

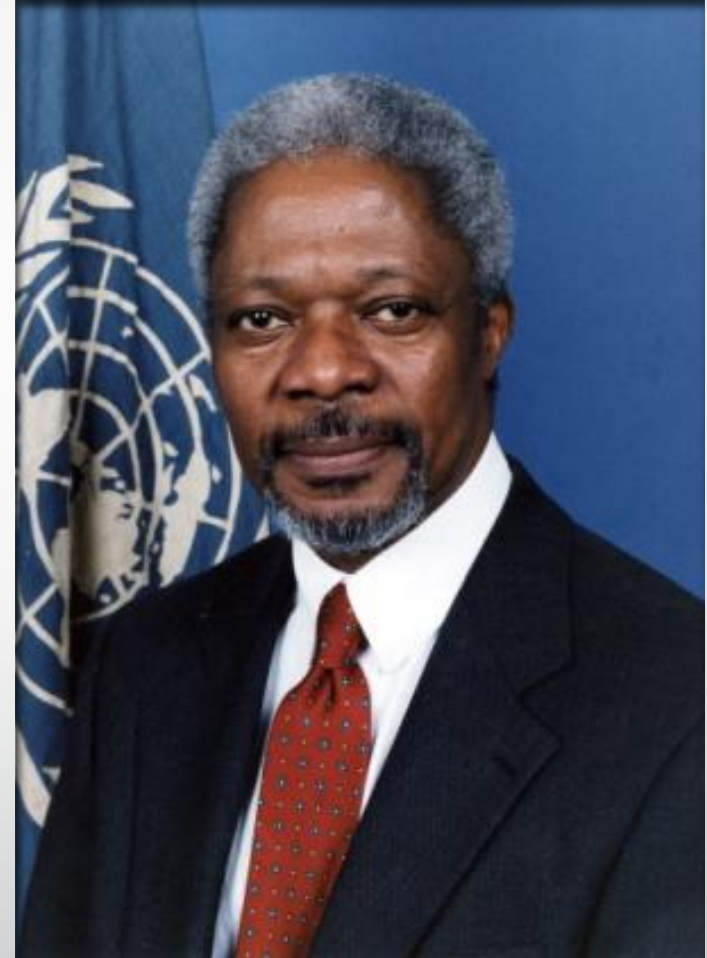
CRITICAL COMPONENTS OF SUCCESSFUL FREEDOM OF INFORMATION IMPLEMENTATION

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“Knowledge is power.
Information is liberating”.

Kofi Annan, Former
Secretary-General of
the United Nations



Access to Information: The Past?

- “Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of “secret sessions”; in so far as it can, it hides its knowledge and action from criticism...The concept of the “official secret” is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude...In facing a parliament, the bureaucracy, out of a sure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups...Bureaucracy naturally welcomes a poorly informed and hence a powerless parliament- at least in so far as ignorance somehow agrees with the bureaucracy’s intent.” (German Sociologist Max Weber)

Access to Information: Paradigm Shift

- “Central to this global “right to information” movement is the presumption that information held by the government should be publicly available, unless government officials can make a good case that legitimate interests- perhaps the public interest in preserving national security, or the need to protect another citizens privacy- would be harmed by releasing information. By the end of the 1990’s there were many people who believed that the “right to know”- and the presumption of openness- had finally become entrenched as a basic principle of democratic governance. If so, this would mark the final overthrow of a much older proposition: that the business of government should, as a rule, be done in secret.”

