



GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO
MINISTRY OF PUBLIC ADMINISTRATION AND COMMUNICATIONS



A GUIDE TO THE FREEDOM OF INFORMATION ACT

CHAPTER 22:02

FREEDOM OF
INFORMATION
UNIT

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PURPOSE OF THE HANDBOOK

Trinidad and Tobago reached a historical milestone by adopting Freedom of Information legislation in 1999; however, this was only the first step. Ahead of us is the greater challenge of implementing the Act and transforming the culture of public agencies towards the direction of accountability and openness while protecting the interests that are worthy of protection.

This handbook was created as a guide for administrative best practice and provides general guidance for administering the Freedom of Information Act (FOIA). It is to be used in conjunction with the Freedom of Information Act, 1999, and wherever disparities may arise, the Act takes precedence.

INTRODUCTION

“In contemporary societies governments must be rendered truly accountable to the people so that our governors are made our servants” by Michael Kirby.

The Freedom of Information Act (FOIA) 1999 was assented to on 1 November, 1999 and came into effect on 30 August, 2001 for Part I, April 30, 2001 for Part II and August 30, 2001 for the remaining parts. The FOIA provides a legally enforceable right to members of the public to seek access to information held by public authorities, limited only by exemptions that are deemed necessary for the protection of ‘essential public and private interests’. It also extends the right of an individual to correct personal data that is incomplete, incorrect, out of date or misleading.

The FOIA enshrines the concept that information collected and generated by government, is a resource of the people, for the people and is to be accessible as freely as possible by the people. It seeks to promote the principles of accountability, openness, transparency and increased public participation. The Act should **NOT** displace the formal procedures for access to information but should be regarded as a legislative ‘last resort’.

Objectives of the Act:

The objectives of Freedom of Information (FOI) legislation are:

- To give people the right to any official information held by public authorities, unless it can be shown that disclosure can cause harm to essential interests
- To give persons the right to access their personal information
- To encourage transparency, openness and accountability in government
- To encourage authorities to disclose more information voluntarily

1.0 SCOPE: Defining a Public Authority

The Act applies to documents in the possession of Public Authorities. Each of the following is considered a Public Authority under Section 3 of the Act:

1. Parliament, a Joint Select Committee of Parliament or a Committee of either House of Parliament
2. Subject to section 5(2), the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a Court of summary jurisdiction
3. The Cabinet as constituted under the Constitution
4. A Ministry, department or division of a Ministry
5. The Tobago House of Assembly (THA), the Executive Council of THA or a division of the THA
6. A municipal corporation established under the Municipal Corporations Act, 1990
7. A regional health authority established under the Regional Health Authorities Act, 1994
8. A Statutory body, responsibility for which is assigned to a Minister of Government
9. A company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State
10. A Service Commission established under the Constitution or other written law
11. A body corporate or unincorporated entity: <ul style="list-style-type: none">• in relation to any function which it exercises on behalf of the State• which is established by virtue of the President's prerogative, by a Minister of government in his capacity as such or by another Public Authority• which is supported directly or indirectly, by Government funds and over which Government is in a position to exercise control• a court registry or office of Court Administration

n.b. The FOIA does not apply to the President, a Commission of Inquiry or to such Public Authority or its functions as the President, may by Order, determine. Such Order is subject to negative resolution of Parliament, Section 5 (1) (c).

2.0 DOCUMENTS

Under the FOIA, when an applicant requests access to a document, it refers to information recorded in any form. It can be printed, on tape, film, by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record.

3.0 PUBLICATIONS

3.1 Publication of statements

Public agencies as a matter of course should publish information of significant public interest and disseminate it widely. Sections 7, 8 and 9 of the Act require that agencies provide an updated document for publication in the *Gazette* and a daily newspaper each year to include the following statements:

Statement 1 (Section 7)

- The purpose, structure and functions of the authority
- The impact of the work of the authority on members of the public
- How can (and do) members of the public participate in the decision making processes of the authority
- A list of the categories of documents that the authority holds
- A list of all the published material that members of the public may look at or purchase, or for which they may subscribe. The statement must also describe where any individual may inspect or purchase this material.
- The procedure for making a FOIA request to the authority. This should describe all the required steps - from filling out and addressing the form, to the type of information it must provide; as well as the obligations of the authority in processing your request.
- The name and contact information for the authority's designated officer and alternate.

