[1] Access to information, once thought of as either a relative to the right to freedom of expression or as a 'luxury' is increasingly recognized as a fundamental human right necessary for the enjoyment of other rights, such as the right to a healthy environment, right to education and housing, and other public benefits.

However, the right to information is only as effective as an individual's ability to enforce it. If there is widespread belief that the right to access information will not be enforced, this so-called right to information becomes meaningless. If the enforcement mechanisms are weak or ineffectual it can lead to arbitrary denials, or it can foment the 'ostrich effect', whereby there is no explicit denial but rather the government agencies put their heads in the sand and pretend that the law does not exist. Thus some external review mechanism is critical to the law's overall effectiveness.[2] Although the review mechanism will differ, depending on the context of the country, in general the appeals procedures should be guided by the principles of:

- Accessibility,
- Timeliness,
- Affordability, and
- Independence.

The best enforcement bodies will allow the petitioner to submit his appeal with minimal formality or cost. As the Freedom of Information Act of Western Australia specifies, the "proceedings are to be conducted with as little formality and technicality, and as expeditiously, as a proper consideration of the complaint will allow." [3] These entities should be tasked with determining the appeal quickly and without the need for attorneys, and their decisions should be binding. Moreover, they will function under the doctrine of natural justice: the decision maker shall have no personal interest in the proceedings; they shall be unbiased and act in good faith; and perhaps most importantly "not only should justice be done, but it should be seen to be done; in other words, legal proceedings should be made public."[4]

The recognition of access to information as a human right portends the obvious implication that this appeal body will differ from other narrowly defined administrative bodies charged with simply upholding an administrative procedure. The functions of an access to information appeals body must be developed and applied within the expansive human rights paradigm. This paper seeks to cull some of the best practices of access to information enforcement bodies around the world, particularly related to

[1] The Access to Information Act, 2002, Jamaica, sec. 2.
[2] Neuman, Laura. "Access to Information Laws: Pieces of the Puzzle," in *The Promotion of Democracy Through Access to Information: Bolivia*, (Atlanta, GA: The Carter Center, May 2004).
[3] Freedom of Information Act 1992, Western Australia, Part 4, Division 3, sec. 70.
[4] See encyclopedia.thefreedictionary.com/Natural%20justice

fundamental principle underlying the system of constitutional democracy' with the ensuring government accountability, transparency and public participation in t process.

the function and regulations, and then use these to provide brief observations of the proposed regulations for the Jamaica Access to Information Appeals Tribunal.

II. Enforcement Models[5]

Enforcement of Access to Information Laws is a crucial part of ensuring an appropriate balance between the right to know and the public's interest in guarding certain sensitive information. There is

3. efforts to reduce costs for petitioners, including the possibility of appealing without the need for attorney representation;
4. broad investigative powers;
5. the power to compel the agency to release documents to the tribunal in a timely manner for review; and
6. the power to sanction agency personnel for noncompliance.

After the passage of governing legislation, regulations or subsidiary legislation may have to be enacted to set out the detailed procedural rules to guide the scope and conduct of the review of the Government's decision.[7] In those jurisdictions where the controlling law provides great detail, the regulations may not be as extensive; the opposite is often true for countries with access to information laws with less procedural specificity. Ultimately, the regulations and procedures for any access to information enforcement body must be crafted to best suit the legal and socio-economic, political context of the specific country.

The following is a brief description of some of the core provisions necessary for an effective and accessible appeals process, based on our interpretation of good international practice and on our own experience in a number of jurisdictions, with observations of how the proposed Jamaican regulations might fit in. This is not an exhaustive list, and the necessary detail and specific provisions will depend greatly on the individual jurisdiction and the needs of Jamaica.

A. Scope

Most access to information laws specify the type of complaints that an appeals body may hear, however, this may be further developed through regulation and procedures. The scope of the review determines the extent of the intermediary bodies' jurisdiction over a matter. Adjudicatory bodies are charged with issuing decisions on matters of interpretation of the law, substantive finding of facts and procedural matters. In practice, it is important that the appeals body be empowered to hear **all** complaints related to the access of information including, but not limited to:

1. Denials (full, partial and severability)

The most common complaints are based on a denial of information, whether an express denial or deemed denial (also called mute refusal). The general basis for this type of appeal is the refusal by a Government Authority to grant a request for a document whether wholly or in part.
This includes either (a) failing to give access to a document by the claim of exemptions under the Act or (b) giving access to only some of the documents requested, (c) deleting parts of the document that have been requested as being exempt information within a document (d) determiningd-6(ns)- 96(n)-ert. 2yhe(o)-1( )7(i)6(e006 Tw 0 -01156 TD[

substantial prejudice.[8] Thus, although not an express denial, the deferral of a request has the same

of the codes of practice."[11] The Mexican Access to Information regime authorizes the Federal Access to Information Institute, the body charged with adjudicating complaints, to hear cases related to incomplete information and dissatisfaction.[12] The Ontario Information and Privacy Commissioner's office accepts appeals for "adequacy of agency decision."

5. Miscellaneous

a. Form of Information

The Bulgarian Access to Public Information Act 2000 includes provisions that the information shall be provided in the form requested unless this is not technically feasible, or it results in an unjustified increase in cost. The Tribunal has the authority to review any complaints related to the form in which the information was provided.

b. Use of Information

Additional powers often include: the power to investigate, to mediate, and to recommend or issue sanctions.

the same shall be furnished to the appellant. These types of rules are generally utilized where there is a more formal hearing as witnesses may include very senior officials in Government including Ministers. Other countries use less formal powers for the conduct of investigation and inquiry to encourage a more informal resolution of appeals including the power to allow for Conferences and Mediation.