Freedom of Information in Latin America & the Caribbean

- The Latin American and Caribbean region has seen an impressive number of countries adopting freedom of information (FOI) laws in the past decade.
- Currently, 19 countries in Latin America and the Caribbean have national FOI laws: [Antigua and Barbuda \(2004\)](#); [Belize \(1994\)](#); [Brazil \(2011\)](#); [Colombia \(1985\)](#); [Chile \(2008\)](#); [Dominican Republic \(2004\)](#); [Ecuador \(2004\)](#); [El Salvador \(2011\)](#); [Guatemala \(2008\)](#); [Guyana \(2013\)](#); [Honduras \(2006\)](#); [Jamaica \(2002\)](#); [Mexico \(2002\)](#); [Nicaragua \(2007\)](#); [Panama \(2002\)](#); [Peru \(2002\)](#), Saint Vincent and the Grenadines (2003) and [Trinidad and Tobago \(1999\)](#). A Presidential Decree on FOI exists in [Argentina \(2003\)](#). UNESCO
- (The Bahamas #20)

Freedom of Information in Latin America and the Caribbean

- In 2006, the Inter-American Court of Human Rights issued a decision stating that the general guarantee of freedom of expression enshrined in Article 13 of the ACHR protects every person's right to access information held by the state, encompassing the positive obligation of the State to provide it, without the need for the requester "to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied" ([Case of Claude Reyes and Others v. Chile](#)).
- This ruling marked the first decision by an international court in recognition of FOI. Further, in December 2010, the Inter-American Court issued another landmark ruling finding an infringement of FOI and outlining important guidelines on access to information related to human rights violations (Case of [Gomes Lund v. Brazil](#)).

Freedom of Information in Latin America and the Caribbean

- Framing developments at the country level was a strong regional legal framework which over the years has created sound legal standards related to the right of freedom of information, fostering the adoption of FOI legislation in a growing number of countries characterized by strong civil society advocacy for FOI. (UNESCO)

TI, Civil Society & FOI Anti-Corruption Focus in LAC

- TI identified the main corruption challenges facing Caribbean States as:
- Weak non-transparent unaccountable institutions;
- Lack of or weak basic anti-corruption legislation (such as access to information laws and whistleblowing protection) weak enforcement of existing legislation;
- Collusion among business and political elites affecting procurement processes;
- Mobilising people to fight corruption. Citizens need to understand their rights and stand up for them.

Freedom of Information in Latin America and the Caribbean

- The right to freedom of information as part of the right of freedom of expression was recognized by [Article 13 of the 1969 American Convention on Human Rights](#) (ACHR), as well as by the 1994 Declaration of Chapultepec. In 1997, the Inter-American Commission on Human Rights at the Organization of American States (OAS) created the [Office of the Special Rapporteur for Freedom of Expression](#), which has strongly supported FOI. The Commission also approved the [Inter-American Declaration of Principles on Freedom of Expression](#) (2000), which reaffirms such support. More recently, the OAS facilitated the development of a [model Inter-American FOI law](#) (2010).

Freedom of Information in Latin America & the Caribbean

- Despite the progressive trend in the legal front at the country and regional levels, the experience of Latin America and the Caribbean also serves to illustrate the difficulties in implementing FOI legislation, including setting up adequate mechanisms to allow timely information access, promoting a cultural change towards transparency among public servants and fostering public demand for information. (UNESCO)

Centre for Law and Democracy RTI Law Ratings (61 Indicators)

- United Kingdom #35
- New Zealand #42
- Canada # 48
- Trinidad & Tobago #49
- Jamaica #51
- Bahamas FOI Law in the process of being ranked.

Centre for Law and Democracy RTI Law Ratings (61 Indicators) Top 5 Ranked Laws

- Mexico #1
- Serbia # 2
- Sri Lanka #3
- Slovenia #4
- India # 5

UN's Sustainable Development Goals-SDG16

- SDG16. SDG16 commits UN member countries to “to promote just, peaceful and inclusive societies” through transparency, anti-corruption and access to information measures.
- A measurement system for SDG Indicator 16.10.2 has not been finalized as yet. UNESCO has proposed that the system should cover 3 subjects:
- Whether the country has adopted guarantees?
- The extent to which those guarantees are in line with international standard?
- What steps the country has taken to implement the guarantees?

