

# Freedom of Information

# Review

ISSN 0817 3532

ISSUE No. 112

## Contents

### Articles

Data protection and freedom of information in Ireland\*  
by Maeve McDonagh 42

The Access to Information Act 2002 Jamaica—An early update  
by Aylair Livingston 47

\*Articles in the *FoI Review* that are refereed are marked by an asterisk.

## Credits

The *Freedom of Information Review* is published six times a year by the Legal Service Bulletin Co-operative Ltd.

### Editorial Board

Thomas B. Riley  
Harry Hammitt  
Maeve McDonagh  
Ulf Öberg  
Alasdair Roberts

**Editor:** Rick Snell  
tel 03 62 26 2062 fax 03 62 26 7623  
email: R.Snell@utas.edu.au  
website:  
<http://www.foi.law.utas.edu.au/>

**Editorial Co-ordinator:** Elizabeth Boulton

**Typesetting and Layout:** Last Word  
**Printing:** Thajo Printing Pty Ltd, 4 Yeovil Court, Wheelers Hill 3150

**Subscriptions:** \$75 a year or \$55 to *Alt. LJ* subscribers (6 issues)

### Correspondence to:

Legal Service Bulletin Co-op.,  
C/- Faculty of Law, Monash University,  
Clayton 3800  
Tel. (03) 9544 0974 email:  
[Liz.Boulton@law.monash.edu.au](mailto:Liz.Boulton@law.monash.edu.au)

Print Post approved PP:338685/00011

This issue may be cited as  
(2004) 112 *FoI Review*

© LSB Co-operative Ltd 2004

## Comment

At this time of year I am made acutely aware of the often awesome chasm between the policy and practice of FoI as I have to give two 50-minute lectures and set an assessment task on this topic to a group of young students and a few veterans of the public service or private enterprise – a rare event in any Australian university. The students are confused by the requirements and ambitions of the legislation and the actual availability of information. They find it difficult to reconcile the stories that appear in *The Australian's* FoI website (see side bar at <http://www.theaustralian.news.com.au>) with the basic operating requirement of a vibrant, liberal democracy, namely, the timely access to high quality and reliable information.

The engagement of News Ltd journalists with FoI, led by Michael McKinnon and supported by many others like Paul Whittaker, has been a feature of the last 12 months. This has been a much needed fillip for the practice of FoI. Yet it has been both costly and frustrating for those involved. In a recent successful AAT decision involving access to a series of Department of Foreign Affairs cables, the release of which would be 'absolutely inconsequential', according to a former Deputy Secretary of the Department of Prime Minister and Cabinet and High Commissioner to Canada from 1997 to 2001 who authored one of the cables (Paul Whittaker, 'Secrecy scarcely diplomatic' *The Australian*, 9 September 2004). Yet the attempt to access these documents cost News Ltd \$20,000 in legal fees and has now been appealed by the Commonwealth Government in the Federal Court.

Why wouldn't young Australian citizens be cynical about both the promise and delivery of open government in Australia?

Meanwhile Victorian State Ombudsman George Brouwer has announced that he will examine Victoria Police's handling of FoI requests as part of an investigation into the administration of the *Freedom of Information Act* in Victoria.

The investigation will focus on the timeliness and adequacy of the Government's responses to FoI requests, as well as the FoI policies and practices adopted by various government departments.

'I also intend to investigate the policies, practices and procedures of Victoria Police ... in responding to FoI requests,' Mr Brouwer wrote.

The investigation comes after the Ombudsman's office had received numerous complaints about the Government's handling of FoI requests, with some requests being processed more than 100 days after the statutory 45-day response period had expired.

Mr Brouwer has also begun an investigation into the Government's claim that no documents could be found to show correspondence between the offices of Police Minister Andre Haermeyer and Victoria Police Chief Commissioner Christine Nixon regarding gangland killings or police corruption. [Richard Baker, 'Ombudsman to Examine the FoI Process', *The Age*, 3 September 2004]

The experience of the last ten years of FoI law reform and reviews in Australia has lowered my expectations. Will this be just one more outstanding report which clearly targets what needs to be done to make FoI work — in the way our young citizens expect — but which is destined to be neglected?

**Rick Snell**

# Data protection and freedom of information in Ireland

## Introduction

The introduction of amending legislation in the areas of both Freedom of Information (Fol) and Data Protection (DP) in Ireland in 2003 has raised issues about the relationship between these two legislative regimes. This article seeks to explore that relationship, exploring three main issues:

1. the relationship between Fol and DP law in Ireland
2. third party access to personal data relating to others under the DP and Fol Acts
3. individuals' rights of access to information relating to them under the DP and Fol Acts.

## THE RELATIONSHIP BETWEEN FOI AND DP LAW IN IRELAND

### Legislative overview

The *Data Protection Act* was originally introduced in 1988 ('the DP Act'). Following the coming into force of the EU Data Protection Directive (Directive 95/46) the Irish government was required to introduce measures implementing the Directive by October 1998. These implementing measures were adopted with the passing of the *Data Protection Amendment Act 2003*. The new Act, together with the 1988 Act, constitute the *Data Protection Acts 1988-2003* ('the DP Acts'). The aim of the DP Acts is to protect the privacy of personal information. The Acts apply to data held by both public and private sector organisations. In 1997, the *Freedom of Information Act* ('the Fol Act') was passed and it entered into force in April 1998. The Fol Act provides a right of access to records including, but not limited to, personal information. The access rights in the Fol Act are subject to a range of exemptions covering areas such as personal information of others, commercially sensitive information, confidential information, cabinet records, records relating to the deliberative processes of public bodies etc. One significant feature of the Fol exemptions is that more than half of them are subject to a public interest override which means that a record can be disclosed even if it falls within one of the categories of exempt documents. The Fol Act has recently been amended by the *Freedom of Information Amendment Act 2003*, which introduces important changes to various exemption provisions of the Act but has limited effect on the provisions regarding the right of access to personal information.

### Access v privacy

The issue of reconciling the right of access in the Fol Act with the protection of the privacy of personal data under the DP Act is one that has not been definitively addressed in the legislation.

Personal data as defined in the DP Act is liable to disclosure under Fol in two sets of circumstances:

1. where the personal data is not covered by the Fol exemptions
2. where the public interest override applies.

