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**STANDING COMMITTEE ON JUSTICE, LAW AND  
HUMAN RIGHTS**

**REPORT ON THE INFORMATION BILL 2016  
(BILL NO. 34 OF 2016)**



**PARLIAMENT OF THE REPUBLIC OF FIJI  
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## LIST OF ACRONYMS

ATC	-	Accountability and Transparency Commission
BUY	-	Bua Urban Youth Network
FLP	-	Fiji Labour Party
NGOCHR	-	NGO Coalition on Human Rights
OHCHR	-	Office of the United Nations High Commissioner for Human Rights
SO	-	Standing Order
SODELPA	-	Social Democratic Liberal Party

## CHAIR'S FOREWORD

Section 25 of the Constitution of the Republic of Fiji provides for the right of every person to access information held by the Government and to correct or delete false or misleading information that affects a person.

Further Section 150 of Fijian Constitution provides that a written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.

A similar provision existed in the 1997 Constitution which provided at Section 174 that as soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies. However, due to lack of political will or for some other reason none of the Parliaments constituted under the 1997 Constitution took the initiative to enact an information law.

This Bill gives effect to a long overdue initiative of a Fijian Government that allows the people freedom to information.

We have heard numerous times stories on how a decision was made by a Government agency against an individual but he was not provided any information on why the decision was made as such. There have been cases where tenders were submitted by people, their bids were refused but they were not told why.

There are students who applied for scholarships, they were refused but were not given any reasons on why that decision was made. There are people who applied for jobs or promotions and were refused they never received any reasons why such a decision was made.

The Information Bill aims to empower the common Fijian to hold the Government and its agencies to account and to provide them with information on why a decision was made provided the information directly affects a determination or decision made by a public agency in relation to the person making a request.

Such a provision ensures that while one person's right to access information is furthered another person's right to privacy is also protected. An example would be while I can now use the law to know why my bid was refused I cannot use it to know why another's bid was successful therefore protecting the business or trade secrets of the second person.

The Committee on Justice, Law and Human Rights was tasked by the Honourable House to scrutinise the Information Bill and provide a report to Parliament. The Committee thereafter held numerous public consultations to seek the views of the people.

The Committee as part of its deliberations also consulted the drafters of the Bill for certain amendments. Amendments were made to various Sections and Subsections of the Bill and the amendments which were necessary have been made and marked in red in the copies of the Bill provided with this report.

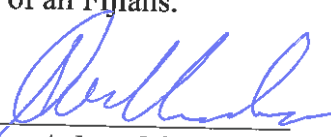
This Report will cover the Standing Committees' role in reviewing the *Information Bill* to ensure that all due processes regarding the Bill has been followed and to also ensure that the provisions contained in the Bill would contribute to the achievement of the Bill's objectives.

Some of the pertinent areas which the Bill addresses are as follows:

- Giving effect to Section 25 and 150 of the Constitution of the Republic of Fiji (2013), whereby persons are given the right to access information held by Government;
- Providing for the implementation of the functions of the Accountability and Transparency Commission;
- to recognise the right of a person to access information held by a public agency in accordance with the procedures prescribed in this Act;
- to ensure that a person is informed of the operations of a public agency, including, in particular, the rules and practices followed by the public agency in its dealings with members of the public; and
- to allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure that the information is correct, accurate, complete and not misleading

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the staff and officers of the Research Unit and secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I, on behalf of the Committee, commend the *Information Bill 2016* to the Parliament and seek support of all the members of this August house for the Bill since it is designed for the greater good of all Fijians.

  
**Hon. Ashneel Sudhakar**  
**CHAIRPERSON**

## **1.0 INTRODUCTION**

### **1.1 Background and Committee Remit**

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the *Information Bill 2016* for review on June 2, 2016. The Bill was referred to the Committee pursuant to Standing Order 85(4)(a) and was tasked with scrutinising the Bill and to table a report on the Bill in a subsequent Parliament Sitting.

### **1.2 Objectives of the Bill**

Clause 4 of the Bill clearly sets out the objectives, which are;

- (a) to give effect to the right of access to information under Sections 25 and 150 of the Constitution;
- (b) to recognise the right of a person to access information held by a public agency in accordance with the procedures prescribed in this Act;
- (c) to ensure that a person is informed of the operations of a public agency, including, in particular, the rules and practices followed by the public agency in its dealings with members of the public; and
- (d) to allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure that the information is correct, accurate, complete and not misleading<sup>1</sup>.