- A list of all the authority's advisory boards, councils and committees, whose meetings or minutes of meetings are open to public scrutiny.
- A description of any reading room or library facility (such as its address and other contact information; and opening hours) that the authority maintains and makes available for public use.

Statement 2 (Section 8)

A description of those documents that guide the employees of the public authority in doing their work, such as,

- Operational manuals
- Rules of procedure
- Operating policy documents
- Instructional documents
- Handbooks
- Any other documents that contain rules, guidelines, policies, precedents, or interpretations of written laws, as these affect the work of the authority.

Statement 3 (Section 9)

A complete list of certain types of documents (detailed in Section 9) created after the commencement of the Act on February 20, 2001:

- Functions of the public authority
- The decision making powers affecting members of the public
- Categories of documents that are maintained by the public authority
- Material prepared by the public authority and where it can be examined by a member of the public
- The process to be followed by members of the public requesting access to a document
- Identification of the designated officer to deal with FOI requests
- Details of boards, councils and other bodies that are part of the public authority and whose meetings are open to the public
- Availability of a library or reading room and an index of documents available for inspection and purchase

These statements must be published in the Trinidad and Tobago Gazette, and in one daily newspaper. All three statements for any particular public authority are likely to be published together and appear as one document.

3.2 Quarterly returns: reporting requirements

All public authorities are required to submit statistical returns on a quarterly basis to the Freedom of Information Unit (FOIU) which will be compiled for inclusion in the Annual Report to Parliament. Quarterly Statistical Returns are due 21 days after the end of each quarter of the financial year and the Annual Statistical Report by July 31st each year. These quarterly reports are prepared by the designated officer and contain information such as:

- Number of requests for access
- Number of requests where access was granted in full, in part or refused
- Number of applications for internal review and results
- Number of applications for review by the Ombudsman and High Court and the results
- Particulars of fees and charges collected and refunded (*not yet applicable*)
- Number of requests for amendment of records and results

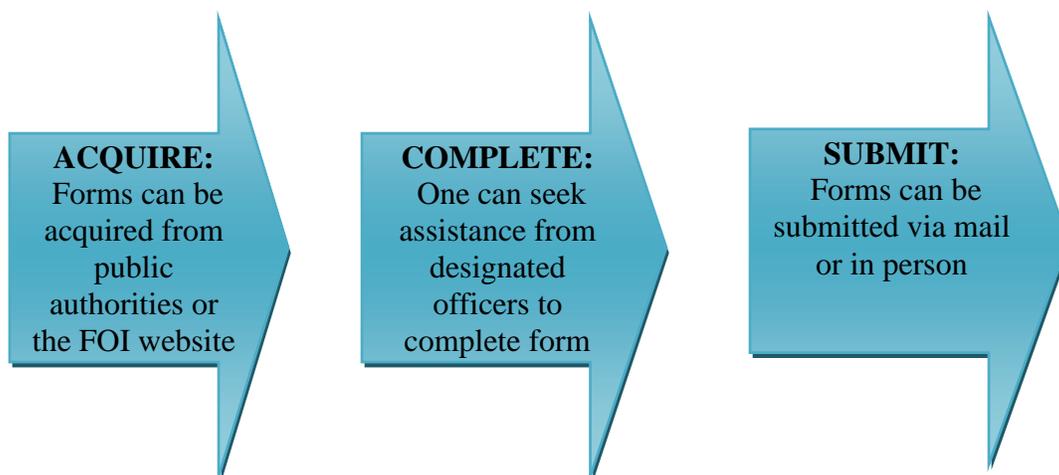
4.0 REQUESTING ACCESS TO OFFICIAL DOCUMENTS

4.1 Who can make a request?

Any individual (including a non-Trinidad and Tobago national), corporation, association, public interest group or media can make a request under the FOIA.

4.2 How can a member of the public make an official request?

There are three basic steps to making a request:



4.3 Assisting an applicant

All public authorities have a duty to help applicants to make a request, section 14 (3) and section 21(6). Applicants cannot be refused access to a document on the grounds that it cannot be located or it is inadequately described, unless the applicant has had an opportunity to further clarify the request. Consultation with the applicant, whether formal or informal, will not count towards the 30 day response time.

