable House. The People's Progressive Movement promised change, and it is the PPM that opens the doors and windows and lets the sun shine on the operations of Government. The light is bright, Madam Speaker, so the people can see.

In November 2005 Madam Speaker, the Freedom of Information Bill was tabled as a discussion document. Then Government sponsored and launched an extensive public awareness and education campaign which included presentations in all five districts of Grand Cayman and one in the Sister Islands. Initial presentations were also made to senior civil servants. A web site was developed which posted the draft Bill and included related information from around the world and various promotional support literature was developed under the theme "Yes, you can".

Madam Speaker, considerable feedback to this Bill was received up through August 2006, including feedback from both our public and private sectors and national and international civil society groups as well as from individual members of the public. For this participatory process, we have gained both regional and international recognition.

These commendations are worth reviewing, Madam Speaker, since the Cayman Islands are now referred to when people talk about 'best practices' and FOI.

In December 2006 the Commonwealth Parliamentary Association sponsored the Caribbean Regional Freedom of Information Workshop in Dominica. The meeting's official communiqué stated: "The development of FOI legislation should be done through a participatory process that ensures the widest possible consultation with the public. In this respect, the Workshop notes the example of the Cayman Islands where this was undertaken as part of the process of drafting the FOI bill."

Internationally, two Human Rights watchdog organisations singled us out. In May 2006, ARTICLE 19, an organisation that focuses on the defense and promotion of freedom of expression and freedom of information, commended our FOI Bill and our public awareness campaign, and submitted recommendations to our Review Committee concerning the initiative. Then the Commonwealth Human Rights Initiative mentioned the Cayman Islands in a background document sent around the world in honour of September 2006's International Right to Know Day. The document said: "In particular, the Cayman Islands' move to ensure public consultation in the drafting process of the law reflects the government's commitment to ensuring stronger citizen participation."

Now, Madam Speaker, let me move on to highlight some of the changes that have been made to the Bill as a result of our much lauded public participation. I begin by reminding Members of this Honourable House what the objects of the bill are:

"....to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely -

- (a) governmental accountability;**
- (b) transparency; and**
- (c) public participation in national decision-making, by granting to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.”**

Madam Speaker, as a result of public input, greater emphasis has been placed on the general principles of ‘maximum disclosure’ and releasing information in the public interest. These principles provide the foundation on which Government can begin building a new culture of openness. Other sections of the legislation, some of which have been revised, strongly support our efforts towards creating an open government.

For example the scope of the bill ensures that, Government Ministries, Portfolios, statutory authorities are all defined as public authorities and even Cabinet is not excluded from a FOI request. The law will also be applied to all Government Companies for which the Government holds more than 50 % shares and may by Order after appropriate consultation, also be applied to private companies who carry out services of importance to the Caymanian society as a whole and organizations who receive government funding.

We heard from the people, many times, asking about the exemptions under the bill. However, Madam Speaker, the key word here is ‘limited and qualified exemptions’. Our draft bill exempts only certain kinds of information. These exemptions include information on our security, law enforcement, and national economy that would prejudice these interests, Cabinet deliberations, personal information as well as information on cases before the courts, trade secrets and commercial information if the release would diminish its value.

The Bill also provides a public interest consideration. The principle of public interest has been strengthened in the revised Bill to allow for disclosure of information in the larger

public interest, even if it concerns exempted information. A definition of Public Interest considerations will be included in subsequent FOI Regulations..

In addition to making provision for a public interest test, to allow for 'maximum disclosure', Madam Speaker, the revised Bill now permits for editing a record to allow the release of information. For example, a record may have a paragraph that includes information we may not want our competitors in Tourism or Financial services to know. Rather than denying access to the entire record, the one paragraph can be removed. Thus it is 'maximum disclosure' -- not always total disclosure.

Madam Speaker, in the Freedom of Information Bill tabled today, the 30 year limit on the age of the document has been removed. Again, this is a direct result of input and in support of the added tenet of 'maximum disclosure'.

As the Cayman Islands public sector matures, so do the rules that regulate the records of Government. Accountability and transparency are only as good as the quality of the records it keeps, and the consistency with which these records are kept. Information does not grow on trees, it must be meticulously created, reliably maintained and carefully protected, so it can be made accessible to Cayman's citizens, residents and clients.

It is with this in mind that the Legislative Assembly passed the National Archive and Public Records law in March of this year. The Public Records law identifies the standards that public authorities must meet to create and manage one of the government's most precious resources; the information that documents our actions and transactions, in whatever medium, whether electronic, paper or otherwise. Without the standards and accountabilities identified in the Public Records Law, records might not be created in the first place, they might not survive long enough to be accessed by the public, or they might be disposed off in an unauthorized manner.

That is why the Public Records Law is a fundamental pre-requisite for the success of the Freedom of Information legislation and why it was passed first, only a few months ago.

The success of both is intricately linked. It is with this in mind that the National Archive has been preparing for the urgent implementation of best practice rules and guidelines in accordance with international best practice standards for records management. So far Madam Speaker, several hundred civil servants and public authority staff have received training across the public sector in records management. The National Archives will also play a role in advising the Chief Secretary in compiling Codes of Practice in relation to maintenance and publication of records under the FOI law and will closely liaise and work with the FOI unit on governments overall readiness efforts.

Other revisions in the Bill, Madam Speaker, assist Civil Servants by being more specific about their obligations. Public entities, under FOI, have a duty to assist the public in making a request for a government record. The new Bill calls for the appointment of information managers (these may be existing staff members) to ensure that staff with sufficient seniority deal with FOI matters in the various public entities.