### *Personal data not covered by the Fol exemptions*

The Fol exemption most likely to be invoked in refusing access to personal data is the personal information exemption. If the scope of that exemption is narrower than the protection afforded by the DP Acts, then material qualifying as personal data under the DP Acts could be disclosed under the Fol Act. The scope of the personal information exemption in the Fol Act is determined by the definition of 'personal information' in the Act. Personal information is defined as:

information about an identifiable individual

(a) known only to the individual, family or friends or

(b) held by a public body on the understanding that it would be treated as confidential.

This definition can be contrasted with that of personal data in the DP Acts:

Data relating to a living individual who is or can be identified either from the data or from data in conjunction with other information that is, or is likely to come into, the possession of the data controller.

The definition in the Fol Act is narrower since it is confined to two particular types of information. The only requirement of the definition of personal data in the DP Act is that the person be identifiable from the data or even from other data that is or is likely to come into the possession of the data controller. Also the definition of personal information in the Fol Act is subject to a number of exclusions that again render its scope narrower than that of the DP Act.

Thus it is possible for material that would come within the definition of personal data, for the purposes of the DP Act, to fall outside the scope of the personal information definition in the Fol Act and be liable to disclosure under that Act. The Information Commissioner has, for example, found that the sum of money paid to an individual by<sup>1</sup> a local authority for purchase of his home under a compulsory purchase order could be disclosed under Fol because it did not amount to personal information relating to that person. Similarly, the Commissioner held in another case that the names of recipients of aid under an agricultural payments scheme were not exempt from disclosure.<sup>2</sup>

The application of the other Fol exemptions to the requested information also requires consideration. One of these is s.32 which provides for refusal of Fol requests where the disclosure of the requested information is prohibited by an enactment. If the restrictions on disclosure in the DP Act could be construed as a prohibition on disclosure for the purposes of s.32 of the Fol Act, then a refusal of access under Fol would be mandated. However, one of the exceptions provided for under s.8 of the DP Act is that of processing 'required by or under any enactment'.<sup>3</sup> The Information Commissioner, in *Re X and South Eastern Health Board*,<sup>4</sup> held that under s.8(e), the restrictions on disclosure in the DP Act do not apply if disclosure is required by another enactment such as the Fol Act. This decision resulted in the disclosure of the names and work addresses of home helps employed by the

South Eastern Health Board, material that would have been covered by the DP Act.

Thus it is clear that at least some information which would qualify as personal data for the purposes of the DP Act would not be covered by the FoI exemptions.

### **Public interest override**

Even if the requested personal data qualifies as personal information for the purposes of the FoI Act exemption, it could still be disclosed where it would be in the public interest to do so, since a number of the FoI exemptions, including that relating to personal information, are subject to public interest overrides. This could result in disclosure under FoI of information which would qualify as personal data under the DP Act. An example is the disclosure under FoI of the details of expenses paid to members of the Oireachtas (Parliament).<sup>5</sup>

Thus in terms of both the scope of the FoI exemptions and the operation of the public interest test, information can be released under FoI which would be protected as personal data under the DP Act.

### **FoI v DP generally**

At a more general level, the *Data Protection (Amendment) Act 2003* contains a provision that appears to confirm the superiority of the access rights conferred by the FoI Act over the protections in the DP Act. It provides that '[a] right conferred by this Act [the DP Act] shall not prejudice the exercise of a right conferred by the FoI Act'.<sup>6</sup>

Regard must, however, be had to the Data Protection Directive which would have superior status to that of domestic law. A perusal of the Directive establishes that it contains a range of exceptions that could allow for disclosure under FoI, eg article 13(g): protection of the rights and freedoms of others.

Thus it appears that the operation of the right of access to information under the FoI Act takes precedence over the right to privacy of personal data in the DP Act.

## **THIRD PARTY ACCESS TO PERSONAL RECORDS UNDER FOI AND DP**

### **Third party access under DP**

The DP Act only provides for access to records relating to oneself and so the issue of third parties gaining access to personal records of others under the DP Act does not arise.

### **Third party access under FoI**

As we have seen, the FoI Act may operate to allow the disclosure of material that would qualify as personal data relating to individuals. This section of the article explores the application of the Act to such material. The use of the FoI Act by third parties to obtain access to records relating to individuals is a concern of many of those either employed by, or who have dealings with, the public sector.

Public servants may not wish details such as their names, salaries, expenses claims or information on their work performance to be disclosed. On the other hand, one of the roles played by FoI legislation is to bring government closer to the people. The disclosure of the

names of public servants who have dealt with particular matters, it is argued, contributes to breaking down barriers between citizens and the administration and enhances accountability. Information on salaries and expenses paid to public servants also arguably enhances accountability as does the disclosure of information relating to the work performance of public servants.

### **Personal information exemption**

The exemption most likely to be invoked in refusing access to personal material about individuals is the personal information exemption. The personal information exemption is subject to a public interest override, which allows for disclosure of third party personal information where the public interest in granting the request outweighs the public interest that the individual's right to privacy be upheld.

The operation of this exemption in the context of requests for access to information relating to public servants will now be considered. The Act excludes from the definition of personal information certain categories of information relating to public servants or contractors engaged by public sector bodies namely:

- the names of public servants or contractors
- information relating to the office or position or its functions or the terms upon and subject to which the individual holds his or her position
- information relating to the service or the terms of the contract
- anything written or recorded in any form by the individual in the course of and for the purpose of the performance of his or her functions or in the course of and for the purpose of the provision of the service
- the views or opinions of the individual in relation to a public body, the staff of a public body or the business or the performance of the functions of a public body.

Decisions of the Information Commissioner concerning information relating to public servants provide an insight into the practical operation of these provisions.

The decisions turn on the meaning of 'personal information' and on the Commissioner's approach to interpreting the public interest. They concern names and work addresses of public servants, their salaries, expenses and work performance.

In *Re X and South Eastern Health Board*, the Commissioner, as we have already noted, found that s.32 was inapplicable. He also considered the application of the personal information exemption to the names and work addresses of the home helps and he found that it was inapplicable on the grounds that such information was expressly excluded from the definition.

In *Re Mr X and Southern Health Board*,<sup>7</sup> the Commissioner found that the name of a Garda (police officer) which appeared in records relating to care proceedings relating to a child did not constitute personal information of the Garda. The basis of this decision was that the identification of a Garda as the Garda who was involved in particular matters in the course of his duties is not personal information about the Garda. In arriving at this decision, the Commissioner noted that this information was not information that would, in the ordinary course of

events, be known only to the individual or members of the family, or friends of the individual, nor was it held by a public body on the understanding that it would be treated as confidential.