### **1.3 Procedure and Program**

In carrying out its task the Committee read through the Bill and conducted its own deliberation of the Clauses in the Bill. The Committee also invited the Ministry of Public Enterprises and the Office of the Solicitor General; the initiators of the Bill. In view of the time-frame to consider the Bill, the Committee called for submissions from the public and other interested stakeholders by placing advertisements through the local newspapers (Fiji Times and Fiji Sun) on 7 and 9 July, 2016 and again on 26 September, 2016. The Committee invited certain entities to also make submissions.

Details of the Committee's deliberation on the submissions received are provided in this Report.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise the Committee's observations.

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<sup>1</sup> Clause 4, *Information Bill* (Bill No. 34) 2016.

## 1.4 Committee Members

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- i. Hon. Ashneel Sudhakar (MP) (Chairman)
- ii. Hon. Mataiasi Niumataiwalu (MP) (Deputy Chairman)
- iii. Hon. Lorna Eden (MP) (Member)
- iv. Hon. Semesa Karavaki (MP) (Member)
- v. Hon. Niko Nawaikula (MP) (Member)

For deliberation on the Bill, the following Hon. Members stepped in as alternate members, pursuant to SO 115(5):

- i. Hon. Balmindar Singh (MP) (Alternate Member for Hon. Lorna Eden)
- ii. Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)
- iii. Hon. Aseri Radrodoro (MP) (Alternate Member for Hon. Semesa Karavaki)
- iv. Hon. Jiosefa Dulakiverata (MP) (Alternate Member for Hon. Semesa Karavaki)

During the course of the deliberation on the Bill there was a change in the membership of the Committee, whereby Hon. Dr Brij Lal replaced Hon. Lorna Eden as a substantive member pursuant to SO 115(2).

## 2.0 *INFORMATION BILL, NO. 34 OF 2016*

### 2.1 Introduction

The *Information Bill 2016*, hereinafter also referred to as the Bill, is the fulfilment of the obligation by the Fijian Government in providing a legislation which ensures that the requirements of the *Constitution of the Republic of Fiji (2013)* ("*Constitution*") pertaining to freedom of access to information.

The Bill seeks to give effect to Sections 25 and 150 of the *Constitution* by creating a legal framework that provides for access to information kept by public agencies.

### 2.2 Written and oral submissions received

The Committee as part of its deliberation received numerous submissions on the Bill.

The Committee received submissions, from relevant stakeholders, on various dates falling between and including 9 August to 18 November, 2016. Organisations and individuals that made submissions to the Committee included:

- i. Bua Urban Youth Network;
- ii. FemLink Pacific;
- iii. NGO Coalition on Human Rights (NGOCHR);
- iv. UN Office of the High Commissioner on Human Rights (OHCHR);
- v. Rajendra P. Chaudhary (ordinary citizen);

- vi. Consumer Council of Fiji;
- vii. Fiji Labour Party;
- viii. SODELPA.

The Committee took into consideration the submissions made by the above mentioned organisations and individuals. The Committee would like to extend its gratitude to all those who participated and provided essential contribution to the Committee's work.

The submissions of the above-mentioned organisations are summarised and provided in this Report. Verbatim Report of a submission that was delivered face-to-face and written copies of the submissions are attached as 'APPENDIX A'.

### **3.0 COMMITTEE'S OBSERVATIONS/DELIBERATION AND ANALYSIS OF THE BILL**

#### **3.1 Impact of the Bill**

The Committee noted that the Bill aims to ensure that the right of all Fijians to access official information, is recognised. Applicants under the Bill are not required to provide a reason for the request, however the organisation keeping the information must give reasons for refusing to release the information sought.

The Bill also aims to provide the necessary legal framework which allows Fijians to correct or delete false or misleading information that directly affects a person.

Furthermore it will bring about more transparency and accountability of both the private and public sector.

#### **3.2 Reading of the Bill and Deliberation by the Committee**

The Committee began its analysis of the Bill by perusing through it Clause by Clause and noting numerous issues.

Some of the main issues noted were:

- What are the merits and de-merits of the Information Bill?
- For obtaining and access to information, is there a possibility for the information commission (ATC) to be decentralised, so that it caters for the people living in rural and remote areas?

The Committee noted that these issues needed clarification thus resolved to formulate questions and suggestions on these, which were then sent to the Solicitor-General's Office.