SDG 16.10.2 Assessment of Implementation Proposed by Civil Society (FOIANET)

- The extent to which a State is proactively disclosing information;
- The extent to which institutional measures have been put in place to assist with implementation;
- The extent to which requests for information are being responded to properly to be determined by submitting test requests and evaluating the responses (2-3 requests for information to 5-10 public authorities).

Access to Information: A Rationale for Implementation

- “Because liberty cannot flourish in the darkness, our rights and freedoms are protected by the daylight of public scrutiny as much as by the decisions of Parliament or independent judges”.

**Gordon Brown, former Prime Minister, United Kingdom 25th October, 2007-
‘Speech on Liberty’ at Westminster University.**

FOI Implementation Deficits

- “One of the biggest problems with the implementation of access to information laws is the lack of training of public officials and failures to develop internal information management and decision-making systems”. Open Society Justice Initiative

FOI Implementation Challenges

- ‘Culture of secrecy’;
- Cost of implementation;
- Creation, identification and management of information;
- Balancing access and other rights;
- Interpretation and application of exemptions; and
- Public awareness and interest
- Leadership

Why Access Rights Are Important?

“Right to information laws are necessary to “peel back the layers of bureaucratic red tape and political sleight of hand and get to the ‘hard facts’. Armed with information, even the most marginalized of citizens can take action in their own interests”. -Commonwealth Human Rights Initiative (CHRI)



Right to Know! Power to Change!

Before



After



OAS Guidance on Comprehensive FOI Framework

- New access to information regime should be reconciled with existing legislation: state secrecy, data protection, habeas data and public records
- Existing legislation that runs contrary to access to information should be rescinded or amended
- Supporting legislation must be considered to enhance right to access to information
- Governments need to develop a plan of action: key activities, indicate responsible parties; timelines for completion of the implementation of the law



Getting Started-Plan, Budget, Consult, Evaluate, Educate, Communicate & Train

1. Develop an Implementation Plan & Strategy for actualizing your Access to Information Regime.

2. Establish a coordinating and oversight body to review the implementation plan for access to information to secure successful implementation of access to information laws, regulations and policies.

3. Promote openness and information sharing generally in the Public Sector through proactive disclosure of information and seek to ensure appropriate cultural change.

4. Monitor progress towards implementation, identify challenges and suggest solutions to address the needs of specific agencies and types of agencies.

5. Identify appropriate ICT systems to support implementation of access rights.

6. Develop a strategy for comprehensive training and awareness of the public sector.

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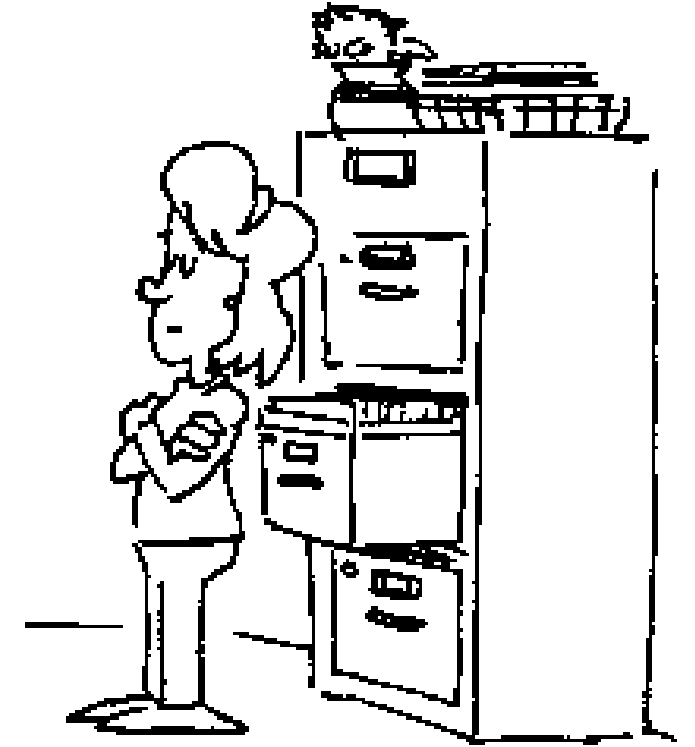
- 7. Consult and seek input from stakeholders including media, NGO's, public sector workers, private sector and members of the public on their access rights needs and viewpoints on access to information.
- 8. Develop comprehensive guidelines in relation to implementing the access legislation, regulations and policies
- 9. Review existing laws that prohibit or limit disclosure of public information.
- 10. Accept help from and engage with international stakeholders and partners on access rights!