In *Re McKeever Rowan and Department of Finance*,<sup>8</sup> contractors engaged by a public body argued that the names of a project team involved in the delivery of services under contract to a public body amounted to personal information and should be withheld from disclosure. The Commissioner noted that the Act expressly excludes from the scope of that exemption the names of those providing a service to a public body under a contract for services and found that the personal information exemption was therefore inapplicable and the material should be disclosed.

In *Re Mr X and RTE*,<sup>9</sup> a request for details of the salaries paid to employees of the national broadcasting company, the Commissioner held that the salary scale of a public sector employee is excluded from the definition of personal information in that it amounts to information relating to the position held or the terms upon which the individual holds the position which is expressly excluded. This information was therefore disclosed. However the specific salary of the employee was not excluded from the definition of personal information, as it did not qualify as 'information relating to the office or position' held by the employee or the 'terms upon and subject to which' he held the position. The Commissioner stated that the assigning of an individual to a particular point on a scale can often derive from some personal aspect of an individual's life, for example, their previous income or position, or as a result of long service, performance or qualifications. As the public interest in disclosing the amount of the salary was not outweighed by the public interest in upholding the right to privacy of the employee, the Commissioner concluded that it should not be disclosed. The point was however made that a different decision might have been arrived at had there been no salary scale or had the gap between the minimum and maximum been so large as to be meaningless. In *Re Mr X and RTE (No.2)*,<sup>10</sup> the Commissioner ordered the disclosure of the salaries paid to RTE's 25 highest paid presenters on the grounds that the salaries paid to presenters under a contract for services came within the scope of the exclusion and did not therefore constitute personal information of the presenters. The Commissioner distinguished the earlier decision on the basis that in the latter case, there were no known salary scales.

In *Re Oakley & The Sunday Tribune newspaper and the Office of the Houses of the Oireachtas*,<sup>11</sup> the Commissioner found that details of the expenses claimed by members of the Oireachtas amounted to personal information of those members as the exclusions from the definition of personal information did not apply to information relating to elected members. The Commissioner remarked also that even if elected members had been covered by the exception, the *specific* details of their expenses would have fallen outside the exception, as such details are not included in the expression 'terms upon which and subject to which [an office or position] is held'. However, the Commissioner went on to hold that the disclosure of the information was, on balance, in the public interest on the grounds that the public interest in ensuring accountability for the use of public funds greatly

outweighed any right of privacy which the members might enjoy in relation to details of their expenses claims.

In *Re Mr X and Department of Enterprise Trade and Employment*,<sup>12</sup> the Commissioner held that the expression of an opinion by an official in an e-mail about the work performance of another official amounted to personal information. With regard to the public interest issue, the Commissioner held that public servants are entitled to a degree of privacy in relation to the evaluation of their work performance, competence or ability and release of the information would involve a serious intrusion on the privacy of the officials concerned. He held that the right to privacy outweighed the public interest in the request being granted.

However, the views of an official with regard to the standard of performance achieved by a section of the Department did not amount to personal information concerning the individual who carried out the function in question, even though the disclosure with regard to the specific function of the Department's work could be linked to the individual. The Commissioner said that if he were to accept the argument that records should be withheld on the grounds that release of the material may result in the reader concluding that the comment was a comment on the work performance of a particular individual, an argument could be made that most information relating to the performance by a public body of its functions is personal information relating to the specific officials who carried out those functions.

Overall, the Commissioner's decisions suggest that access will be refused only where the information in question is truly personal in nature. Thus details of the specific salaries of public servants who are on a salary scale and comments on or evaluations of their work performance will be withheld while information relating to their names, their salary scales, their expenses and the performance of their section of the public service will be disclosed. The recent decision of *Re X and RTE (No.2)* goes against this general trend, however, since it allowed for the disclosure of specific salaries where no salary scale existed even though the Commissioner acknowledged that the level of the salary might well be determined by personal factors.

With regard to the treatment of specific salaries and expenses it is interesting to note that the Commissioner found it was in the public interest that the specific expenses of members of the Oireachtas be disclosed while it was not in the public interest for specific salary details of RTE employees to be disclosed. It is not clear how the Commissioner would treat an application for details of expenses of public servants but it is likely that, following the decision in the RTE case, that such information would be disclosed.

### **Personal safety exemption**

Another relevant exemption is s.23, the law enforcement exemption. The scope of this exemption was extended by the *FoI Amendment Act 2003* as a result of concern expressed by the Information Commissioner in his 2001 Annual Report that release of records under FoI could compromise the safety of individuals. In many cases, those most at risk would be public servants. Examples included the risk to housing officials as a result of the disclosure of records relating to anti-social behaviour or to

social welfare or tax officials as a result of disclosure of records relating to social welfare or tax fraud. The amendment to s.23 allows for refusal of access where disclosure could reasonably be expected to 'endanger the life or safety of any person'.

This exemption may prove useful in the refusal of access to records relating to public servants where there is a genuine danger to their lives or safety.

## INDIVIDUALS' ACCESS RIGHTS UNDER THE DP AND FOI ACTS

Rights of access to personal material are provided for in both the FoI Acts and the DP Acts. Section 4 of the DP Acts is the relevant section. That section entitles an individual, on making an application in writing, to be informed whether the data processed by or on behalf of the person controlling the use of the data (the 'data controller') includes personal data relating to the individual and, if it does, to have the information constituting the personal data communicated to him or her in intelligible form.

The FoI Acts do not make specific provision for access to personal information but rather it provides a right of access to personal information as part of the general right of access to records conferred by s.6 of that Act.

Questions which arise in this context with regard to the two access regimes include:

1. To what sort of personal data/information do the respective access rights apply?
2. How are data/records defined in the two Acts?
3. How far back in time does the right of access extend?
4. Do all individuals enjoy access rights under both regimes?
5. How do the exceptions to the access rights in the two systems compare?
6. What time limits are in place for complying with access requests?
7. What charges may be levied?
8. What sort of appeal mechanism is available in the event of refusal?
9. Assuming both avenues of access are open, which is to be preferred?

### 1. To what sort of personal data/information do the respective access rights apply?

As we have seen the DP Acts confer a right of access to personal data. The FoI Acts apply to all records held by public bodies including records of personal information. The definition of *personal* information is, therefore, not directly significant in relation to the exercise of the access right. In terms of accessing personal data relating to oneself, the FoI Acts have the advantage of being wholly open-ended. On the other hand the definition of personal data in the DP Acts is very broad and is likely to catch most, if not all, personal information held by state employers.

