

Review of Freedom of Information Bill 2016 against The Consolidated List of Recommendations provided from Civil Society and Private Industry

- **Total Recommendations included- 7.**
- **Total Recommendations disregarded- 23**

1. Section 2: Interpretation

- The definition of “public authority” should be expanded to include legislative, administrative and non-statutory bodies. The FOI Bill should also cover private organizations that operate with substantial public funds and performing public functions and services. If this is accepted, section 3(2)(c) should be deleted.

i. NOT INCLUDED

2. Section 3: Application

- 1 (a) – Any further exemption to records should be made by the Information Commissioner and not the Minister.

i. NOT INCLUDED

- (2) – Should this include private companies receiving public funds?

i. NOT INCLUDED

- (3), (4) & (5c) – Any further exemptions to public authorities should be made by the Information Commissioner and not the Minister.

i. ADDED: Decisions are to be made in consultation between Information Commissioner and Minister. However, The Minister still retains majority of power.

3. Section 4: Objects of the Act

- There should be obligations on the Government to enforce and uphold the objects stated.

i. ADDED

4. Section 4: Public Interest

- Needs to be more clearly defined in the Act. The test draws from best practices, but leaves definition to the Information Office. This needs more guidance.

i. ADDED: This is defined further in Bill & Regulations

5. Section 6: General Rights of Access

- (1) – Should be applicant and purpose blind. Why not include Haitians and Cubans for example?

i. NOT INCLUDED

- (3) – The thirty years referenced in the “sunset clause” should be reduced to 15 years.

i. NOT INCLUDED

6. Section 7: Application of Access

- (4) – The extension period should be reduced to 10 days. Reasonable cause for such extensions should be limited to force majeure events.

i. NOT INCLUDED

- (5) – This section should state the actual legal reasons and not simply ‘reasons’.
 - i. NOT INCLUDED*
 - (5) – The appeal process is burdensome and expensive. Appeals are not allowed in Magistrates Court. Having to appeal to The Supreme Court places an excessive burden on someone requesting information.
 - i. NOT INCLUDED*
7. Section 8: Transfer of Requests
- (2) – The Transfer period should be no later than 5 days.
 - i. NOT INCLUDED*
8. Section 9: Vexatious, Repetitive or Unreasonable Requests
- How does one define vexatious?
 - i. NOT INCLUDED*
 - (2) – Should guidelines be in the Act? If they are separate, then they are subject to easy changes. Should the right of appeal be attached?
 - i. NOT INCLUDED*
9. Section 11: Deferment of Access
- (1 c) – This section is too vague and it needs to be narrowed or removed.
 - i. NOT REMOVED*
10. Section 13: Cost of Access
- (2) – Costs should only apply to reproductions and not preparing of reports.
 - i. PARTIALLY INCLUDED*
 - (3) & (4) – This seems very wide and susceptible to overcharging could be used as a deterrent.
 - i. ADDED:* The regulations lay out a very clear fee schedule to ensure that fees are known and can be applied fairly and evenly.
11. Section 15: Public Interests
- Public interest considerations should be included in the Act itself.
 - i. NOT INCLUDED*
12. Section 17: Records affecting security, defense or international relations
- (b) (ii) – This seems far too broad. All Information can be communicated in confidence.
 - i. NOT ADJUSTED*
13. Section 20: Records affecting national economy, commercial affairs & certain documents concerning the operations of public authorities.
- 1(a) – This should disclose abolition or variation of tax, duty, interest rate, exchange rate or instruments of economic management, so as to avoid placing excessive strain on business. For example, if duty is to be amended (up or down), it is in the interest of a business to know so they can adjust their inventory accordingly.
 - i. NOT ADJUSTED*
 - 1 (c) – It is not clear why a public authority requires this ‘protection’.

i. NOT ADJUSTED

14. Section 21: Records revealing Government deliberative processes

- 1(a) – Opinions, advice or recommendations for Cabinet or a Committee of should be fully disclosed.
- (3) – Why shouldn't these documents be available? Maybe some should be exempt, but not all.

i. NOT ADJUSTED

15. Section 22: Prejudice of effective conduct of Public Affairs

- 1(c) – Legal Advice given by or on behalf of the Attorney General should be subject to the public interest test.

i. NOT INCLUDED

- Public Interest test guidelines should be better detailed at some point in the Act.

i. NOT INCLUDED

16. Section 25: Records relating to Personal Data

- If the person is a public servant and the request is made in respect to Government business, a balance should be struck between privacy and disclosure in the public interest.