The Solicitor-General's Office, who are the drafters of the Bill, responded and advised the Committee accordingly. The response is summarised as follows:

*What Are the Merits and De-Merits of the Information Bill?*



Section 25 of the Constitution of the Republic of Fiji ('**Constitution**') provides for the right of every person to access information held by the Government and to correct or delete false or misleading information that affects a person. Further, section 150 of the Constitution provides that a written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.

The Information Bill 2016 ('**Bill**') is therefore a fulfilment of the requirement to enact legislation giving effect to sections 25 and 150 of the Constitution.

The objectives of the Bill, outlined in clause 4, are to—

- (i) give effect to the right of access to information under sections 25 and 150 of the Constitution;
- (ii) recognise the right of a person to access information held by a public agency;
- (iii) ensure that the public is informed of the operations of public agencies; and
- (iv) allow a person to correct or delete personal information held by a public agency.

*For obtaining and access to information, is there a possibility for the information commission to be decentralised, so that it caters for the people living in rural and remote areas?*

This is possible. However, it should be noted that this is a policy issue.

The response and issues were deliberated on extensively and the Committee resolved that it would be appropriate to invite and call for submissions from key and interested stakeholders in order to get a broader perspective on the Bill.

### **3.3 Issues noted from submissions**

As stated above, the Committee heard from numerous organisations. Submissions given by these organisations greatly assisted the Committee in its deliberation. These submissions highlighted issues on the Bill.

The Committee took note of all the submissions received and deliberated on the submissions. Main points raised in the submissions are summarised as follows:

#### ***i. Bua Urban Youth Network (BUY)***

The pertinent issues noted by the BUY were as follows:

- The Bill promotes access to information which is something greatly anticipated. This would ensure certain vital information that actually affects people that are able to be accessed.
- The Bill provides that agencies may charge a fee for making information available, however this fee should not be charged as such fees would deter people from trying to access information.

- The Bill provides for the process for providing information by public agencies, however the Bill should also provide that information in a language that the applicant can understand (whether English or in vernacular form).
- The Bill provides that certain information is exempted from disclosure, however it seems this list provided in the Bill (Division 3) is alarmingly long. Disclosure is necessary for the promotion of transparency, accountability and good governance.

## **ii. *FemLINK Pacific***

FemLINK Pacific believes that this is a good opportunity to enhance the gender analysis when dealing with information gathering and accessing, since Fiji is state party to the UN Convention on CEDAW.

Urges all state parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.

It is essential that social equality accounts for the diversity of women and the application of the Freedom of Information legislation. This would respond to the reality that men and women will not be affected equally by this legislation because of persistent imbalances such as the under-representation of women in decision making structures.

## **iii. *NGO Coalition on Human Rights (NGOCHR)***

The NGOCHR noted that the Bill has provisions that relate to the principles pertaining to the right to information encapsulated in Article 19 of the Universal Declaration of Human Rights. Pertinent issues noted by the NGOCHR were as follows:

- The Bill gives effect to the principle of maximum disclosure of information as highlighted in Clauses 4 to 6, which outlines the objectives of the Bill and the rights of access to information held by public agencies. This access provided is however subject to limited exceptions. Clause 35 reiterates the above-mentioned principle in which it outlines what public agencies are obligated to publish or make available to the public.
- The Bill prescribes provisions promoting access to information, however it lacks provisions that mandate that adequate resources and attention are devoted to public awareness initiatives that promote access to information.
- The Bill provides for provisions for processes to facilitate access to information, however the realisation of this is hindered since there is no provision that ensures full access to information for certain groups such as; persons who are not able to read, write or speak the language of the record (information), persons living with disabilities and persons who have historically struggled to have their voices heard or have access to information of relevance to them such as persons of ethnic minorities, women and children.
- The Bill promotes access to information but in order for this to be achieved the fees that may be prescribed by public agents/bodies (as prescribed in Clause

12(2)) for release of information should not be too high so as to deter potential applicants and would defeat the objectives of the Bill.

- The Bill outlines the relationship of the Bill with other written laws, however it does not provide a requirement that other legislation, as far as is possible/practicable, be interpreted in a manner consistent with the Bill.

#### Division 2 (12) – (2)

With all related sections where there is a mention of fees: Amendment is required in terms of charges for access to information should be free for the very poor, the elderly and persons with disabilities.

#### Clause 36

This Clause be amended that in relation to the overall promotion of access to information, it would be more practical that there be more than one information officer – and ensure that the position is a senior (director) level with a substantive communications budget to support media and public outreach.

#### Clause 38

This Clause be amended so that there is a promotion of public awareness of the legislation;- it is explicit that this will be across all media platforms and media agencies including through community media networks.

