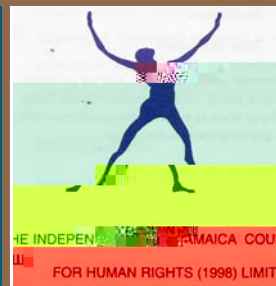


E – NEWS

Access to Information

Spring Edition

Volume 6



ACCESS TO INFORMATION AND ENFORCEMENT

Welcome to Volume 6 of the Access to Information E-News with focus on Access to Information and Enforcement. The objective of *E-NEWS* is to create a forum for the exchange of information and ideas about Jamaica's Access to Information Act and to provide an opportunity to focus on specific issues, themes, and news relating to the public's "Right to Know." We hope that through the distribution of *E-NEWS* we can raise awareness of the Access to Information Act in Jamaica and encourage people to use this new right.

The Independent Jamaica Council for Human Rights has assisted in the preparation of Volume 6 of this *E-NEWS*. In this volume, there is a discussion of the importance of the appropriate model for enforcement of the right to information, a look at what happened at the Parliamentary Review of the Access to Information Act, an analysis of the cases that have been heard by the Access to Information Appeals Tribunal, information about the Volunteer Attorneys Panel and civil societies experience in enforcement of their right to know.

In this edition you will find articles on:

- What happened to the issue of enforcement in the Parliamentary Review of ATIA?
- Civil Societies experience with the Access to Information Appeals Tribunal
- What is the Volunteer Attorneys Panel for ATI
- Implementation Oversight and Enforcement Models
- Access to Information Cases: Is mediation the answer?
- Review of the decisions before the ATI Appeals Tribunal
- Recent and upcoming events
- Quote of the month on the right to know

The Carter Center

One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
Phone: (404) 420-5179
Fax: (404) 420-5196
www.cartercenter.org

The Carter Center

Jamaica Field Office
1 Grants Pen Road
Kingston 8
Phone: (876) 755-3641
Fax: (876) 925-2821
E-mail: cartercenterja@mail.infochan.com

The Independent Jamaica Council for Human Rights

131 Tower Street, Kingston
Tel (876) 967-1204
Fax (876) 967-0571
E-mail:
ijchr@mail.infochan.com
www.ijchr.org

What happened to the issue of enforcement in the Parliamentary Review of the Access To Information Act?

By Nancy Anderson, Legal Officer, IJCHR.

Civil Societies experience with the Access to Information Appeals Tribunal

By Susan Goffe, Chairperson JFJ

What is the Volunteer Attorneys Panel for Access to Information?

The Carter Center in collaboration with the Independent Jamaica Council for Human Rights and the Jamaican Bar Association has collaborated to form a Volunteers Attorneys Panel to take on cases on a *pro bono* basis before the Appeals Tribunal and the Courts of decisions taken under the Access to Information Act. The Panel consists of 40 attorneys-at-law who work from a Roster. The Carter Center is currently acting as the Secretariat for the Panel and provides administrative and management support for the panel, assisting in publicizing the panel and facilitating the conduct of seminars for the volunteer attorneys to represent the rights of the public in bringing forward cases for appeal or before the courts. Volunteer Attorneys through the Volunteers Attorneys Panel provide high-quality representation in test cases under the Access to Information Act to ensure that there is an appropriate mechanism to enforce the rights established by the law. This allows more people to have effective representation before the administrative and court system to enforce their right to access government held information. The Panel provides an organized opportunity for attorneys to volunteer their time to represent individuals or groups in cases under a new piece of legislation including persons who cannot afford to pay for legal services and have legal representation. It is a mechanism that promotes pro bono services for a specialized area of law and is a model that could be copied for other types of human right cases that are heard before administrative tribunals before going to court including asylum and environmental law cases.

The Panel includes a mix of both experienced attorneys in the field of human rights litigation and administrative law and young attorneys who are interested in learning about this field. The Panel aims to ensure mentoring of attorneys with less experience in the conduct of these cases. Three representatives guide the panel from each of the founding organisations, Ms. Laura Neuman, The Carter Center, Ms Nancy Anderson, Legal Officer, Independent Jamaica Council for Human Rights, Ms. Hilary Phillips Q. C. , The Jamaican Bar Association.

The cases for which the Volunteer Attorneys Panel take free of cost are selected based on the following criteria:

- Public Interest in the requested information
- The need for court interpretation of the vague sections of the law
- The incapability of the person affording the cost of representation
- Provision of assistance to civil society organizations, which are part of an informal coalition to assist in monitoring the implementation of the Act through its phased implementation.

The panel works by way of a referral process. Every effort will be made to tailor the procedures to suit the needs of individual lawyers, whether sole practitioners or those in larger firms. Referrals are made to allow minimal disruption to the attorney's existing practice. Attorneys have only been asked to volunteer for one case per year, as there have not been many cases appealed to the Appeals Tribunal or taken to court. Attorneys have been asked to participate in media events on the work of the Panel. To make certain that the volunteer attorneys spend their valuable time most productively, the following services are provided:

Screening - All cases are screened by the Carter Center, Independent Jamaica Council for Human Rights and the Jamaican Bar Association to ensure they are eligible for free legal assistance.