### 2. How are data/records defined in the two Acts?

The right of access in the DP Acts applies to personal data, which is defined as automated and manual data. The FoI Acts define 'record' as including any

memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the DP Act) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing. The FoI access rights, therefore, apply to both manual and electronic records and there is no need for the manual records to be contained in a structured filing system. Given the broad scope of the definition of personal data in the DP Acts and the fact that most public service records are likely to be in structured filing systems, there is little difference between the Acts in terms of the public service data/records covered by them.

### 3. How far back in time does the right of access extend?

The right of access to personal data under the DP Acts applies to all data kept by a data controller. There is no limit with respect to the age of the data.

The FoI Act confines the right of access to records created after the commencement of the Act in April 1998. This limitation is, however, subject to two exceptions, one of which concerns records which 'relate to personal information about the person seeking access to the records'. The exception which allows for full retrospection with regard to personal information does not apply in the case of requests by members of the staff of a public body for personnel records created before April 1995, provided these records are not being used or are not proposed to be used in a manner which will adversely affect the interests of the individual.

The meaning of 'being used or proposed to be used in a manner which will adversely affect the interests of the individual' was considered in a case which was ultimately appealed to the High Court: *Minister for Agriculture and Food v Information Commissioner*.<sup>13</sup> The facts were that the public servant in question made a request to see his personnel file. The Department refused to grant access to records created prior to 1995 on the basis that they were not being used or proposed to be used in a manner or for a purpose that adversely affected the interests of Mr ABI. After the start of the review, the Department had sealed some of the pre-1995 records on the file and endorsed the envelope to the effect that the records were not to be consulted in the future. The High Court held that there were reasonable grounds for believing in the possibility of future use because of the mere presence of the sealed envelope with a note attached to it that it was not to be consulted in the future. This was more likely than not to excite the curiosity of anyone who consulted the file; so much so, that such a person would be tempted to open the sealed envelope, in which event, its contents the Court held might well be used to the applicant's detriment.

The scope of the DP Act is clearly broader in terms of its retrospective effect than the FoI Acts especially with regard to access to pre-1995 personnel records.

#### 4. Do all individuals enjoy access rights under both regimes?

While the Fol Acts apply only in respect of records held by 'public bodies', the DP Acts apply to personal information kept by any data controller. The public bodies covered by the Fol Acts include those listed in the First Schedule to the Act. Initially the Act applied to Government Departments and about 60 or so central government agencies such as the Revenue Commissioners. Over the last five years its scope has been extended to over 400 bodies including health boards, local authorities, voluntary hospitals, bodies working with people with physical and intellectual disabilities, the industrial development agencies, RTE and the Universities and the Institutes of Technology. Important bodies that remain outside the scope of Fol include commercial semi-state bodies such as the ESB and Coillte and also the Gardai. Thus not all individuals will be in a position to exercise the Fol access rights.

#### 5. How do the exceptions to the access rights in the two systems compare?

The two Acts are subject to a number of exclusions and exemptions. Applicants for access to their own personal records under the Fol Acts are, to a great extent, treated in the same way as any other applicant in terms of the application of the exemptions. The only differences are that first, the personal information and commercially sensitive information exemptions cannot be invoked to deny an individual access to information relating to themselves<sup>14</sup> and second, that a request for access to medical, psychiatric or social work records relating to the requester may be refused on the grounds that their disclosure might be prejudicial to the physical or mental health or the emotional well-being of the requester.<sup>15</sup>

Not all of the Fol exemptions or exclusions are necessarily relevant to applications for access to personal information. In particular, the exemptions relating to meetings of the government, parliamentary matters and financial and economic interests of the state are unlikely to be applicable in respect of applications for access to an individual's own personal information. Most of the exclusions from the Fol Acts are irrelevant to applications for access to personal information.

In determining the scope of the exceptions to the right of access in both regimes, the wording of the particular exception is significant. Relevant questions include whether the application of the exception is mandatory or discretionary, whether it is subject to a harm test or to a public interest override. While all of the DP Act's exceptions are expressed in mandatory terms, the application of many of the Fol Act's exemptions is discretionary.

Most of the exceptions found in both Acts are harm based. The public interest override is only to be found in the Fol Acts. It allows for the disclosure of records which would otherwise be exempt where the public interest would, on balance, be better served by granting than by refusing the access request.

In terms of application of the exclusions and exemptions, it appears that apart from the operation of the public interest override, there is little to choose between the two Acts.

#### 6. What time limits are in place for complying with access requests?

While the DP Acts provide for a time limit for compliance with access requests of 40 days from the satisfaction by the applicant of the procedural requirements laid down in s.4, decisions under the Fol Acts on requests for access to records must, in general, be given no later than four weeks after the day on which the request is received.

#### 7. What charges may be levied?

The DP Acts allow for the charging of a fee in respect of access to personal information. That fee may not exceed either the amount prescribed by regulation or an amount regarded by the Commissioner as reasonable, having regard to the estimated cost of compilation. A figure of £5 (€6.35) is set by the Regulations.<sup>16</sup> In the case of the Fol Acts, access charges are made up of three components, an application fee of €15, a fee for search and retrieval; and a fee for a copy of a record, currently set by Regulations at £16.50 (€20.95) per hour and 3p (38c) per page for paper copies respectively. Special arrangements exist in respect of requests for access to personal information. The Fol Acts provide that the application fee does not apply to requests for personal information and that the search and retrieval fee shall not be charged in respect of such requests unless the request relates to a significant number of records.<sup>17</sup> There is provision also for waiver of the copying fee, where it would not be reasonable to charge such a fee, having regard to the means of the requester and the nature of the record requested.<sup>18</sup> For those seeking access to personal information therefore, the charges under Fol are likely to be low and in practice many public bodies do not charge any fee for such requests.