4.4 Who is the designated officer?

The designated officer is the person officially appointed by a public authority as the interface between the public and the organization to handle all requests pertaining to the FOIA, section 7(1) (a) (VI). The duties of the designated officer include:

- To register requests
- Record time spent on requests
- Ascertain appropriate action area
- Dispatch reply for requests
- Advise applicant of charges (*not yet applicable*)
- Forward quarterly returns to the Freedom of Information Unit

4.5 Who is the decision-maker?

Each public authority should have clear arrangements as to who is the decision-maker and these decisions should be published. The decision-maker is the individual vested with the authority to grant or deny access to requests for access to information.

4.6 Steps in processing a request

1. Ensure information is sufficient, correct and addressed to the relevant authority.
2. Stamp the date of receipt.
3. Forward request to appropriate action area and consult with applicant if necessary

4. Advise applicant in writing of approval or denial of request. Reasons for denial must be clearly stated
5. If access to information is denied, the applicant must be advised of their option to appeal to the Ombudsman and/or seek judicial review, section 39 (1).

4.7 Consultation

It may be necessary to consult with an applicant to clarify a request or to reduce the scope of a request. Refusal of a request cannot occur unless some form of consultation is undertaken by the designated officer. This can be done formally or informally, in person or via phone, section 21(6). However, where detailed knowledge of the subject matter on the request is required, it may be more appropriate for the action area to assume that responsibility. The time limit for processing the request is suspended while consultation with the applicant is being undertaken, and resumes on the day the applicant confirms or alters the request, section 21(7).

4.8 Granting access

An applicant should be notified of a decision to grant access as soon as possible, keeping in mind the 30 day limit. Access may be deferred if publication of the document is for presentation to Parliament or to be released to the media and the applicant should then be informed of the period of deferment.

Access in different form to request

Sometimes access may be granted in a form other than originally requested, if access in the form requested would interfere unreasonably with the public authority's operations or the Minister's function; or where the condition of a document dictates that access should be given in a different form to that requested or where copyright considerations are involved, sections 18(4) and 21(6) (c).

***n.b.* The applicant has the right to seek review of a decision to grant access in another form than that which was originally requested.**

5.0 EXEMPTIONS

5.1 Exempt information and exempt documents

A public authority may refuse access to any official documents containing exempt information. Such documents, as defined in Part IV of the FOIA, are listed as *exempt documents*:

- Cabinet documents
- Defence and security documents
- International relations documents
- Internal working documents
- Law enforcement documents
- Documents affecting legal proceedings
- Documents affecting personal privacy
- Documents relating to trade secrets
- Documents containing material obtained in confidence
- Documents affecting the economy and commercial affairs
- Documents to which secrecy provisions apply

Before deciding to refuse access the authority must try to delete any information that makes the document exempt. Removing all exempt information will make the required document suitable for release and access may then be approved. The applicant must agree to accept the document in its amended form before the authority makes the deletions.

Cabinet Document (section 24)

The following Cabinet documents are exempt, if less than 10 years,

- Official record of deliberations or decisions that are included in Cabinet Minutes and Cabinet Decisions;

- A document prepared by a Minister or an officer for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;
- Cabinet Notes or draft Cabinet Notes;
- Brief for Ministers in relation to issues to be considered by Cabinet;
- A document that is a copy or draft of the above, or contains extracts;
- A document which minutes the disclosure of any deliberation or decisions of Cabinet

Documents affecting defence and security (section 25)

Documents are exempt if disclosure is likely to prejudice the defence of Trinidad and Tobago, or prejudice the lawful activities of the security or intelligence services.

Documents affecting international relations (section 26)

Documents are exempt if disclosure is contrary to the public interest AND would prejudice relations between the government of Trinidad and Tobago and the government of any other state, and international bodies, or divulge information communicated in confidence between the governments or the government and an international organisation.

Internal Working documents (section 27)

An internal working document is defined as an opinion, advice or recommendation prepared by an officer or Minister or a record of consultations or deliberations between officers and a Minister in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority, and are exempt if disclosure would be contrary to the public interest.

The FOIA provides a two-pronged test to determine whether or not an internal working document, as specified in section 27, is exempt. This exemption has the widest application of all the FOI exemptions and is therefore one of the most difficult to defend.

