



# Freedom of Information Act, 2017

Government Officials

23<sup>rd</sup>- 25<sup>th</sup> April, 2018

# Overview of Presentation

- Purpose of presentation is to provide an overview only of the 2017 Act:
- What is freedom of information?
- Who has the right to access and how?
- What if you are unhappy with the decision of the public authority?
- What is the Office of the Information Commissioner?
- What measures are there to promote openness?

# BACKGROUND

- The Freedom of Information Act 2017 repealed and replaced The Freedom of Information Act, No. 10 of 2012 which was passed but never brought into force.
- Some members of the public were highly critical of the number of classes of information which are exempt from disclosure under the Act. It was against this backdrop that the Ministry of Education along with the Office of the Attorney-General formed a Committee to benchmark and review the existing Freedom of Information legislation.

# Benchmarking and points of reference

In our review of the existing legislation, the committee considered and made recommendations based on a number of model laws, analyses and best practice principles, including but not limited to, the following:

- The Organisation of American States' Model Inter-American Law on Access to Public Information and its Implementation Guidelines;
- The Commonwealth Human Rights Initiative: A Preliminary Analysis of the Bill and Recommendations for Improvement;
- Comments from Citizens For A Better Bahamas
- Freedom of Information Legislation of:

- ❖ United Kingdom

- ❖ Jamaica

- ❖ Australia

- ❖ Canada

- The Cayman Islands

- Trinidad & Tobago

- New Zealand

# Enactment and enforcement.

- Enacted on 31 March 2017
- Sections providing for appointment of Information Commissioner and staff brought into effect April 21, 2017.
- Provisions bringing Whistle Blower provisions into effect March 1, 2018

# What is freedom of information?

- Freedom of information is an extension of freedom of speech;
- Inter-American Court of Human Rights via *Claude Reyes et al. v Chile* (2006) decided that access to information is a part of the fundamental right of freedom of expression;
- Usually protected through legislation;
- Provides rights of individuals to request information from ‘public authorities’.



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# Why is it important?

- Promotes greater accountability by Governments;
- Promotes transparency;
- Helps to engage citizens more fully in the decision-making process
- Hallmark of any modern democracy.



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Human Rights



# Who has the right of access to information? S. 6

- Bahamian citizens;
- Permanent residents;
- Corporate bodies registered in The Bahamas;
- Partnerships or other unincorporated associations under laws of The Bahamas;
- Any other person who has an office, branch or agency in The Bahamas.





# What can you ask for?

A record:

- Which is not exempt;
- Which is held by public authority in connection with its functions;
- Any record over 30 years old is not subject to any exemptions (s.6(3));
- If part of a record is exempted, partial disclosure is made (s.12).




# How do I request information? S. 7

Such persons who wish to obtain access to a record shall make an application.

The application must be:

- Made in writing;
- Addressed to the Information Manager of the particular Public Authority ; and
- Provide information concerning the record as is reasonably necessary to enable the Public Authority to Identify it.



Public Authority shall acknowledge receipt of the application and once approved, grants the applicant the record within the specified time. (30 days)

If the application is refused or access is deferred, the Public Authority shall state the reasons why and the options available

## What are the other measures to promote openness?

- Each public authority must have an information manager who receives requests for information and promotes best practices on record maintenance – Section 46;
- Protection for whistleblowers – Section 47;
- Code of minimum best practices for records management to be published for public authorities to comply with – Sections 48 & 49;
- Training to be provided to public officials – Section 51;
- Offence to alter, deface, destroy, block, erase or conceal records with fine of \$10,000 or six months imprisonment – Section 54.



# What is a Public Authority?

- Certain classes of information excluded which are not disclosable under certain Acts (Central Bank Act, Securities Industries Act, Insurance Act, Financial Transactions Reporting Act);
- Minister may by order, after consultation with the Commissioner and affirmative resolution of both Houses of Parliament declare that additional bodies or classes of information be excluded.

# What is a Public Authority?

- Minister may by Order expand the entities covered as public authority (which provide services of public nature/receive regular government appropriations);
- Minister after consultation with the Commissioner and the Affirmative Resolution of both Houses of Parliament may by Order make exceptions or modifications to the list of certain public authorities.

# Exclusions to Public Authority

- Judicial functions of court/holder of judicial office;
- Security or intelligence agencies in relation to their strategic/operational intelligence gathering activities (list of agencies can be expanded by Minister in consultation with Minister for National Security);
- Private holdings of national archive under contract.



# The Importance of Access to Information

Objects of the Freedom of Information Act:

- governmental accountability;
- transparency; and
- public participation in national decision making,

by granting the public a general right of access to a record held by a public authority, *subject to certain exemptions* which balance the right of access to information against not disclosing information in the *public interest*.

# Right of access to Information s. 5

Each public authority must publish:

- Functions;
- A list of Departments & Agencies and—
  - (i) matters handled;
  - (ii) the locations;
  - (iii) opening & closing hours

# Right of access to Information

- Name and contact information for Information Manager
- Manuals, Policies, Practices, Rules & Guidelines used for decision making or recommendations or any scheme administered by the authority with respect to:
  - Rights or Benefits, or
  - Obligations or Penalties

## Public Authority's Decisions will be made Public S. 27

- A Public Authority must make best efforts to make its decisions and reasons for those decisions public.
- This does not apply where the information that would be disclosed thereby is exempt under the FOI Act.

## Appeals Process

- Apply to the Minister or Chief Officer for an Internal Review.
- The Minister's decision may be appealed to the Information Commissioner.
- The Information Commissioner's decision may be appealed to the Supreme Court.

# The Information Commissioner S. 30-31

- Appointed by Governor-General upon the recommendation of the Prime Minister after consultation with Leader of the Opposition;
- Must be independent, impartial and accountable
- Must have knowledge in access to information, transparency or public and corporate governance
- Shall be appointed for a term of 5 years, can be reappointed for one term

## Cont'd ... Information Commissioner

- **MUST NOT**
- within the last 5 years have held a political office or served as an official of a political party
- have been convicted of a crime of dishonesty/violence, been declared bankrupt

# Independence & Powers of the Information Commissioner S. 33- 45

- Powers necessary to perform his/her functions and shall establish a Freedom of Information Unit to administer the regime
- Independence and autonomy in administering the Unit
- Budget
- Develop rules and procedures to regulate the Unit's affairs



## Cont'd.. Responsibilities of Commissioner

- Report to Parliament annually on applications under the Act and his office's activities.
- Monitor Public Authorities to ensure compliance with their obligations under the Act
- Publicize the requirements under the Act and rights and obligations thereunder
- Make recommendations for reforms

# Removal of Information Commissioner

## s. 36

- The Commissioner may be removed from Office by the Governor-General for:
- Misbehaviour
- Inability to discharge functions of his office, whether arising from infirmity of body or mind or any other cause.



**Thank you for your kind  
attention**