

# ITU-EC HIPCAR Project

## Draft Model Legislative Text

on

# Access to Public Information (Freedom of Information)

**Presentation at the**

**Second Consultation Workshop for**

**Working Group 1 – ITU-EC HIPCAR Project**

Saint Kitts, 19-22 July 2010



# Objective

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- To provide an overview of the Draft Model Legislative text for Access to Public Information
- To highlight where particular positions agreed to in the Policy Building Blocks are given effect.
- To highlight suggested points of deliberation for the ready review and acceptance of the Draft Model Legislative text.

# Methodology Overview

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- There is much precedence in Access to Public Information (Freedom of Information) laws
  - 70 jurisdictions have been established some form of FOI framework
  - Much case law precedence and ongoing discussion papers have been produced
- HIPCAR Policy Building Blocks provide the direction on particular points of policy for CARIFORUM
  - Formed basis for amendment of precedent models to meet regional consensus
- Regional Precedent used to allow adoption of style of drafting conducive for ready adaptation to needs of the Beneficiary States.
  - Model Legislative text enabling in nature, deferring questions of procedure and standards to subsidiary Regulations.

# Key References

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- Commonwealth Model Law on Freedom of Information
- **Article 19** Model Freedom of Information Law
- HIPCAR Regional Assessment Report, FOI
- *HIPCAR Access to Information Policy Building Blocks*
- Freedom of Information Act, Jamaica
- Freedom of Information Act, Trinidad and Tobago
- Freedom of Information Bill, St. Vincent & the Grenadines
- Freedom of Information Act, Dominican Republic

# Overview of Structure

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- Model text comprises of 8 Parts, 67 sections
  - Preliminary
  - Duty to Publish Certain Information
  - The Right of access to Public Information
  - Exempt Documents
  - Review and Appeals
  - Designated Authority
  - Contravention and Enforcement
  - Miscellaneous

# Part 1 - Preliminary Clauses

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## Key Notable Points:

- Section 3 - ***Definitions***

- Interpretation of term “document” to include a wide interpretation of forms, formats, technologies of presentation and uses
  - Policy Building Blocks 1.1, 1.3
- “prescribed authority”, “public authority” and “private bodies” where the former term is used as a general term to refer to entities within both the public and private sector
  - Policy Building Blocks 2.1, 2.2, 2.3

# Preliminary Clauses

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- Section 4 – ***Limits of Applicability***
  - Non application of Act to the President, or a commission of inquiry issued by the President.
  - Non inclusion of Judicial Offices and Offices of Court Administration as public authorities
- Section 5 – Enactment Binds the State.

# Part 2 – Duty to Publish Certain Information

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- **This Part** consists of 5 sections which establishes a paradigm where certain official documents should be prepared for publication as a matter of course
  - Policy Building Block 3.4
  - **Section 6** obliges prescribed authorities to prepare and publish general statements in the *Gazette*
    - Statements covered by this clause generally address issues of governance, administrative arrangements and responsibilities.



# Duty to Publish Certain Information

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- **Section 7** provides for the ready accessibility of the rules and guidelines which frame the operations and/ or determinations of an authority or enterprise as it relates to the administration of a public service, good, resource or award – including through the use of online channels as specifically prescribed in **Section 9**

- Policy Building Blocks 3.5, 5.8

# Duty to Publish Certain Information

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- **Sections 8 & 10** provide for supportive frameworks necessary for effective FOI implementation
- **Section 8** outlines the responsibility for the implementation of systems of record keeping, storage and disposal
  - of the relevant Minister to establish rules and guidelines that encourage best practice in record management
  - of the public authorities to effect systems that will be in compliance with these guidelines
    - Policy Building Blocks 2.4, 3.6 and 3.7
- Notwithstanding Section 8, **Section 10** provides for a co-regulatory approach to treat with private bodies
  - Policy Building Block 2.5

# Part 3 – the Right of Access to Public Information

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- **This Part** consists of 14 sections which establish the general right of individuals to access certain official documents.
  - **Sections 11 through 15** outlines the general framework
    - by which individuals can request official documents,
    - the types of documents which fall under this rubric, and
    - the general procedure through which individuals may request access to particular documents, and the right of the authority to assist in that regard

# the Right of Access to Public Information

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- **Sections 16 and 17** establish particular directions which govern the processing of a request by an applicant,
  - Policy Building Block 5.7
- **Section 18** provides the general procedure through which a prescribed authority will inform an applicant on its decision pursuant to a request. While **Section 19** provides for the right to delete exempt information from a document prior to disclosure

# the Right of Access to Public Information

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- **Section 20** provides for the charging of fees for the provision of access, but provides a limiting guide on the quantum of that charge.
  - Policy Building Block 5.9
- In accordance with the media and technology-neutral definition of document, information etc., **Section 21** provides for communication of information via diverse set of media
  - Notably this section tries to ensure information is provided in a usable format, or language, as requested by the applicant.