To assist decision-makers to gain a better understanding of the exemption the following is an outline in broad terms of the parameters of its application:

The purpose of the exemption is to protect from mandatory disclosure the decision-making and policy-making process where the maintenance of confidentiality is necessary to ensure the efficient working of responsible government. The need for confidentiality is balanced by the requirement that the public interest test be applied whenever use of the exemption is contemplated.

There are no definitive categories of “internal working documents” under section 27(1) (a). However any document that forms part of the consultative or deliberative process of government or relates to the activities of any agency may come within the definition. The nature and the source of such a document are not important. It need not have been produced within the public authority. Examples include:

- general and ministerial correspondence;
- file notes;
- briefing material;
- internal minutes;
- reports;
- submissions or recommendations;
- records of discussions or meetings;
- documents containing consideration of policy options and administrative matters;
- opinions and advice from outside the agency
- drafts of any of the above

Documents that are not exempt by virtue of being internal working documents

Documents excluded from the exemption are those containing purely factual material such as:

- scientific or technical reports;
- accounting records;
- statistical data;

- information relating to employment;
- studies or surveys;
- feasibility and other technical studies;
- reports on equipment and product tests;
- drafts of any of the above.

Law enforcement and public safety

Documents are exempt if their disclosure would or would be reasonably likely to prejudice the investigation of a breach of laws or the enforcement or administration of the law, prejudice a fair trial, disclose a confidential source of information, disclose investigation methods, or endanger the lives of those engaged in law enforcement or who have provided information. However the exemption does not apply to a document that:

- reveals the investigation has exceeded the limits of the law relating to an investigation;
- reveals the use of illegal methods or procedures in the investigation;
- continues a general outline of a programme adopted for investigating breaches;
- reports on the success of a programme adopted for investigation;

Documents subject to legal professional privilege

Documents are exempt if they would be privileged from production in legal proceedings on the grounds of legal privilege.

Documents affecting personal privacy

Documents are exempt if disclosure would involve the **unreasonable** disclosure of personal information (as defined in section 4) about a person (including a deceased person) unless the information relates to the applicant. Generally however information pertinent to an applicant (including a person's medical records) should be made accessible.

Where information is provided involving an individual other than the applicant, the public authority shall advise the individual or next of kin of the decision and his/her right to judicial review and period to exercise that right.

"Unreasonable" in this context is measured objectively by prevailing community standards, not the personal view of the applicant or the decision maker.

Documents relating to business affairs

Documents are exempt if disclosure would disclose trade secrets, or other matters of a business, commercial or financial nature likely to expose the undertaking to a disadvantage.

Documents relating to examinations

Examination papers, students' examination papers or examiners' reports are exempt if the use for which it was prepared is not yet completed.

Documents containing material in confidence

Documents are exempt if disclosure amounts to divulging information that is communicated in confidence AND disclosure is contrary to public interest by reason that it is reasonably likely to impair the ability of the public authority to obtain similar information in future. This does not apply to information acquired from a business, commercial or financial undertaking such as that referred to in section 31 of the Act. In most cases three elements must exist for the duty of confidence to arise:

- the information must have been supplied in such circumstances that a mutual relationship of confidentiality exists between the supplier and recipient of the information;
- the information must be of a confidential character;
- the supplier of the information must have some interest in maintaining the confidentiality of the information.

Documents affecting the national economy

Documents containing information, the premature disclosure of which would be contrary to the public interest because it would be reasonably likely to have a substantially adverse effect on the economy, are exempt. This means that the information is such as to:

- give an unreasonable advantage in relation to a contract being entered into by the public authority;
- prejudice the commercial activities of the public authority;
- affect the commercial or professional activities of a third party, unless they consent;
- be contrary to the public interest in that it reveals negotiating strategies of the public authority.

It should be noted that the kinds of documents to which this section may apply so far as having an adverse effect on the economy include the disclosure of variation or abolition of –

- currency or exchange rates;
- interest rates;
- taxes, including duties of customs or of excise or;
- regulation of banking, insurance and other financial institutions;
- proposals for expenditure;
- foreign investment;
- borrowing or anything else which falls under “instrument of economic management”.

