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"There may be times when we are powerless to prevent injustices but there must never be a time

The Freedom Of Information Act: An Imperfect Tool No One Is Using by Ward Grant

The ninety-ninth of the Political Reform Commission's one hundred-three recommendations calls for a review of Belize's Freedom of Information Act (FOIA), which has been in effect since 1994. It is an important piece of legislation because the public's right to know is an essential element of good governance. A democratic, open and balanced government can only be maintained when the people – especially our media watchdogs – can keep an eye on government's activities. But, being an instrument of democracy, the FOIA can be only as strong as the people's readiness to make it perform. In other words, for it to mean anything, we must make use of the law.

But we all know this, don't we? The PRC appears to have been unanimous in its belief that our FOIA should be amended to narrow the definition of material exempt from public access. It contends that complacency and fear, and an insufficient level of political education, have resulted in a "lack of awareness about Belize's political system and political issues", significantly constraining participation in Belizean democracy and the furtherance of political reform. This lack of awareness has been encouraged by "a local media that has not done enough to inform and educate the public about Belize's political institutions and national issues" (Final Report of the Political Reform Commission, p. 35, January 2000), and "controlling and secretive attitudes towards the sharing of public information on

when we fail to
protest!"

the part of all, and especially on the part of elected and public officials."(Ibid)

Even if we were more inclined to make use of it, would our FOIA perform, as it should? Most assuredly not, since its strongest features are designed to place a stranglehold on the flow of information rather than make it freely accessible.

To begin with, an "exempt document" or "exempt material" is any document or piece of information, which the government wants to make unavailable to the public! The kinds of information that can be exempt upon a minister's say so are quite broad, for example:

- 1.) Documents/materials whose disclosure would be contrary to the public interest by prejudicing security, defence, or international relations or could divulge information received in confidence from another government.(Freedom of Information Act 2000, s 22)
- 2.) All cabinet documents/materials relating to law enforcement, personal privacy, or trade secrets.(Freedom of Information Act 2000, s 23, 24, 27 and 29, respectively)
- 3.) Any documentation/material that would be "reasonable likely to have a substantial adverse effect on the national economy" is also exempt.(Freedom of Information Act 2000, s 30)

Under section 20, a minister or almost anyone he/she so chooses ("... prescribed authority ... principal officer ... an officer [acting] in accordance with the arrangements approved by the responsible Minister or the principal officer ...") can make decisions as to information availability.

Surely, this is entirely too much authority for any one 'official' to possess. Moreover, while the official is empowered, upon appeal, to review rejected requests for access – even to affix fees for access – under section 35 not even the Ombudsman can reverse, and in many instances cannot even look at, documents exempt by Cabinet or Ministerial decision.

Let's assume for a moment, that there is nothing wrong with the way in which our FOIA is written. Too often ministers and/or prescribed authorities are not experts in the field over which they preside, bringing into question the appropriateness of the foundation upon which they decide to exempt any documents and other material. Are there established guidelines for these decisions? If other persons are being consulted, who are they; what is the nature of their relationship? And does not the public have a right to know these consultants and whom they

represent?

Under the current Act, Cabinet (where most Government decisions are made) documents and any other information slapped with a 'certificate of exemption' can remain unknown to the public in virtual perpetuity .

It would be preferable to have a Tribunal, as in the United Kingdom, or other independent committee, mandated to review refusals of access, devise and monitor clear standards for exemption; empowered to reverse almost any ministerial and many Cabinet exemptions; and do it all without political bias; a body closer to and more representative of the people as a whole, rather than just the party in power. In fact, it is interesting to note that Belize's law does not contain a clause like that of Trinidad & Tobago's, whose section 35 says that where there is evidence that non-disclosure may result in abuse or neglect of official authority; injustice to an individual; danger to the health/safety of an individual or of the public; or, unauthorized use of public funds, then access must be granted.

A fair and open government of and by the people can only be maintained when the people can keep an eye on government's activities. It is in this respect more than any other that Belize's Freedom of Information Act fails in its supposed intent. And while that failure exists, the will of the people is at risk. But it does not have to be that way. If only we would apply ourselves and challenge those things that need challenging. The tools are there; we just have to set and use them properly. If Government's anticorruption activities are to be taken seriously, then revision of the Freedom of Information Act is an aspect of political reform that has no business being kept on the back burner. And it is a tool of democracy that we as citizens (and watchdogs) have an obligation to take advantage of.

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