#### 8. What sort of appeal mechanism is available in the event of refusal?

Complaints relating to refusals to allow access to personal data under the DP Acts may be made to the Data Protection Commissioner. The Commissioner has the power to investigate a refusal of a subject access request. He or she has the power recently conferred by the 2003 Amendment Act to seek an amicable resolution of the matter.<sup>19</sup> Alternatively he or she may issue an enforcement notice requiring that such access be given. The data controller may appeal to the Circuit Court against the requirement specified in the enforcement notice within 21 days of the service of the notice. Where no such appeal is brought or where the court on appeal confirms the terms of the notice, the data controller will be subject to prosecution under s.10(9). That provision makes it an offence to fail or refuse, without reasonable excuse, to comply with a requirement specified in an enforcement notice. Under the Fol Acts, appeals against a refusal of the head of a public body to grant access to records may be brought internally,<sup>20</sup> in the first instance,<sup>21</sup> and if the applicant is not satisfied with the outcome of the internal review process, he or she can make an appeal to the Information Commissioner<sup>22</sup> and to the High Court on a point of law<sup>23</sup> and ultimately to the Supreme Court. The decision of the Information Commissioner on appeal is binding on the public body concerned.<sup>24</sup>

The system of appeal provided for under the FoI Acts has a number of advantages over that provided for under the DP Acts. First, it allows for the bringing of internal appeals. That method of appeal, which is not available under the DP Acts, has the advantage of being speedy and cost effective. Second, and more importantly, the system of appeal provided for under the FoI Acts gives the applicant himself or herself, the right to decide how far to bring the appeal. Under the DP Acts, it is up to the Data Protection Commissioner to decide whether or not to issue an enforcement notice. Should he or she decide not to take that route, the matter cannot progress any further.

### 9. Assuming both avenues of access are open, which is to be preferred?

Overall, in comparing the access provisions of the two Acts, it is clear that while there is little to choose between them in terms of exclusions and exemptions, the greater emphasis which is placed on the use public interest tests in the FoI exemptions seems to render that Act more favourable to the provision of access. The FoI Acts is also to be preferred in terms of its time limits and its appeals mechanism. In cases where access rights are exercisable under both Acts, it appears, therefore, that the applicant should prefer the FoI Acts.

Another question is whether it is open to the employee to use each regime in turn in order to access the requested records. This matter was clarified by the insertion in the DP Amendment Act 2003 of the new provision stating that a right conferred by the DP Acts shall not prejudice the exercise of a right conferred by the FoI Act. Thus, it appears to be open to an individual seeking access to personal information to use either Act. If he or she is dissatisfied with the outcome of the application there is nothing to prevent the applicant initiating an application for access under the other set of provisions.

### CONCLUSION

The access rights provided for under the FoI Act have survived the enactment of the DP Act 2003 and where there is conflict between the two sets of provisions, it appears that the FoI Act will prevail. The result is that personal data as defined in the DP Act can be disclosed to third parties under the FoI Act.

One area in which this is already occurring is that of the provision of access to information relating to public servants. However, there are important safeguards in the FoI Acts which protect against the use of the Acts to gain access to private information concerning public servants. The inclusion in the FoI Amendment Act of the personal safety exemption ensures that such information cannot

be disclosed where to do so would endanger the public servant concerned.

In terms of utilising the right of access to personal data/information, the regime provided for under the FoI Acts is to be preferred over that available under the DP Acts, assuming the holder of the information is covered by the FoI Acts and the record does not fall foul of the limit on retrospective application of the Act.

The relationship between DP and FoI law is unnecessarily complex. It is difficult to understand why the opportunity was not taken in 2003 to develop a single coherent legislative code rather than to press ahead with the passing of two amendment Acts which render this area of law even more confusing.

**MAEVE McDONAGH**

*Professor Maeve McDonagh teaches law at University College Cork.*

email: m.mcdonagh@ucc.ie

This paper was first delivered at an IIR conference 'Data Protection in Ireland' held in Dublin on 16 February 2004.

### References

1. *Re Meath Association An Taisce and Meath County Council*, Information Commissioner, unreported, Decision No.99114, February 26, 2001.
2. *Re Mr & Mrs ACG & Ors and Department for Agriculture, Food and Rural Development*, Information Commissioner, unreported, Decision No.9951, 99594, 99596, 99598 and 99606, November 27, 2001.
3. s.8(e),
4. Information Commissioner, unreported, Decision No.000193, October 31, 2001.
5. *Re Oakley & The Sunday Tribune newspaper and the Office of the Houses of the Oireachtas*, Information Commissioner, unreported, Decision No.99168, July 27, 1999.
6. s.1(5)(a).
7. Information Commissioner, unreported, Decision No.99146, February 21, 2002.
8. Information Commissioner, unreported, Decision No.99183, January 21, 2003.
9. Information Commissioner, unreported, Decision No.020248, July 18, 2002.
10. Information Commissioner, unreported, Decision No.010102, February 10th, 2004.
11. Above, n 5.
12. Information Commissioner, unreported, Decision No.99451, November 19, 2002.
13. High Court, unreported, 17/12/1999, O'Donovan, J.
14. s.28(2)(a), s.27(2)(b).
15. s.28(3).
16. S.I. No. 347 of 1988.
17. s.47(4)(a).
18. s.47(4)(b).
19. s.10(1)(b)(ii).
20. s.14.
21. Assuming the original access decision was not made by the head of the public body concerned.
22. s.34.
23. s.42.
24. s.34(14)(b).

## The Access to Information Act 2002 Jamaica— An early update

This is a report on the first few months of operation of the Jamaican *Access to Information Act 2002*. The legislation came about after a long period of discussion both inside parliament and by civil society organisations.

Laura Neuman, in 'Access to Information: Jamaica Case Study', a draft paper prepared for the Conference on Access to Information in the Americas, a Project of the Inter-American Dialogue stated that 'in Jamaica, such

strange bedfellows as human rights organisations, media owners, private sector leaders, and the civil service association joined together'. From that wide assortment has come a great commitment to the legislation and a well-versed appreciation of the importance of the implementation process. This early update outlines some of the experiences in Jamaica.

## Background

### Legislative history

1991	Initial interest generated by the discussions leading up to the 1992 CARICOM Charter of Civil Society for the Caribbean Community, which included a provision for Freedom of Expression and Access to Information
1995	Green Paper tabled in Parliament
1996	Wells Committee report entitled Freedom of Information: A Door to Open Government
1998	the Jamaica Cabinet approved the proposal for the enactment of a Freedom of Information Act, which was to incorporate the Wells report recommendations
1999	Parliamentary Counsel drafted a Freedom of Information Bill but not tabled
1999	Carter Centre seminar to release guidebook on combating corruption in Jamaica
2000	Media Association of Jamaica holds Fol Seminar attended by Minister of Information Maxine Henry-Wilson
2001	Minister Henry-Wilson announced changes to Fol drafting instructions and new name Access to Information Bill
2002	Joint Select Committee hearing including 4 days of public hearings
2002	Access to Information Act 2002 passed
2002	August, Carter Centre convened workshop for over 25 ministerial staff, Access to Information Unit and civil society representatives to work on implementation plans
2004	January 5 Act commences
2004	June 2004 The Carter Center, in collaboration with the Jamaican Bar Association and the Independent Jamaica Council for Human Rights, launched the Volunteer Attorneys Panel to provide free legal representation to those denied their right to government information

## Access to Information Unit—Jamaica

The Access to Information Unit is a Unit falling under the Jamaica Archives and Records Department of the Office of the Prime Minister. The Director has the wide mandate of oversight of the implementation and monitoring of the *Access to Information Act*.