The commission must ensure that its responsibilities as mentioned above are incorporated on a gender perspective including linkages with CEDAW on women's right to access information which will "help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women."

#### *iv. Office of the United Nations High Commissioner for Human Rights (OHCR)*

#### Clause 2 -Definitions

The definition of "Information" is broad under the current drafted Bill as it excludes any material that does not 'directly affect' a decision made by a public agency in relation to the person making a request. It also excludes access to information that is in the public interest and does not promote the principle of maximum disclosure henceforth limiting the sector of the public that is able to request information.

Also the definition of "public agency" is broad since the Bill does not include any criteria to guide the decision of the Minister in exempting a public agency, nor does there seem to be any requirement to provide reasons for the decision to exempt a public agency from the provisions of this Act.

The Minister's role should be limited to refusal to release a document if it falls within a legitimate exemption, or discretion to grant access to information despite that information being exempt, if it is in the public interest.

Exemptions should relate to a legitimate aim of the government that would be harmed if information from particular agencies were disclosed, such as protecting intelligence

information or information relating to agencies that compete on the open market with private sector counterparts.

It should be open to an exempt agency to grant access if it does not harm a legitimate aim, it is in the public interest to do so and it is not subject to secrecy provisions in other legislation.

Clause 2 - Accountability and Transparency Commission and Minister responsible for accountability and transparency

OHCHR recommends that the relevant commission responsible for administering the Information Bill is the Accountability and Transparency Commission be formally established. The process of establishing the commission should be transparent and inclusive with diverse membership.

The relevant Minister be the Minister responsible for information.

The Bill to specifically state which agencies are exempted by the Minister from application and specifically what regulations the Minister is required to make.

Clause 6 - Requests for access to information

- OHCHR recommends that the bill be aligned to article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, that every person whether permanent or non-permanent residents of Fiji may request to access information.
- Recommends that requirements to submit a request should be clear and transparent, and not subject to the discretion of the Commission. Inclusion of requirements in the legislation is necessary to facilitate compliance and consistency amongst request and facilitating access to information.

Clause 9, 20 and 21 – Exemptions

- Exemptions in the Bill appear to be very broad as the Bill mandates that the commission must refuse a request for information if the information is exempt or if it is held by an exempt public agency (**Clause 9**).
- Under **Clause 20**, exempt information includes, but is not limited to, national security, scientific or economic interest of the state and contempt of court. It also includes ‘any other information, the disclosure of which, the Commission deems is not in the public interest’ (clause 20(o)). If disclosure does not harm a legitimate state interest, there should be no basis for preventing such disclosure test.
- The Bill also grants Ministries wide discretion to exempt public agencies, in consultation with the Commission under **Clause 21**. This lack of transparency over which public agencies are to be excluded from the Act is particularly concerning, as the provision appears to lack any criteria for decision. As

mentioned above, no public bodies should be completely excluded from the scope of the law.

*Clauses 19 and 29 – Public Offices may refuse a request to provide or amend information*

Under clause 19, a public office may refuse a request if the information cannot be located, or processing the request would substantially and unreasonably divert resources. Reasons for refusal of this request must be provided to the Commission and the person making the request.

In order to facilitate the efficient administration of requests, if a request to disclose information is refused, a reasonable timeframe to provide notice of that decision, and reasons, should be included in the legislation. This timeframe should mirror that which is provided in the corresponding provision relating to correcting or deleting information under clause 29. Which presently allows for 20 days.

As presently drafted, the Bill does not require the public to be notified of avenues to review or appeal a decision to refuse a request. If a request is refused, the person making the request should also be notified of their rights in relation to challenging decision.

Under clause 29, a public agency must refuse to amend a document if the information is correct, accurate, complete and not misleading, if the request is incorrect, inaccurate, incomplete or misleading or if amendment to the document is specified in another law. Reasons for refusal must be provided to the person.

*Clauses 22-26 and 32-34 – Right to review and appeal a decision*

Under the Bill, a person may submit a complaint to the commission if a public agency refuses to provide the information requested. The Commission will then engage with the public agency concerned to facilitate access to the information requested. If such efforts do not resolve the situation, the Commission may make an application to the High Court for an order requiring the public agency concerned to provide access to the information requested. Any person who is aggrieved by a decision of the Commission may appeal to the High Court on a question of law.

According to General Comment No. 34, arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests. An accessible and independent appeals system is essential to prevent undue administrative discretion in interpreting the scope of exceptions to the right of access, as well as other aspects of the law.