Case Review - All cases are reviewed and an intake form is written up on the facts and issues the case presents.

Referral - Referrals are made by phone, email and /or letter to the attorney and the client. Once the attorney accepts a case the attorney schedules a time to meet with the client concerning their case.

Resources - Assistance to conduct research has been arranged through the process of assigning a senior and junior attorney to each case.

Mentor Link - Experienced volunteer attorneys may also be called upon to help less experienced volunteer attorneys



differences and establish the issues in dispute even where a matter has to go forward to a hearing for a binding decision. Settlement can also avoid the cost and effort of preparing legal submissions and attendance at public hearings. Traditional appeals, which are legalistic in procedure, can be both time-consuming and expensive. There are some disadvantages to settlement through mediation foremost of which is that fact that no legal precedents are set by the decision making process. Other issues include the fact that mediation usually has to be agreed upon by consent of the parties, mediation comes at a cost which is usually shared by the parties or paid by the state and finally a process of mediation has to be tracked and monitored to be effective.

Mediation has been a preferred process of choice to address the issues arising in Access to Information Cases in a number of jurisdictions. Mediation has the advantage of being a private, usually voluntary, process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), are assisted to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. Its advantages include that it is often seen as a means to ensure settlements for all parties; provision of better service tailored to meet the needs of the parties and a mechanism that can ensure the resolution of complex cases. Mediation enables the parties to understand the issues which can result in compromises that produce results satisfactory to both parties. Generally mediation is a less costly and quicker process than more formal methods of dispute resolution. Mediation is utilized most notably in a number of Canadian provinces, but also in the state of Connecticut in the United States, in Western Australia and in Ireland.

The International Experience

In Canada there has had a range of good experiences in the use of mediation to resolve ATI disputes. In Canada ATI cases at the provincial and municipal level where the Information Commissioner has binding order-making power are the most relevant. Four of its largest provinces have commissioners with order making powers, which seek to resolve complaints through mediation that is Quebec, Ontario, British Columbia, and Alberta. The Information Commissioner in the Province of Ontario in particular has over 15 years of experience in mediating appeals. A primary objective of this Commissioner has been to focus on mediation as the preferred method of dispute resolution. In Ontario the Commissioner is given power to use a mediator to effect a settlement by virtue of s.51 of the Provincial Act and s.40 of the municipal act which provides that the Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal. The Ontario Commissioner has reported of its success in the use of mediation reporting in 2003 that 92% of requests for review by mediation were resolved fully. In addition the Ontario Information Commissioner has recently published "Best practices for Institutions in mediating Appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act " alongside the Privacy Commissioner for Ontario and the Ministry of the Attorney General.

In Ireland the Freedom of Information Act 1997 and 2003 specifically contemplates that the Commissioner having a mediation role - CF s.34.7. The FOI Act provides that at any stage during a review, the Commissioner may try to effect a settlement between the parties on the records to be released. The Commissioner stated in their 2003 report that in some cases, requesters may agree to narrow the focus of the review by agreeing to exclude records which will add little or no value to the information they seek. In others, it might be agreed that additional records outside the scope of the original request be released without the need for arrival at a formal decision in the case. In 2003, 154 cases were settled. This is 21% of all reviews completed in 2003 compared with 25% in 2002 and 16% in 2001.

In Connecticut there has been a Freedom of Information Commission since 1975. It receives 600-700 formal complaints per annum. Mediation is conducted by a member of the Commission's staff assigned to each appeal to act as liaison between the parties through an "ombudsman" program. The ombudsman is given the jurisdiction to attempt to effect a settlement of each appeal even on the date assigned for hearing. But if a settlement is not possible, the matter will proceed to a hearing. Around 50% of the complaints in Connecticut are settled by mediation.

In Western Australia s.71. of the Freedom of Information Act stipulates a requirement for a conciliation mechanism.

Recent and Upcoming Events

The Parliamentary Review of the Access to Information Act:-

Presentation at Conservation Training Week: A presentation was made to students at the Northern Caribbean University Communications Department on Access to Information and Investigative Journalism on October 13, 2005. Materials were produced and shared with each student on the use of the Access to Information Act and the basics of starting an investigative journalism project. The Access to Information Student Investigative Journalism Award was introduced to the students who were encouraged to participate.

Presentation to CVM TV: The Access to Information Appeals Tribunal heard two appeals on October 10 & 11, 2005. Decisions were handed down for both cases on December 1, 2005.

Lecture to Jamaica Historical Society:- A meeting was held with Access to Information officers and civil society on January 30, 2006 with civil society organisations and Access officers from Government Ministries and Agencies to

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Commissioner is expected to be an expert and to make decisions that are fair, reasonable and supportable.... It's not easy to create and sustain an effective FOI law. Secrecy is inherently attractive to governments, and being held