Unlike some jurisdictions having Fol laws, the post of Director in the Jamaican context does not carry the power to sanction, as time progresses, flagrant breaches of the Act. The Unit's powers are largely persuasive, albeit in the context of the possibility of sanctions under the Act itself.

In evaluating the government's performance in meeting its obligation under the Act of making information readily available, this article brings to the reader a report card of sorts in respect of the effectiveness of the activities of the Unit itself, and by extension, the government

and also the Public Authorities involved in the first round of the administration of the Act.

Questions as to the adequacy of such activities and general methodologies may be raised, or on the other hand, quelled. Suffice to say that the program continues to receive the support of the administration spearheaded by the office of the Minister of Information, Senator the Honourable Burchell Whiteman.

In any event, it is expected that this exercise will provide the basis upon which to build on the strengths of the Access to Information (ATI) Program as it currently exists, and to identify and correct the inevitable areas of weakness and deficiencies.

## Commencement of the *Access to Information Act*, 5 January 2004

The *Access to Information Act* commenced on 5 January 2004 and, pursuant to s.5(1)(a), and the Access to Information (Public Authorities) Order, 2004 made by the Minister responsible for Information, was made applicable to the following Ministries and Agencies:

- Ministry of Finance and Planning
- Ministry of Local Government
- Office of the Cabinet
- Office of the Prime Minister
- Jamaica Information Service (JIS)
- National Works Agency (NWA)
- Planning Institute of Jamaica (PIOJ).

Before providing an assessment of the progress of the Access to Information program at the end of the reporting period (January to March 2004), an account will be provided of the preparatory activities undertaken by the Unit immediately before and since commencement.

## A summary of pre and post commencement activities

### *Sensitisation sessions*

Sensitisation sessions continue to be conducted with over 4339 people sensitised at 16 Ministries, 23 Agencies/Departments and 11 Values and Attitudes/ATI Fora since the establishment of the Unit.

Of that number, 2164 were sensitised during this Reporting Period. The sessions have been well received overall and this assessment has been informed by an evaluation exercise undertaken at the end of each session where participants are required to complete evaluation forms on the effectiveness of the session and the presenter in bringing the message across.

### *Public officers' guidelines*

A draft Manual, 'Guidelines on the Discharge of Functions under the Act by Public Officers' was made available (hard copy and compact disc) to the Entities. These Guidelines were prepared by the Unit and contain guidance and relevant recommendations on procedures to be followed in the administration of the Act, relevant forms to be used (prescribed and suggested) and a directional guide to the Entities administering the Act at any point in time.

### **A user's guide**

An additional Manual 'A User's Guide to the Access to Information Act' was also disseminated (hard copy and diskette) to Phase I Entities, civil society groups including the media, and any other group or individual for their information and greater understanding of the Act and its purpose.

### **Advisory**

Further to a policy directive by the Honourable Minister of Information that Entities not currently falling under the operation of the Act should nonetheless act in the Spirit of the Act, an Advisory was disseminated in January 2004 containing instructions on how this was to be translated into practice.

### **Newsletters**

Two issues of the newsletter, *The Access Quarterly* have been produced and made widely available. They carry information on the program and pointers and recommendations for best practices.

### **Media coverage**

The Unit, through the work of its Public Education Manager, arranged and conducted a number of radio interviews during the week of 5 January 2004. Articles on Access to Information also appeared in the print media.

The Jamaica Information Service continues, (through its website and weekly pages carried in the *Jamaica Herald*), to be the primary dissemination point for information generated by the Unit.

### **Road map**

A directional guide on the location and names and contact information for Responsible Officers for Phase I was developed and made available to the Public Authorities themselves and other stakeholder groups.

The Guide is now being updated to include additional similar information in respect of Phase II.

### **Appeal Tribunal**

The Appeal Tribunal was established in December, 2003 pursuant to s.32(1) and the Second Schedule of the Act. It is comprised as follows: Mrs Dorothy Pine McLarty, Chairperson; Hon David Coore OJ, QC; Hon Dr. Oswald Harding OJ, CD, QC; Mr John Maxwell CD and Rev Phillip Robinson.

The Tribunal is now in the process of defining its Rules of Procedure and meets intermittently in an effort to keep updated on developments concerning the Act.

### **Applications for Access to Information and treatment ... The pulse of ATI**

The most serious criticism that can be leveled against an Access to Information law is a charge that it is ineffectual. The Unit continues to be very aware of the necessary duality of use of the law by the public and constant monitoring of how effectively it is being administered by the government.

The Phase I Entities have submitted reports on the requests for information received by them during this

inception Quarter. A total of 84 applications was received for the months of January to 31 March 2004.

### **Cabinet Office**

The Cabinet Office received a total of 14 Applications for the Reporting Period. Of that number, nine applications were transferred from other Phase I entities. Applicants were largely from civil society groups including the media, and the general public.

The applications were treated in the following manner:

Full grant of access: 4  
 Deferral of access: 8  
 Transfer of application(s): 1  
 Information routinely available: 1

The Cabinet Office, under the leadership of the Cabinet Secretary and Head of the Permanent Secretaries' Board, Dr Carlton Davis, has been exemplary in its approach to the Program, evidenced by its laudable records management practices and the novel initiation and facilitation of Retreats at which the entire ATI Program is examined and critiqued by a number of persons, including Permanent Secretaries, Information/Documentation managers and stakeholder groups.

### **Office of the Prime Minister**

The Office of the Prime Minister received a total of 19 applications for the period. This public authority reports that this period was challenging with all of the requests being submitted by applicants during January and February. No applications were received in March.

The requests came primarily from the media, private organisations, academia and government.

The applications were treated in the following manner:

Full grant of access: 2  
 Deferral of access: 1  
 Transfer of application (s): 12  
 Unable to process (document does not exist): 4

Under the leadership of its Permanent Secretary, Mrs Charmaine Constantine, this Ministry is obliged to meet each month to address ATI matters and to ensure the timely release of non-exempt information. This is achieved through the instrumentality of an ATI advisory committee established in the first month of this reporting period.

