



28 May 2015

The Hon. Jerome Fitzgerald M.P.
Minister of Education, Science and Technology
The Ministry of Education, Science and Technology
Thompson Boulevard, P.O. Box N-3913/14
Nassau, N.P., The Bahamas
Email: fitzgerald.jerome@gmail.com

Dear Minister Fitzgerald,

I am writing to you on behalf of the Centre for Law and Democracy (CLD), an international human rights NGO that specialises in providing legal and policy expertise to promote foundational rights for democracy. The purpose of my letter is to highlight how important it is that the Government of The Bahamas pass a strong and effective Freedom of Information Act as soon as possible.

The right to information is guaranteed by Article 19 of the *International Covenant on Civil and Political Rights*, signed by the Commonwealth of The Bahamas on 4 December 2008. Article 23(1) of the Constitution of The Bahamas guarantees, as part of freedom of expression, the “right to receive and impart ideas and information without interference.” Accordingly, the Bahamian government is under a duty to enact legislation giving effect to the right to information. Enacting strong right to information legislation will also ensure transparency and accountability, and improve overall trust in government.

Three years ago, Parliament approved the Freedom of Information Act, 2012, but it never came into force, leaving The Bahamas languishing among the minority of countries in the world without any right to information law. The Freedom of Information Act, 2012, was a deeply flawed piece of legislation. In particular, its limited scope of applicability and broad exceptions to disclosure signally failed to meet international human rights standards.

CENTRE FOR LAW AND DEMOCRACY

**39 Chartwell Lane
Halifax, N.S.
B3M 3S7
Canada
Tel: +1 902 431-3688
Fax: +1 902 431-3689
Email: info@law-democracy.org**

Board of Directors

Lee Cohen
Toby Mendel
Alex Neve
Dawn Russell
Jim Cruikshank

Centre for Law and Democracy
(A company limited by guarantee).

On 18 May 2015, a revised Freedom of Information Bill 2015 was released for public consultation. Although the new Bill has some modest improvements over the 2012 Bill, the main problems have not been addressed and it still fails to meet international standards in many respects.

The Centre for Law and Democracy (CLD) has assessed both the 2012 and 2015 Bills using the RTI Rating, an internationally renowned tool for assessing the strength of RTI legislation developed by CLD and Access Info Europe (both ratings are attached to this letter). The versions scored 88 and 93 points, respectively, which would place them at 48th and 38th positions globally from among the 102 national laws assessed by the RTI Rating. This is far below fellow Caribbean countries, Antigua and Barbuda and the Cayman Islands which score, respectively, 113 and 112 points on the RTI Rating.

CLD welcomes the improvements in the 2015 Bill, such as rules suggesting harm is required before an exception is engaged and removing the power of the Minister to issue certificates effectively rendering information secret. However, the 2015 Bill is also weaker in some respects, including by adding new and problematical exceptions and by giving the Minister the power to exclude additional bodies from the ambit of the law.

Full consultation and debate prior to enacting a right to information law is appropriate, given its democratic importance and complexity. However, there has been ample time for debate on this issue in the Bahamas and it is now time to move forward decisively to adopt a law, albeit a law which respects international and constitutional standards in this area. The weaknesses of the 2012 Bill are now well-known and the same is now true of the 2015 Bill. There is also model regional legislation to draw upon, in the form of the Model Inter-American Law on Access to Public Information (available at: http://www.oas.org/en/sla/dil/docs/AG-RES_2607-2010_eng.pdf).

I urge you to prioritize the improvement and then adoption of the Access to Information Bill. CLD is ready to offer your government whatever assistance it might need in moving forward with this endeavour.

Yours Sincerely,



Toby Mendel
Executive Director
Centre for Law and Democracy
toby@law-democracy.org