Documents relating to the business or commercial activities of the public authority

Where the disclosure of information requested would provide an unreasonable advantage in the procurement of goods and services concerning the public authority, prejudice the commercial activities of the public authority by revealing information to a competitor, affect commercial relationships with third parties without the third party consenting to its disclosure or contrary to the public interest or reveals instructions for the guidance of

public officers in the management of the business of the public authority, then it can be considered exempt.

5.2 Giving access to exempt documents (Public Interest Test)

The public interest has been described as a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of its members. **The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.**

An important thing to note about this test is that it embodies a presumption in favour of disclosure. **The burden is on the public authority to show that the public interest in withholding the information is greater than the public interest in disclosure.** In addition, there may be factors that make the public interest in disclosing the particular information requested, for example:

- The information relates to an issue that affects a large number of people;
- it sheds light on how public funds are being spent;
- it deals with a matter that is a subject of public controversy;
- disclosure would help individuals to make more informed choices on important matters.

Section 35 of the FOIA states “Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant:

- Abuse of authority or neglect in the performance of official duty; or
- Injustice to an individual; or
- Danger to the health or safety of an individual or of the public; or
- Unauthorised use of public funds has or is likely to occur.”

It is also important to note that, although the Act make provisions for the exemption of certain classes of information, these exemptions are not absolute and can be overridden if the disclosure of the information can be deemed in the interest of the Public.

5.3 Person deemed as decision maker in respect of exempt documents

5.4

In the absence of arrangements being published as to who is the decision maker, the responsible Minister is deemed to have decided what is/is not exempt for the purposes of judicial review, section 22(2)

6.0 REFUSALS

6.1 Refusal of access

A refusal under the FOIA is deemed to be:

- The decision of a public authority to deny or defer access, in whole or in part, to a document that has been requested under the Act
- The failure of a public authority to give written notice of a decision on an FOIA request, **within 30 calendar days** of having received the request
- Providing access with deletions
- Not being able to locate a document
- Refusing to amend a record of personal information

6.2 Types of refusals

An authority may refuse to process an FOIA request for access to official documents if:

- They are satisfied that the work involved will substantially and unreasonably divert resources of the public authorities from its other operations, section 21 (1).

- After having begun the exercise, it becomes evident that all of the documents being requested are exempt, section 21(5).
- The authority decides to defer access to documents because the information requested is to be presented to Parliament or released to the media.

Please note that access may NOT be refused without first notifying the applicant in writing of that intention, identifying a contact officer and giving the applicant a chance to consult and redefine the request, section 21(6).

7.0 PERSONAL RECORDS

7.1 Amendment and annotation of personal records

Part V of the Act gives an applicant an opportunity to correct inaccurate information contained in a document where it contains personal information which that person alleges to be inaccurate, section 36. The document containing personal information about the applicant may be amended whether it is a document to which the Act applies or not.

7.2 Access to parts of records

If part of a record contains exempt material, access may be given to only that part of the record containing non-exempt material, where practicable. If this is done, the public must be made aware that only partial access was given so as not to be misled.

8.0 RESPONSE LETTERS

8.1 Preparing a response letter

The following points should be noted whenever one is preparing a letter of response to a request:

- a) All effort should be made to respond to requests related to FOIA, within the specified 30 day period
- b) Make every effort to be helpful. Reflect a responsive attitude by the tone of voice, style and words chosen
- c) Use clear, plain language which is easily understood by the applicant
- d) Be courteous and responsive to the needs of the public

8.2 Content of the letter

The following is a guide to constructing a response letter:

- a) Responses should open with a reference to the specific information requested, and the date of the initial request
- b) Include a name, telephone number, fax number, and e-mail address of a contact, in the event of any queries surrounding the response
- c) If access is denied it must be supported by a justifiable claim within the Act. Therefore the specific section must be named and quoted followed by a thorough explanation
- d) The applicant must be advised of any possible recourse

9.0 REDRESS

9.1 Review

Under Part V of the Act, an applicant may seek a review of a refusal on the grounds that the document does not exist or cannot be located after a thorough and diligent search, section 23(1)(e), by writing to the Ombudsman within 21 days of the receipt of the refusal,. The Ombudsman may conduct a review by examining the document if it exists and make a recommendation to the public authority with respect to granting of access, Section 38A.