### **Ministry of Finance and Planning**

The Ministry of Finance and Planning received the majority of requests during the period, with a total of 30 applications. Two were carried forward to reporting period quarter 1 (April–June 2004). Applications were received primarily from civil society. The print media also submitted a large portion of the total requests received. The sum of \$980 was collected for copies done.

The applications were treated in the following manner:

Full grant of access: 6  
 Deferral of access: 2  
 Transfer of application: 9  
 Information routinely available: 11  
 Application abandoned by applicant: 2

### **Jamaica Information Service (JIS)**

The JIS received one application which could have been regarded as an Access to Information request, in light of

this entity already being in the business of disseminating information.

The request was received from the group Jamaicans for Justice. Full access was granted and this was done within the initial prescribed period of 30 days.

### ***National Works Agency (NWA)***

The NWA received a total of six applications. Of that number, one was carried forward to the next quarter.

Three requests were received from the civil society group, Jamaicans for Justice, one from the press, two from the general public.

This public authority reports that five of the six applications were dealt with within the initial 30-day period stipulated under the Act.

A total of \$6350 was collected for copies made of official documents.

The applications were treated in the following manner:

- Full grant of access: 2
- Deferral of access: 1
- Transfer of application: 1

Under the able guidance of Mr Ivan Anderson, CEO, and Information Manager, Ms Marion Edwards, this Agency has been congratulated by stakeholder groups as being the most proactive and exemplary in its approach to the provision of information requested.

### ***Ministry of Local Government, Community Development and Sport***

The Ministry of Local Government received a total of 13 applications for the reporting period. Applicants were largely from non-governmental organisations. The sum of \$250 was derived from copies made of official documents.

The applications were treated in the following manner:

- Full grant of access: 8
- Transfer of application: 3
- Treated informally: 2

### ***Planning Institute of Jamaica (PIOJ)***

The PIOJ received one application from the civil society group, Jamaicans for Justice. That request was deferred.

## **Applications of interest—samples**

### ***Cabinet Office***

- Terms and conditions and value of contracts for consultants in the government service
- Expenditure by the government under the Social Economic and Support Program (SESP)
- Government policy and plans for the engagement of consultants, including inspection of job descriptions.

### ***Office of the Prime Minister (OPM)***

- Correspondence between OPM and the United States Embassy regarding National Security, US/Jamaica Relations, 1972–2003
- Minutes of the committee deciding on the conferment of National Honours and Awards and the details of the decision regarding the conferment of the title 'Most Honourable'

- Contract for the General Manager of the Railway Corporation
- Copy of the Rattray Review of the Angus Report on former Minister of Water and Housing, Karl Blythe and Operation Pride
- Copy of Accounts for Non-Aligned Conference held in Malaysia, 2003
- Social Economic and Support Program (SESP) Accounts for St Catherine, 2001–02, 2002–03.

### ***Ministry of Finance and Planning***

- Contracts relating to the renovation of the residence for the Governor of the Bank of Jamaica
- Original terms of all Euro bonds issued by the Ministry
- Report on the operations of Caymanas Track Ltd
- Current financial statements for a number of children's homes in the corporate area
- Finsac's sale of Island Broadcasting Services Ltd
- Sale of Hot 102 FM.

### ***Ministry of Local Government Community Development and Sport***

- Payment vouchers on work commissioned by Ministry
- Inspection of signed contracts and information on their value
- Certificates of completion for work contracted to be done
- Details on projects commissioned by the Ministry.

### ***National Works Agency***

- Copies of contracts related to most of the projects undertaken by the NWA
- Copies of the contract for the Northern Coastal Highway Improvement Project
- Number of contractors paid, and the amount owing
- Contract for installation of curb stone on Charlemount Drive, Kingston 6.

### ***Planning Institute of Jamaica (PIOJ) & the Jamaica Information Service (JIS)***

- Policy Guidelines on Access to Information.

## **Matters arising from implementation**

Notwithstanding commendable efforts to date, the Program has not been without the inevitable drawbacks. Based on feed back from stakeholder groups, and the experiences of both the Phase I Entities and the Access to Information Unit, the following matters have arisen for consideration and resolution:

- business versus calendar days in the computation of time under the Act
- unsigned application forms (prescribed) and their validity
- creation of 'new' official documents from the gathering and compilation of information not contained at one source
- time being taken to respond
- assigning of reference numbers to applications

- inaccessibility of files located in Ministers' offices
- reticence of staff not directly involved with Access to Information in public authorities to assist in the location and retrieval of information requested.

The advice of the Attorney General has been sought and is being awaited in respect of the first three matters itemised.

The length of time taken to respond has been discussed with the Entities and it has been explained that a number of factors conspire to stall the finalisation of a request:

- ATI administrators have expressed concern at the reluctance of some staff to provide information requested by them expeditiously. This has been particularly so in respect of files located in the a few offices of Ministers of Government
- it has also been noted that the time taken to clarify requests tends to affect the overall time taken to finalise them.

It would seem, therefore, that the need for on-going sensitisation of staff on ATI, at all relevant levels in public authorities, has never been more apparent. Public servants should be made to realise that Access to Information has, 'unfortunately' for some, come to be everybody's business and that we all stand to be embarrassed by a less than adequate and satisfactory attempt at the administration of the Act.

Additionally, it has been posited that the increased support of Heads of Departments should be sought as this could possibly address this particular problem to some degree.

Finally, increased public awareness on the necessity of making requests as clear as possible is another way of addressing the stated difficulty.

The assigning of Reference Numbers to Applications has also been discussed and the Entities reminded that this is essential. The ATI Stakeholder Committee reports that this matter appears to have been satisfactorily addressed.

Overall, and as was expected by the Unit, some of the delays may also have been unwittingly occasioned by the commendable desire of the Phase I entities to seek the best advice on grey areas of interpretation and to consult carefully on complex applications.

### **Costs of implementation**

It was thought that it would be useful to represent, as accurately as possible, the costs incurred by the administration in its implementation of the Access to Information Act.

Pre and post commencement expenditure for Entities under Phases I and II will be compiled and presented in the Report for the next reporting period (April–June 2004).

### **Monitoring**

#### ***ATI Advisory Committee of Stakeholders***

This Committee, under the initiative of the Honourable Minister, was established in February, 2004. It comprises representatives from Civil Society organisations with the primary mandate being that of non-government

monitoring and recommendations on the implementation of the ATI Act within a constructive forum.