When a member of the public needs help identifying a specific record, these information managers will be prepared to assist. These provisions will help Civil Servants who were concerned about 'voluminous requests'. If they do the job that they will be trained to do, no civil servant should spend the day photocopying hundreds of pages since the Bill requires them to assist the public in narrowing the request.

Since I just mentioned 'hundreds of pages', Madam Speaker, I will remind Members that there is no fee to request information. However, there may be reasonable charges for production of the information, such as photocopying, printing, CD burning or other forms of duplicating. These charges will not exceed costs incurred by the Government entity. Madam Speaker, it should be noted that there is provision in the FOI Bill for the waiving of fees, for example where it might cause undue hardship. Also under consideration is the waiving of fees where the information can be provided electronically. The fee structure is currently

being developed and will be provided for in subsequent Regulations which must be brought to this Honourable House for affirmative resolution.

It should be noted also that Computer Services has begun the creation of user requirements to develop a system to manage and track Freedom of Information requests in addition to tendering for an enterprise content management system to deal with document imaging and records management, all of which support our FOI initiative in providing greater public access to information and better service delivery. Government Information Services and Computer Services are also playing a key role in the continued development of our FOI web site and upgrading our general www.gov.ky website which will be the primary portal for accessing government entity publication schemes. These schemes will be designed to allow for the proactive posting of information and records.

Also, Madam Speaker, the Bill now stipulates clearer deadlines. Government entities should fulfill FOI requests within 30 calendar days. If there is a valid reason why that deadline cannot be met, the reason is given in writing to the person who requested the information, and then the Government body has only one more 30-day period to fulfill that request.

Madam Speaker, we should never forget that Government represents and serves the people. Our FOI Bill in its original form was praised for protecting whistleblowers, those people who, in the public interest, reveal some wrongdoing on the part of public authorities. The FOI Bill protects public officers who disclose information on wrong doing that would disclose a serious threat to health, safety or the environment if they act in good faith.

The FOI Bill provides for greater access than ever before for members of the public to access their own personal information which government holds, but their privacy will also be protected by provision of an exemption preventing third parties from accessing someone's personal records. Protection of people's privacy has to go hand in hand with FOI

and the Government intends on bringing stand alone privacy and data protection legislation to this Honourable House in the very near future.

Recently, Madam Speaker, the Cabinet Office announced the appointment of the Coordinator of Cayman's new Freedom of Information Unit who will oversee the coordination and implementation of FOI and the training of public servants. This Unit will be responsible for the development of regulations, policies, procedures and benchmarks to ensure full and effective implementation of the law in the entire Cayman Islands Public Sector. There also has been formed a Freedom of Information Steering Committee which has already begun working on a Government wide implementation plan and has adopted the best practice of posting all their minutes, working papers and presentations on the FOI website.

The revised Bill also provides for the appointment by the Governor in Cabinet of an independent Information Commissioner to handle appeals, rather than a tribunal. International best practice suggests that an Information Commissioner with power to order release of information is the most effective mechanism in handling appeals and promoting maximum disclosure principles. The Information Commissioner will be appointed after an open and transparent process that includes participation by the public in providing nominations and the publication of a shortlist of candidates.

The Commissioner may hold office for a maximum of two 5 year terms and can be removed by the Governor in Cabinet for appropriate reasons defined under the Law. The individual holding the position shall not be an employee of a political party and shall not hold an elected or an official position of government.

The general activities of the Information Commissioner include:

- Hearing, investigating and ruling on appeals under FOI law;
- Monitoring and reporting on FOI compliance by public authorities;

- Making recommendations for reform both of a general nature and directed at specific public bodies;
- Referring cases to the appropriate authorities where it appears that criminal offences have been committed; and
- Publicizing the requirements of the FOI law and the rights of individuals under it.

The Information Commissioner will have the power to conduct full investigations, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

Appeals will be at three levels. Firstly, an aggrieved party may appeal by way of internal review whereby the Minister, Chief Officer or principal officer, if not involved in the request, will reconsider the matter. Secondly, if the applicant is still dissatisfied by a decision of the Minister, Chief Officer or principal officer, he or she may take the appeal to the Information Commissioner. Thirdly, there is provision for cases to be ultimately brought before the Grand Court for judicial review.

Madam Speaker, it is not enough to provide for appeals. We must always remember that before matters become contentious, systems must be in place to promote openness. The revised Bill promotes openness and transparency by mandating that public entities proactively publish details of their functions and the kinds of information they produce and are responsible for. In addition the bill includes a provision that requires public entities, as a matter of course, to make best efforts to ensure that their decisions and reasons be disclosed.

Madam Speaker the new FOI Bill 2007 has been posted on the FOI website, www.foi.gov.ky, and these remarks have been disseminated to the media .

In closing, Madam Speaker, let me thank the many public and private entities for their input into this Bill and for those who worked to consolidate and summarize the recommendations. As I table the Freedom of Information Bill, 2007 and as the Cayman Islands move into a period of Constitutional modernisation and review, let me share this

thought from Franklin D. Roosevelt: "In the truest sense, freedom cannot be bestowed; it must be achieved."

It's a reminder, Madam Speaker, for all concerned -- the public, the media, Civil Servants -- that freedom takes work. I concede the sea ahead is rough, but we all know that the voyage will be worth the effort.