As presently drafted, the Bill narrows the avenue whereby a person aggrieved by a decision is able to challenge that decision on its merits. To this extent, review of a decision should be available in relation to all decisions made by a public body regarding an information request and an internal mechanism should be considered where appropriate. Additionally, internal review decisions should be made subject to appeal to an external review mechanism, such as a Court. In this instance, it should be

open to the court to conduct administrative review of the decision, and not be limited to evaluating the legality of the decision made, but also the merits of the decision. The review and appeal process should be subject to a reasonable timeframe including how long the aggrieved applicant has to lodge a complaint, as well as how long the public body or Commission has to address and respond to the complaint.

#### Clauses 35-36 – Publication of Information

Clause 35 could be amended to read –

*“Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to:-*

- (a) A description of its structure, functions, duties and finances;*
- (b) Relevant details concerning any services it provides directly to members of the public;*
- (c) Any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body’s response;*
- (d) A simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;*
- (e) A description of the powers and duties of its senior officers, and the procedure it follows in making decisions;*
- (f) Any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;*
- (g) The content of all decisions and/or policies it has adopted which affect the public along with the reasons for them, any authoritative interpretations of them, and any important background material; and*
- (h) Any mechanism or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.”*

#### Protection of whistle-Blowers

The Bill does not currently include any reference to the protection of whistle-blowers. The following provision could for instance be inserted in the Bill to provide protection to whistle-blowers –

*“No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.*

*For purpose of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.”*

**v. Mr. Rajendra P. Chaudhary**

The submission by Mr. Chaudhary was on the personal experiences faced with regards to accessing information with the Police and the Ministry of Health. It was noted that there were instances where access to information was difficult due to either bureaucratic procedures in place or because of very high fees to be paid in order to access information. The Committee noted the relevant issues which were raised in the submission as it related to the Bill but disregarded the issues which could be properly be dealt with by the relevant Ministry.

**vi. Consumer Council of Fiji**

The pertinent issues raised by the Consumer Council of Fiji were as follows:

- The Bill ensures that information kept by a public agency can be released to an individual if that information is relevant to that individual.
- The Bill promotes independence and neutrality by establishing a Commission to hear and receive applications for the release of information.
- The penalties attached to persons (inclusive of the Commission and consumers/applicants) who commit an offence are fair.
- The timeframe of 20 days provided in the Bill for the Commission to facilitate a request is too long given that some requests may be critical and needs to be facilitated in a timely manner.
- The Bill only states reimbursement of fees to the applicant if the agency provides the information out of time, however it fails to provide whether there will be reimbursement for information provided that has errors.
- The Bill does not provide for a refund for the application fee if request by an applicant is refused by both the agency and the Commission.
- The Bill does not provide for disclosure of charges to be levied by an agency before the request is executed.

**vii. Fiji Labour Party (FLP)**

The pertinent issues noted by the FLP were as follows:

- The Bill restricts access to information held by the State and its agencies, in that access is only confined to information which directly affects the person making the application.

- The Bill also restricts access to information, in that a person cannot access information that directly affects him or her if the date of the information precedes the legislation.
- The Bill is supposed to bring into effect Sections 25 and 150 of the Constitution. Emphasis must be given to Section 150, which could be said is the mandate for the making of the Bill. Section 150 states that legislation shall be made which provides the legal framework for the right of a person to be able to access information from the Government and its agencies (public agencies). This constitutional requirement must not be diminished by subsidiary legislation except for circumstances where national interest may be impaired as a result of the disclosure of the information.
- Freedom or right to access information is also a vital component of a transparent and accountable government. Thus information from the State and public agencies must not be withheld unless there is a very good reason for doing so.
- The timeframe provided in the Bill for facilitation of requests by the Commission is too long and should be shortened.
- The Bill provides for charges to be levied by agencies for information requests, but this levy should be minimal so as not to deter applicants from requesting for information.
- The Bill provides for refusal to release information on the basis that the information cannot be located (as prescribed in Clause 19(1)(a)). This Clause could be used as a means of giving excuse by the agency/Government so as to not release information which may be vital to the applicant but embarrassing to the agency.
- The Bill provides for authority of the Minister with consultation with the Commission to exempt certain public agencies from the application of the Bill. This could open up the process to abuse and be used to prevent exposure of corrupt and improper practices.
- The Bill seems to put more administrative prescriptions on accessing information by establishing the Accountability and Transparency Commission (ATC); the respective agencies are more than capable of facilitating information requests themselves. And it would seem that just an independent Information Commissioner should be appointed and assume all the functions of the ATC except for facilitating requests. The Information Commissioner to be empowered to hear and determine appeals arising out of refusal to disclose information.