3. Power to Mediate

Hearing all appeals cases, whether orally or on the record, is costly, time consuming and depending on the size of the administration, not realistic. It can also be more cumbersome and intimidating for the appellant. For those reasons, in many jurisdictions the Information Commission(er) or Tribunal has, through regulation, been vested with the power to mediate claims, before they move to the hearing stage. "Mediation can succeed in settling some or all of the issues, reducing the number of records in dispute, clarifying the issues and helping the parties to better understand the Acts."[19] However, included in the mandate to mediate is also the implicit understanding that the mediator will not convert to an adjudicator. As discussed below, safeguards must be considered to ensure the integrity of the mediation and adjudication process and avoid any inherent conflict of interests.

C. Procedures

Procedures on the request, investigation and hearing of an appeal may vary depending on the powers of the review body and whether there is first a process for internal review. For example, where there is no internal review procedure, cases are heard for the first time by a commissioner, ombudsman, court or tribunal on the basis of an agency's preliminary determination. There is generally less of an investigation or record and, thus, more responsibility on the adjudicatory body. In processing appeals, the Commission(er) or Tribunal is often vested the ability to "determine the procedure for investigating and dealing with complaints and give any necessary directions as to the conduct of the proceedings."[20] This may include consolidating claims where there are appeals that involve common questions of law

grounds for appeal.[22] If example forms or a boilerplate form for requesting appeal are provided, they should include the minimal details needed to properly file a complaint and an explanation of any alternative dispute resolution mechanisms available. There should also be an explanation for completing forms to aid disadvantaged applicants. As the filing of an appeal can be quite cumbersome and confusing, in many jurisdictions the Commission(er) or Appeals Tribunal staff are directed to assist the petitioner.

Time limits for requesting an appeal vary depending upon the jurisdiction but are often 30 to 60 days, with provision for the adjudicator to extend or waive the deadlines for good cause.[23] In some cases, such as in Thailand, where there is an Information Board or Ombudsman that sends the cases to the adjudication body the time limit for filing may be shorter.

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on oath or by affidavit or otherwise whether or not the evidence or information is or would be admissible in a court of law.

d. Calling witnesses

An intermediary body with order powers may serve as the arbiter, inquisitor or both. Thus, regulations should include powers that enable the conduct of this function, including the power to call witnesses and require the production of documents.[46]The Commission(er), Tribunal or presiding officer should also be authorized to subpoena witnesses and administer oaths.[47] In the Australian Administrative Appeal Act powers have also been given to the Tribunal to call their own witnesses, and the Public Authority and the Appellant given an opportunity to cross-examine. This is an important provision for situations in which the adjudicator consolidated cases of similar facts or issues of law. Other jurisdictions include provisions to allow the submission of sworn statements or affidavits to be submitted where witnesses are unable able to attend, with the proviso for a modified cross-examination.

e. Third Party

The modern practice in Access to Information laws is to ensure that the there is a potential for third parties to attend and make representations before a decision making body on right to know cases, particularly when information related to their person or business is at issue. The Australian Act makes provisions for the Tribunal to hear applications by third parties, this may include third parties with a business interest in a document or government agencies with a legitimate interest in a document, or individuals where there is a request that may reveal personal information.[48] lg5(l(T)-t bT)-14(h)-4(or14(hc(d)-(h)b(r)-4(ln)-(a)-12(8-14(hc(ss)m)

regulations should be crafted to ensure that at all stages of the filing of a complaint, the investigation, and the disposition of the appeal that the burden of proof remains on the public authority.

Section 8, as presently written, appears to shift the burden of proof to the appellant to show a *prima facie* case or risk having the appeal dismissed. This provision may be contrary to both international best practice as well as the Jamaican Act. Section 14 may also be amended to more clearly identify that the onus during the hearing is on the public authority.

Moreover, requesting further information or documents from the appellant to substantiate his or her claim may not be fruitful, as it is often the public authority that holds such documents (see Section 8 of draft regulations). Without investigative support from the Tribunal, or its Secretariat, it is unlikely that the appellant will be in possession of or able to compel the release of such documentation. If, however, the appellant is able to make a *prima facie* case against the public authority's decision, the Appeal Tribunal should be empowered to order the public authority to release the information or compliance with any other order, without a need for hearing (see Section 6 of draft regulations).

4. Clear and Established Timelines: The inclusion of clear timelines facilitates the understanding and efficiency of the process for all parties (petitioner, respondent, Secretariat and Appeals Tribunal). For instance, the regulations might state how long the public authority has to respond to the Appeal Tribunal's request for documents, and how many days to implement the findings

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Section 4 and 14(e) are welcome additions to the regulations. These provisions allow for third party "intervenors" on either the request of parties or the Tribunal. As with other jurisdictions, this could be expanded to allow for third party involvement when a petition is filed indicating a recognizable interest, and granted by the Tribunal. These interventions, whether orally or through *Amicus* briefs, can serve to assist the Tribunal with cases of important public interest or particularly difficult matters of fact or law.

7. Alternative Dispute Resolution (ADR): As a means of reducing the burden on both the Tribunal and the appellant, the regulations may serve to incorporate alternative dispute resolution mechanisms such as mediation, pre-hearing conferences or reconciliation into the appeals process. In