OAS Guideline: Budget & Resource Priorities

- Realistic start-up budget and permanent budgets
- Adequate and permanent resources must be allocated to ensure a sustainable level of services
- Effectiveness strongly relies on resources allocated infrastructure: staff, information management and capacity building
- Forecasting resources on projected number of requests may require adjustments in first years of operation
- Efficiencies can be found in existing programs
- Measures to promote openness will mitigate costs associated with the treatment of requests over time

Information Commission requires financial independence and autonomy.



Importance of Records & Information Management

How Critical Is RIM To FOI Implementation?

In order to support an access to information law, an effective system for creating, managing and archiving information (including records) is imperative. Without such a system, it will be more difficult and time-consuming to locate and identify information and provide it within the timeframes mandated by applicable law. In addition, lack of an effective system can create suspicion as to the transparency and legitimacy of public officials and their actions. “Any Freedom of Information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if arrangements for their eventual archiving or destruction are inadequate.”

Draft UK Code of Practice on the Management of Records.

OAS Guideline Guidance on Information Management

Establish an information management policy to:

- preserve information
 - make information easily accessible in the future
 - assess the current filing process
 - develop a permanent and effective plan
- develop a data map
 - determine appropriate retention policies
 - determine appropriate destruction policies
 - train staff on the procedures

Benefits of Records Management



- Accountability
- Meets legal requirements
- Saves time and money
- Improve services to clients
- Better decision-making
- Reduces risks to the organisation

OAS Guideline Guidance on Training

- Training of information providers and users is a vital element for the implementation of the Law
- Initial Training: legislation, rights, obligations, policies, and procedures to ensure compliance with the Law
- Ongoing Training: education, complementary training activities, ensure officials are up-to-date on the law and procedures

RIM System Technology

- Responding process will require technology to:
 1. identify potentially relevant information
 2. collect that information
 3. produce the information in a format that is usable by the requestor
 4. maintain a record of the information produced and when a response was provided.

OAS Guideline on Technology Advantage

- Proactive disclosure: benefit to public authorities as it reduces costs and numbers of requests, and time spent by employees in searching for the information
- There are numerous technological solutions that can facilitate the implementation of the plan and drive down the cost of managing the information to make it accessible to the public
- Investment in technology can often pay for itself in a short timeframe.
- To garner support, a public authority may be able to identify cost savings derived from a technological solution by tracking: 1) storage requirements and corresponding costs, and 2) the time and cost associated with responding to requests for information

OAS Guideline Guidance on Training FOI Information Providers

- Importance of access to information
- Laws and scope of the rights of access
- Procedure for the presentation of requests
- Procedures for responding to requests
- Procedures for information management policies, maintenance of documents and access

OAS Guideline Guidance on Training FOI Information Users

- Importance of access to information
- Rights guaranteed by the law
- Procedures for presentation of a request
- Procedures for presenting an appeal
- Participation of Civil Society

Enforcement Models and Mechanisms: Jamaica



Access to Information Appeal Tribunal



9th Information Commissioner's Meeting (April 2015, Chile) Issues Identified

- 1. The continuing inequalities that limit the right to access information for all citizens;
- 2. The deterioration of the right to access to information because of the approval of legislation and public policies contrary to that right;
- 3. The weakening of the right to access information through the use of new technologies;
- The lack of adequate funding support and maintenance of the organs of supervision;

Access to Information Unit



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