#### ***viii. Social Democratic Liberal Party (SODELPA)***

The SODELPA suggested that some recommendations be made to the Bill and these are summarised as follows;

- The right of access to information be opened to all government documents and information whether held in electronic or other format and that the Information Bill be so amended to facilitate the right of access to all government information unless certified that it would be a threat to national security to release the information that is requested. The right should not be limited to only information that is personal to the person applying. All information, not only information that is created after the coming into force of the Bill, should be available.



- That “public agency” is inappropriate and that the new Information law should apply to all public offices, as defined in the *2013 Constitution Decree*, and as referred to in the *State Services Decree*. Furthermore it was recommended, that Section 21, which allows the exemption of public offices from the requirements of the law, be removed - ALL government agencies, statutory bodies and government commercial companies must be subjected to the Information law.
- The Party recommends that information from statutory bodies and government commercial companies be also available, in particular, all government bodies where a government Minister appoints Directors, should be included in the list of bodies from which government can be requested. These bodies all receive funds from the government, whether government owns all the shares or not, and so the information should be publicly available.
- The current definition in the Bill for “government companies” is only companies where government owns 100% of shares – therefore recommends that all public enterprises, all statutory bodies, all government commercial companies, be included as agencies from which information may be requested under the Bill.
- That there be revision of the redrafting of the Bill. The definition of “information” in the Bill is restricted to forms of information storage, rather than referring to the holder of the information, as defined in other Freedom of Information laws. Therefore it is recommended that the definition of information be redrafted, to include not only the forms of information storage, but to refer to the holders of information – being public officials and public officers like Cabinet Ministers, Permanent Secretaries, the Commissioner of Police, the Military Commander, heads of statutory bodies, CEOs of government commercial companies, etc.
- That the Government draft a Bill to enable the Commission to be appointed and to carry out its functions, as set out in the Constitution. The committee to consider the option for requests under the Bill to be made directly to the Ministry or agency concerned rather than through the ATC, or alternatively, that an Information Commissioner be appointed for this purpose, so that the ATC can focus on maladministration, accountability and transparency of government agencies.
- That information requested be provided within 30 days, and any extension of time should be limited to another 30 days only, with good reason provided and made known to the applicant.
- That the fee be a minimal one, rather than punitive, to enable all people to access official information. This should not be a revenue raising exercise for the government.
- That there be a review of Section 13(2)(a) of the Bill and we recommend its deletion or the insertion of a process where this decision can be reviewed by a third party like the ATC or other judicial body.

- That the national security, national defence or foreign policy, individual privacy interest, business proprietary interest be the bar to disclosure and that section 20 be reviewed by the Committee.
- That where a document contains some exempted information, that the document still be released, but with exempt paragraph or photo or content be redacted.
- That an exemption to the release of indigenous genealogy records, archaeological sites and items, landowning records and fishing ground records be exempt under the Bill.

### **3.4 Research into foreign jurisdictions**

The Committee noted the impact the Bill would have on the people of Fiji, thus resolved to look into other jurisdictions to see how their information laws have impacted their people.

There were two jurisdictions which also had freedom of information laws that the Committee thought would be relevant to look into; these two countries were Australia and the United Kingdom (UK). The pertinent points noted by the Committee with regards to these countries were as follows:

#### ***Australia***

The *Freedom of Information Act 1982 (FOI Act)* provides a legally enforceable right of access to government documents. It was updated in 2010<sup>2</sup>.

According to the Office of the Australian Information Commissioner (OAIC) the *FOI Act* promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes documents containing personal or other information, such as information about policy-making, administrative decision-making and government service delivery. Individuals can also request that ministers or agencies amend or annotate any information held about them.

The OAIC states that the FOI Act:

- allows the public to request access to documents held by Australian Government ministers and most agencies;
- allows the public to request that ministers or agencies amend or annotate any information they hold about a person;
- establishes an information publication scheme requiring agencies to publish online details about their functions and structure;

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<sup>2</sup> Ibid.

- allows agencies and ministers to release documents that would be exempt under the FOI Act, unless prevented by a secrecy requirement in another law.

The Australian Information Commissioner notes that the Act recognises that a community that is better informed can participate more effectively in the nation's democratic processes. It also recognises that information gathered by government at public expense is a national resource and should be available more widely to the public.