Meetings have been continuous since inception, with meetings taking place on the third Wednesday of each month and to which the Honourable Minister of Information and the Director, ATI Unit are invited in order to discuss concerns etc arising from implementation. The Committee will liaise with the executive of the ATI Association of Administrators (ATIAA) in a continuing bid to be fully cognisant of all matters affecting public authorities as they attempt to implement the Act.

Its input in identifying glitches in the process and making relevant recommendations has been most helpful to the Unit in its bid to effectively monitor the program.

#### ***ATI Association of Administrators (ATIAA)***

This body has now been established. Its primary mandate is to act as a secondary self regulatory body in respect of the administration of the Act by Public Authorities and to actively liaise with the ATI Committee of Stakeholders. From this is expected to flow a greater understanding of the role and expectations which they are expected to fulfill and satisfy, the sharing of relevant experiences and technical knowledge with each other and assistance to the Unit in its monitoring role.

#### ***Internal advisory committees***

All Phase I Entities have established structured secondary advisory committees to address matters arising from applications.

Generally, the Entities, as part of basic records management practices, maintain records committees, which, besides advising generally on issues arising from records systems in place, are so structured and composed as to enable the consideration of, and initial guidance, on access to information matters as well.

#### ***Websites***

All Phase I Entities have websites in place that carry information on Access to Information. Various recommendations for improvement of content as regards ATI have been made by the Unit.

#### ***Civil society—the interplay***

There continues to be a relatively strong relationship between the Unit and Civil Society organisations. An umbrella group, The ATI Committee of Stakeholders, brings together the local Human Rights group Jamaicans for Justice, the Media Association of Jamaica (MAJ), the Press Association of Jamaica (PAJ), the Farquarhson Institute, the Private Sector Organisation of Jamaica (PSOJ) and others.

During this quarter, (and the preceding one and a half years), information on the Act and associated activities and events, was continuously fed to the media (newsletters, press kits containing all relevant legislation and other general information). This was expressed to be with the intention that that group, being a primary stakeholder, would utilise this information to inform its public about access to information.

While the media has sought to perform its role of monitoring the progress and effectiveness of the administration

of the Act, it is desirable that the all-important role of informing the public through their own offices about the Act, its objectives and value, be as satisfactorily and adequately executed.

Further, enough care is not being taken to accurately reproduce basic factual information relayed to them by the Unit

In addition, other groups need also to be more energised in the role which they have to play. The group, Jamaicans for Justice is by far the most proactive and involved.

Many of the requests received by the Entities were submitted by local human rights groups and the media. ATI Administrators have noted that once access is granted and arrangements are put in place to facilitate the examination/inspection of documents required, the applicants fail to turn up.

While it is understood that many of the requests are submitted for the purposes of testing the administration on the value being placed on this initiative and how effectively it is being implemented (and this is indeed appreciated and welcome), it is disingenuous, not to mention frustrating, for ATI administrators, for the process to be prematurely abandoned by applicants once they are notified of the grant of access.

### **Public awareness: taking the show on the road**

Public awareness of the implications of the Act, its objectives and many benefits, was not as would have been desired. The breadth of the Unit's activities in this regard was confounded by the overall budgetary constraints with which the current administration has had to contend.

The Unit's activities were limited largely to continuous strategic sensitisations in the various Government entities, dissemination of information through the auspices of the Jamaica Information Service and strategically placed news items and articles on various ATI events.

A methodical approach to informing the public through the media, relevant literature and general advertising was limited. It has been observed that since the beginning of the Reporting Period, the numbers of applications for information has declined. It has been the generally held view that this has been due to the general public's lack of awareness.

It is, however, expected that this drawback will be somewhat alleviated as plans are now being brought to finality for a collaborative approach with civil society groups, aimed at the development of relevant literature and advertising strategies.

In the meantime, efforts made by the Unit, since inception, have been re-energised. Approaches continue to be made to various non government organisations and agencies for consideration of assistance in this regard.

Additionally, the media is being encouraged to adopt a more proactive approach to the filtering general information to their readers, listeners and viewers.

### **Next steps Phase II**

The following Entities are slated to be in Phase II, which commenced in May 2004: Ministry of Water and Housing, Ministry of Education, Ministry of Agriculture, Ministry of Health, Ministry of Commerce, Science and Technology

Bank of Jamaica, Accountant General's Department and Urban Development Corporation

These Entities were selected for this Phase based on assessments of the degree of preparedness. This activity was informed by an evaluation of Action Plans prepared by them and submitted to the Unit in 2003. Responsible Officers have been appointed, pursuant to the Access to Information Regulations. The Office of the Chief Parliamentary Counsel has been asked to prepare the Access to Information (Public Authorities) (No. 2) Order, 2004.

### **Preparatory activities for Phase II**

The Unit has conducted sensitisation sessions with all of the Entities slated for Phase II. These activities began in January 2004.

Efforts continue to be made by these Entities to further the sensitisation and preparatory exercise. The Unit desires however to offer sessions to selected public officers on the recently passed regulations and amendments to the ATI Act.

Mrs Milford-Allen, ATI Responsible Officer for the Ministry of Agriculture, reports that sensitisation sessions for all members of staff have continued. Educational materials have been developed and disseminated. One request had been received and was being addressed.

All managers at the Bank of Jamaica have been exposed to sensitisation sessions conducted by the Unit and these have been continued by relevant personnel at the Bank.

It is to be noted that even at this point in time, the Ministry of Land and Environment has expressed very strong concerns about its ability to be ready for the applicability of the Act to its functions and which is slated for Phase IV.

### **Phasing of Departments, Agencies, etc of Ministries**

It is proposed that Entities falling under Phase I Ministries should be brought under the operation of the Act as soon as possible. To that end, Action Plan templates are being disseminated to these entities in an effort to arrive at an informed understanding of their state of readiness.

In particular, the Ministry of Local Government, Community Development and Sport has begun auditing its agencies in an effort to assess their readiness for the time when those agencies will come on stream. Concern has been expressed by Ms Althea Scott, Director, Information and Documentation at that Ministry, on the state of the records at particular parish councils. Efforts have begun in an attempt to address these concerns.

Similarly, Mr Rohan McCalla, Information Manager of the OPM, has indicated that he has now begun visiting the agencies falling under that Ministry in an effort to have a better understanding of their readiness.

### **AYLAIR LIVINGSTON**

*Aylair Livingston is Director, Access to Information Unit, Jamaica Archives & Records Department, Office of the Prime Minister, Jamaica.*