# the Right of Access to Public Information

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- **Sections 22 and 23** provides the framework through which an authority may defer or deny access to information requested.
- **Section 24** provides for the delegation of decision making in response to a request to persons other than the relevant Minister or Chief Executive Officer of the Government Department (or Private Body)

# Part 4 – Exempt Documents

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- **This Part** consists of 11 sections which define the subset of documents which are deemed to be exempt from the provisions of Part 3
  - Notably, **Section 25** provides for
    - the rescission of the exempt classification on an official document subject to a “public interest” test; and
      - Policy Building Block 4.4
    - despite the general descriptions, such documents are not exempt *per se* but can only be considered exempt pursuant to the application of the same “public interest” tests
      - Policy Building Block 4.1, 4.2, 4.3

# Exempt Documents

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- **Sections 26 through 34** provide general description of documents which may be deemed exempt, including:
  - Cabinet documents,
  - Documents relating to or affecting national security, defence and/or international relations
  - Documents affecting the enforcement or administration of law
  - Documents or information the disclosure of which would be construed as contempt of court or contempt of the Parliament
  - Documents or information related to trade secrets, business or commercial affairs of the person, or which may reasonably prejudice such affairs if disclosed;
  - Documents affecting the national economy
    - Policy Building Block 4.1
- **Section 35** provides protection of the privacy and personal information of persons.



# Part 5 - Review and appeals

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- **This Part** consists of 3 sections which establish the right of the applicant to have a forum to appeal dissatisfactory decisions of an officer of a prescribed authority.
  - Policy Building Block 5.1
  - **Sections 36 and 37** provide a framework where, the applicant may request of the head of the prescribed authority for an internal review of the decision by senior officers of the authority.
    - Policy Building Block 5.2
  - **Section 38** provides for appeal to an independent oversight body.
    - Policy Building Block 3.5

# Part 6 – Designated Authority

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- **This Part** consists of 19 sections which establish the independent oversight body.
  - **Sections 39 through 41** provides for the eligibility and appointment of the head of the Designated Authority, and establishes entrenchment provisions associated with the office.
    - Should provisions explicitly outline the independence of the Office?
    - Should there be provisions on remuneration as well?
      - Policy Building Block 5.3

# Designated Authority

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- **Section 42, 43 and 44** outline the functions of the Designated Authority, provides for the delegation of powers and the confidentiality associated with the role.
  - Policy Building Block 5.4
- **Sections 45 and 46** empower the Authority as a regulator for the purpose of carrying out his functions, while **Sections 47 and 48** establish a mechanism through which the Authority may request information pursuant to an investigation – the information notice
  - Policy Building Block 5.3

# Designated Authority

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- **Sections 49 through 53** establish the appropriate process by which the Authority may undertake an audit or investigation
- **Sections 54 through 56** establish the mechanism and process by which the Authority may issue directions to prescribed authority deemed to operating in a manner not consistent with the Law. Prescribed authorities are herein obliged to respond or comply with instruction

# Part 7 – Contravention and Enforcement

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- **This Part** consists of 6 sections which outline the criminal offences associated with the breach of particular provisions of the Legislative text
  - Policy Building Block 5.1, 5.10
  - **Section 58** defines as a criminal offence the wilful breach of the record management guidelines established by the Minister in Section 8.
    - Section defines as a particular criminal offence any such breach of record management that is deemed to be pursuant to a request
  - **Section 59** expands on treating with the general practice that may be deemed to be obstruction to the actions of the Designated Authority, or his agents. Any such action is considered a criminal offence

# Contravention and Enforcement

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- **Section 60** treats with persons who are deemed to have misled the Designated Authority, or abuse the rights conferred by Part 5 of the text.
- **Section 61** seeks to treat with persons who breach oaths of confidentiality entered into in undertaking functions within the Designated Authority.
- **Section 62** identifies a breach of the whistleblower protection afforded by section 66 is a criminal offence.

# Part 8 - Miscellaneous

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- **Section 64** provides protection for persons who, while within the employ of a prescribed authority and becomes knowledgeable of actions by that party which run counter to the objectives of the text or the provisions therein, wilfully informs the relevant authority of such action.
  - Policy Building block 6.1, 6.2
- **Section 65** clarifies the role of the Courts as the ultimate appellate forum where either party remains dissatisfied with outcome of any dispute resolution process undertaken by the Authority
  - Policy Building Block 5.6
- **Section 67** provides a general enabling provision through which the relevant Minister may enact Regulations necessary to effect or elaborate on particular provisions throughout the text
  - Policy Building Block 3.8

# Suggested Points of deliberation

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- Definition of “private body”, and agreement of widespread applicability of legislative text to “prescribed authorities” – which includes private bodies.
- Consider the propriety of the investigation and instruction process frameworks – are they too bureaucratic? Or are they appropriate?
- Consider the statutory position of the Designated Authority – where is the best fit:- in a new body or do existing statutory offices provide a good fit?



# Questions?

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# Thank You.

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