i. NOT ADJUSTED

17. Section 28: Application for Internal Review

- (3) – Why are only The Minister or Chief Officer allowed to make decisions? What if they are obstructing the process?

i. NOT ADJUSTED

18. Section 30: Office of Information Commissioner

- (3) – The Information Commissioner should be appointed through measures independent of the Government, such as the Judicial Services Committee or a Parliament Select Committee with representation from the Opposition. Additionally civil society should be included in the decision-making process either through membership on the Select Committee or the publication of a short-list of candidates and public feedback on the candidates.

i. NOT INCLUDED

19. Section 31: Removal of Information Commissioner

- 'Misbehavior' should be changed to negligence and misconduct.

i. NOT ADJUSTED

20. Section 32: Deputy & Assistant Information Commissioner

- Should this be limited in number, not just one or more? How many is 'more'?

i. NOT ADJUSTED- However, additional information has been included in the Regulations.

21. Section 34: Funding & FOI Unit & Accounting

- There should be a separated and dedicated budget line item for the Freedom of Information Unit.

i. NOT INCLUDED

22. Section 35: Staff

- This should be deleted
 - i. **NOT DELETED**, In fact additional information was added to the Regulations section of bill.
23. Section 38: Exemption of Liability
- The Commissioner and their staff should NOT be exempt from liability. Laws are made to make people liable or responsible.
 - i. **NOT ADJUSTED**
24. Section 44: Appeal from Commissioner's Decisions & Orders
- Why is appeal to the Supreme Court as a first step? This make appeal process cost prohibitive.
 - i. **NOT ADJUSTED**
25. Section 46: Information Manager
- (b) – The special attention for each vulnerable group needs to be better outlined. The current language is too general.
 - i. **ADJUSTED** in Regulations section 13(h)
26. Section 47: Whistleblower
- In order for the whistleblower section to be effective, there should be a section inserted stating that the FOI Act supersedes the Official Secrets Act.
 - i. **NOT ADJUSTED**
 - Language should be included to mandate that a separate Whistleblower's Act be drafted and passed
 - i. **NOT INCLUDED**
27. Section 51: Protection from liability regarding Defamation, Breach of Confidence & Intellectual Property Rights
- Protection from liability, regarding defamation, breach of confidence and intellectual property rights should be removed.
 - i. **NOT ADJUSTED**
28. The Following section should be ADDED:
- The Ministry responsible for Freedom of Information Act shall be responsible for funding the public educational programs aimed at explaining how to use and apply the FOIA. The development and promotion of these programs shall be carried out in conjunctions with the Information Commissioner and independent Civil Society Organizations.
 - i. **NOT INCLUDED**
29. The Following should be ADDED:
- The Act should include direction that the Information Commissioner and their staff will maintain a current registry of all public requests for information. This registry should be made available via electronic means for public viewing and tracking via a registration number, making provision to protect sensitive and personal information.
 - i. **ADDED**: Section 16 Regulations
30. The Following should be ADDED:

- The Act should include direction that the Minister and Information Commissioner shall collaboratively produce clear documents for the public stating the appropriate procedure to follow to request information and the appeal process. Additionally, a registry of the current public authorities that hold certain types of information and the appropriate information officer in each authority should be produced annually and made available via government website.
 - i. **ADDED:** Section 57 of Act and within Regulation Doc.

TOP 3 Priority Recommendations to focus advocacy on:

1. Section 21: Records revealing Government deliberative processes

- 1(a) – Opinions, advice or recommendations for Cabinet or a Committee of should be fully disclosed.
- (3) – Why shouldn't these documents be available? Maybe some should be exempt, but not everything.

2. Section 30: Office of Information Commissioner

- (3) – The Information Commissioner should be appointed through measures independent of the Government, such as the Judicial Services Committee or a Parliament Select Committee with representation from the Opposition. Additionally civil society should be included in the decision-making process either through membership on the Select Committee or the publication of a short-list of candidates and public feedback on the candidates.

3. Timeliness

- Section 6: General Rights of Access
 - i. (3) – Thirty Years should be reduced to 15 years in the “sunset clause”.
- Section 7: Application of Access
 - i. (4) – The extension period should be reduced to 10 days. Reasonable cause for such extensions should be limited to force majeure events.
- Section 8: Transfer of Requests
 - i. (2) – The Transfer period should be no later than 5 days.