If a document falls under one of the *FOI Act's* nine exemptions, an agency or minister can refuse to release it. Some of these exemptions include documents affecting national security, defence or international relations, documents affecting law enforcement and public safety, and Cabinet documents. The *FOI Act* does not cover documents that are already accessible to the public.

### ***United Kingdom (UK)***

According to the Office of the Information Commissioner the *UK Freedom of Information Act 2000* provides public access to information held by public authorities. It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.<sup>3</sup>

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Recorded information relevant to the act includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

Public authorities include government departments, local authorities, the NHS, state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money.

The Information Commissioner states that the main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.<sup>4</sup>

The UK Information Commissioner sets out the following points on its website:<sup>5</sup>

- everybody has a right to access official information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the Act;

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<sup>3</sup> Bill Summary produced by the Parliament Research Unit.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

- an applicant (person making the request) does not need to give a reason for wanting the information. On the contrary, the organisation must justify refusing them information;
- an organisation must treat all requests for information equally, except under some circumstances relating to ‘vexatious’ requests and personal data. The information someone can get under the Act should not be affected by who they are. All requesters should be treated equally, whether they are journalists, local residents, public authority employees, or foreign researchers; and
- because all requesters should be treated equally, an organisation should only disclose information under the Act if it would disclose it to anyone else who asked. In other words, you should consider any information you release under the Act as if it were being released to the world at large.

The Commissioner clarifies that the Act does not prevent organisations voluntarily giving information to certain people outside the provisions of the Act. The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. This is held under the *Data Protection Act 1998*.

### **3.5 Outcome of deliberation**

The following is the outcome of the Committee’s deliberation.

Main observations made:

The Committee noted that there is a need for an independent body that could address the issues raised by the public concerning access to information that related to them, which were kept by government offices.

The Committee also considered the submissions of various submitters on the need to consider the concerns on the possibility of restrictions to the right to freedom of access to information.

Therefore the Committee deliberated at length on the issue concerning the balance between the right to access information and which information should be protected.

After considering all the submissions the Committee felt that a law that allows the public to access information which concerns them, will greatly benefit the ordinary Fijian.

Apart from the observations, there were also pertinent issues the Committee gave much consideration to. These issues, provided below, were discussed at length by the Members of the Committee and considered with the assistance of the drafting team. This ensured that all relevant issues raised before the Committee was appropriately addressed.

*In relation to the definition of 'information' provided in the Bill, it has been submitted to the Committee that the definition given defeats the purpose of the Bill, in that it is too restrictive since it only allows a person to obtain information in respect of a decision made by a public agency in relation to that person. Would it be possible to redraft this definition so it does not restrict a person from obtaining other information, which may indirectly affect him or her?*

The Bill enables the public to get access to public information that relate to themselves. Issues of privacy should be considered and unwarranted disclosure of information of other people should not be allowed – the Bill only allows access to information that directly affects the person requesting. The Bill is drafted to answer the fine balance between the right and freedom to information and the right to protect private and privileged information.

It is advised that there is a provision that provides for the disclosure of certain information by public agencies – Clause 35 – however this does not necessarily mean that the access to the information can be given anyhow.

The Bill provides one avenue for accessing information but does not stop the public from using the existing avenues for access to information – the Bill is a complementary law to the existing ones. Therefore no change to the provisions of the Bill.

*Drawing from the question above, will the Bill restrict the members of the public from obtaining information that they currently are able to access from Ministries and departments through requests, such as statistical data, reports on socio-economic issues, etc.?*

No, the Bill does not restrict members of the public from obtaining information. It should also be noted that there are certain information that should not be divulged – for e.g. state secrets and matters protected by privilege. It should be noted that access to information is allowed, but only to the extent that it relates to the person requesting and it does directly affect that person. Therefore no change to the provisions of the Bill.

*Will the Media also be restricted/denied from obtaining information unless it directly affects one of them?*

No, the media will not be restricted, as long as the information relates to or directly affects the individual. Therefore, it should be noted that the information that can be accessed will be limited, since there are also privacy issues that need to be considered and protected. Therefore no change to the provisions of the Bill.

*Is it possible to enlarge the definition of "information" to cover broader requests, since requests would also cover information concerning the State?*

Information allowed to be accessed also includes information concerning the State, but only to a certain extent, since some information relating to the State should not be

allowed to be accessed for reasons of national security. Therefore no change to the provisions of the Bill.