9.2 Appeal Procedures

In any appeal proceedings under Part V of the Act, the onus is on the public authority to establish that the decision under review is justified. Thus it is necessary to ensure that all factors leading to a decision are recorded and stored for future reference: These include:

- records of all conversations with the applicant;
- copies of all relevant correspondence;
- a record of all relevant facts and reasons for the decision;
- details of the decision;
- details of any charges imposed;
- time-keeping log.

9.3 Judicial Review

The **designated officer** is to ensure that the applicant is informed of his right to apply to the High Court for judicial review and time within which to apply for review namely as soon as possible but no later than 3 months after the decision is made or the applicant becomes, or reasonably should have become aware of the decision (see section 11 of the Judicial Review Act, 2000).

The designated officer will need to instruct the Solicitor-General and prepare all the necessary documents on behalf of the public authority in the event of judicial review

proceedings of a decision arising under the Act - and such responsibility should be reflected in the arrangements to be published with respect to decision making. A decision made under this Act by a public authority is subject to judicial review. A decision for the purposes of this Act includes the failure to comply with the time limits to provide the requests.

9.4 Process of Judicial Review

The process of Judicial Review is specified in the Judicial Review Act, 2000, Ch 7:08.

10.0 PENALTIES

The Act imposes a fine of \$5,000 or 6 months imprisonment upon a person should that person willfully destroy or reword a document (an official document) required to be maintained and preserved that is within the possession, custody or power of the public authority.

The Act also imposes a fine of up to \$10,000 or 2 years imprisonment where a person knowingly destroys or damages a record or document required to be maintained and preserved by the public authority while a request for access is pending.

11.0 How to reduce the public need to access the Act

The following procedures can be used as a guide to facilitate access to information, in order to reduce the number of FOI requests:

- Proactively publishing information to be kept in the public domain
- Improving communication between staff and the public
- Allowing access, to the greatest extent possible, to the organisation's records and information, without resorting to procedures under the FOIA.

GLOSSARY OF TERMS

Appeal: Means a written challenge by a FOIA applicant to the sufficiency of the FOIA response

Applicant: A person who has made a request for access to an official document in accordance with section 13 of the FOIA.

Decision Maker: The person who makes a the final decision on the grant or refusal of access to information in respect of a FOIA request.

Designated Officer: An employee of a Public Authority who is assigned to receive and process requests for access to information (under section 13), applications (under section 36) and notices relating the publication of information (under section 10).

Document: Refers to information recorded in any form, whether printed or on tape or film or electronic means. These may include, but are not limited to: map, diagram, photograph, film, micro film, video-tape, sound recording, or machine-readable record.

Exempt document: Any document to which, based on the provisions of Part IV of the Act, access may be refused.

Minister: The Minister of Government to whom responsibility for information is assigned.

Official document: A document in the possession, custody or control of a public authority, and which contains information related to the functions of that authority; whether or not it was created by the authority, and whether or not it was created before the commencement of the 1999 Freedom of Information Act Ch 22:02.

Personal information: Defined under the FOIA, includes any of the following, as it pertains to an individual, section 4:

- Race, national or ethnic origin, colour, religion, age, sex, marital or family status;
- Educational, health, criminal, employment or financial history;
- Any identifying number or symbol assigned;
- Address, telephone number, finger prints or blood type;
- Personal opinions or views except where they relate to another individual and
- Name, where it appears with other personal information relating to the individual or where its disclosure will reveal other personal information about the individual.

THE FREEDOM OF INFORMATION UNIT (FOIU)

The FOIU was officially set up on 2 February 2009 to monitor, advise, train and report on compliance of Public Authorities with the FOIA, 1999. The Unit comprises of two distinct areas:

Monitoring and Evaluation

The role of this area is to create policies and regulations to guide the implementation of the Act. It plays a key role in assisting public authorities to understand their compliance requirements as it pertains to the FOIA. Through continuous evaluation on the implementation of FOIA, recommendations will be made. This Unit collates quarterly reports provided by public authorities, which information is then submitted in an annual report to the Minister of Government responsible for Information, to be laid in Parliament.

Client Relations and Training

This area provides assistance to public authorities in understanding their roles and responsibilities in ensuring public access to information. It also plays a key role in educating and sensitizing the public on its rights to access information through training sessions and sensitization seminars.

We invite you to contact the Unit with all queries, comments and feedback on the FOIA.

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