

Address Delivered by
THE HONOURABLE D. KURT TIBBETTS, JP, MLA
Leader of Government Business
to the Legislative Assembly upon Tabling the
Freedom of Information (General) Regulations, 2008
Friday 5th December, 2008

Madam Speaker and Members of the Legislative Assembly, I wish to lay before this Honourable House the Freedom of Information (General) Regulations, 2008.

Madam Speaker, eighteen (18) months ago I stood before this Honourable House and presented the Freedom of Information Bill, 2007.

Today, Madam Speaker, I am proud to present these Regulations to this Honourable House.

As you will recall Madam Speaker, in March of this year we published a Consultation Paper on the Proposals for the Freedom of Information Regulations 2008 to obtain comments from members of the public. Comments on the Consultation Paper were due at the end of April 2008. Madam Speaker, I am proud to advise that we received comments on the Paper from members of the public, government departments and agencies here in Cayman, comments from overseas FOI experts and comments from respected international organizations such as the Commonwealth Human Rights Initiative. All the comments were reviewed by the Freedom of Information Legal Sub-Committee and the proposed Regulations were amended accordingly. Being one of the few countries in the world to continually seek public participation during all stages of the creation of the FOI Law and FOI Regulations, we have proven our commitment to an open, transparent Government in accordance with the current global FOI trends.

To quote the Commonwealth Human Rights Initiative when they responded to our Consultation Paper, “CHRI commends the [Cayman Islands] Government for pioneering public consultation at all stages of the law making [process] and its implementation. Experience has shown that for any right to information legislation to be effective, the policy-makers must proactively encourage the involvement of civil society groups and the general public so that they may consider and provide recommendations on the development of legislation. By inviting submissions on the strengths and weaknesses of the FOI Regulations 2008, the Cayman Islands Government has helped to strengthen the democratic participation of its citizens. Overall, CHRI’s assessment is that the proposed Regulations.....contain.....progressive provisions that appropriately draw from international best practice.”

Madam Speaker, today I present to this Honourable House the Freedom of Information (General) Regulations 2008 which I daresay have been long anticipated and are welcomed, both nationally and internationally. As shown upon implementation in other jurisdictions worldwide, FOI legislation improves the relationship and trust between the Government and the public, ensures greater efficiency in public sector management processes and allows for greater participation by the people in national decision-making. Freedom of Information legislation plays a vital role in the system of constitutional democracy and as such Madam Speaker, I am certain the entire Cayman Islands will reap FOI’s positive benefits.

Now, Madam Speaker, let me move on to highlight the current FOI Regulations that are a result of our hard work and much lauded public participation. I begin by reminding Members of this Honourable House that the objects of the FOI Law 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 of a sensitive nature.”

Madam Speaker, as a result of public input, we now have established the Freedom of Information (General) Regulations 2008 which further the general principles of maximum disclosure and releasing information in the public interest. These principles set the standard to be used by Government to bring about this new culture of openness.

The FOI Regulations provide the criteria for making an FOI request, set out the timelines for responses by public authorities and define key terms in the FOI Law. These key terms include “personal information” and the “public interest”. The timeline in the Regulations for transferring the request to another authority, who is more closely related to the subject matter of the request, is 14 calendar days. 14 calendar days is also the timeline for notifying a third party that their personal information has been requested. Finally, and very importantly, the staff members in an authority are given 2 working days to hand the FOI request to their Information Manager. The Regulations also provide support for public authorities and include considerations for how a public authority is to treat a voluminous request, that is where a request will “unreasonably divert the resources of an authority” to prevent abuse of the FOI Law. The Regulations contain a provision for “expedited service” in defined circumstances where information has to be provided within ten (10) calendar days as it is needed to preserve the life or liberty of an applicant.

In addition to this Madam Speaker, the FOI Regulations provide the fees to be charged when information is released pursuant to a FOI request. There are no fees for making an FOI request, searching for records or making a decision on the records. Instead

the Regulations only provide fees for reproduction of records and change of the format of records. I would also like to make special reference here Madam Speaker to the fact that there is no fee for the grant of access to information in electronic form which was included in the Regulations as a direct result of public input. . The Regulations also outline the circumstance in which these fees can be waived, for example where an applicant has financial hardship in paying for information. All the fees set out in the Regulations Madam Speaker have been specifically set so as not to exceed actual costs incurred by Government entities in the reproduction of records.

The FOI Regulations, Madam Speaker, set out the functions of the Information Managers, who are appointed in each public authority to promote the best practices of FOI. The Regulations also outline the requirements for public authorities to hear appeals from the public, otherwise noted as internal review and the right of third parties to make an appeal to the Information Commissioner where their personal information has been requested by an applicant as defined under the FOI Law.

Madam Speaker, these Regulations which I lay before this Honourable House have been prepared to coincide with international best practice standards and, I must admit, will probably be closely mimicked in other jurisdictions considering implementing FOI legislation.

We are happy to announce that the Cayman Islands Freedom of Information Law will be brought into effect on the 5th of January, 2009, and in closing, Madam Speaker, let me thank the many public and private entities for their input into these Regulations and a special mention must be made of the work of all the members of the FOI Legal Sub-Committee, who consolidated and summarized all the recommendations received. As I table the Freedom of Information (General) Regulations, 2008 I would like to impart this quote of wisdom by Aristotle which goes to the root of FOI, in which he says: "If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in government to the utmost."