*With regards to the definition of “Government Company”, would it be appropriate that the definition be enlarged to also cover companies partially owned by the Government or where Government has majority shareholding?*

The Bill only covers Government wholly-owned companies. Having the Bill cover for partially owned companies is ill advised as these would include privately owned information, which leads to issues of privacy and matters protected by privilege. Therefore no change to the provisions relating to the definition of Government Company in the Bill.

*Currently, the Bill provides that requests for information should be made to the Commission. Should section 6 be amended (expanded) to allow request to be made to the public agency first, before going to the Commission (ATC), since this could quicken the process of obtaining information? The Committee notes that in larger jurisdictions such as Australia, NZ and UK, information requests are managed at the department level and not through a central body as is proposed here in the Bill through the ATC. In other jurisdictions like Victoria in Australia, an Information or Freedom of Information (FOI) Commissioner is appointed to whom appeals can be made where departments refuse to grant information requests.*

Currently, the Bill provides that requests for information should be made to the Commission, but nothing stops a person from going to the public agency. The Bill enables the public to get the assistance of the Commission to ensure that the agency provides the information. It should also be noted that the information sought should only be that relates to or directly affects the person requesting. It should also be noted that officers of public agencies will be required to undergo training on how to provide and also protect information, which is something positive for the public.

*With regards to Part 4, Clause 36; would it be practical to have more than one information officer and that the responsibility is to be given to a senior position holding officer in a public agency?*

The Bill was initially drafted, so that one designated officer or unit will handle the requests via the Bill. The law will make sure that every public officer will have to be properly trained to ensure that they are able to carry out this responsibility. The Bill doesn't preclude the public agency from having more than one information officer.

*Queries have been raised at the Committee on whether there will be a Freedom of Information Bill following the Information Bill, which will address issues such as general rights of access to information held by Government or public agencies?*

The Bill – *Information Bill*, No. 34 of 2016, is the Bill that will enhance the right and freedom given to the public to access government held information, which relates to them.

*As raised by UNOHCHR; is it necessary to exempt certain Government entities from the requirements of this Bill, as provided in Clause 21 as it may affect transparency?*

It is advisable that some entities need to be exempted, such as Cabinet – to protect state secrets. The Clause doesn't exempt the whole office. Exempt decision is an executive decision and this can be scrutinized via judicial review.

*The Bill doesn't have any criteria that the Minister has to follow in exempting an entity. Should a set of criteria be in place when considering granting exemption to a public agency?*

The provision was drafted with carefully thought out language. It was also advised that the Minister will less likely abuse these powers. It was also suggested that this can be included in the Regulations.

*Clause 6(1) provides that natural persons can request for information. This Clause doesn't provide rights to legal persons such as corporations to access information. Should provisions be made to allow for that?*

This Bill provides an avenue for the ordinary citizens to be able to access the information via the Commissions help.

*Concerns have been raised about Clause 35 that too much time is being provided to public agencies to avail information to public, i.e. 12 months. Should the timeframe be reduced to 6 months?*

The reason for 12 months is for the Ministries and Departments to prepare to shift to electronic recording and information keeping.

*The Committee saw it appropriate to also include here a suggestion raised by the UNOHCHR. The suggestion raised was for provisions to be included in the Bill that provides for the protection for whistle-blowers. The UNOHCHR also presented few sample provisions that could be incorporated into the Bill. Suggested sample provisions by the UNOHCHR, which was mirrored to the Model Freedom of Information Law developed by Article 19, are as follows:*

*“(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.*

*“(2) For the purpose of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.*

The Bill already has whistle-blower protection – Clause 47.

*The Bill provides that documents could be exempted from release if they contain exempt matters. Should the Bill be revised to allow for the release of parts of the document after the exempted parts have been redacted?*

Clause 16 allows for that.

After consultation with the drafters, the Committee were advised of a few very minor amendments which pertained to drafting style changes to be made to the Bill. These minor amendments were made accordingly.

### **3.6 Gender analysis**

The Committee took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

During its deliberation the Committee noted that the Bill will apply equally to every Fijian irrespective of gender. It will afford every person in Fiji the right and freedom to access information that relates to them, from government agencies.

The Bill will follow the principles behind the freedom and right to access information enshrined in the Constitution; whereby all persons irrespective of gender, will be catered for when the Bill comes into effect.

## **4.0 CONCLUSION**

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation saw that there was a need for the Bill. The deliberations led to consultations with the drafters so as not to upset the objectives of the Bill. As a result of the Committees deliberations, the Committee felt that the Bill at this stage does not need any further substantive amendments, apart from those minor drafting style changes made to the Bill which are reflected in red text in the amended copy of the Bill presented with this Report.

The Committee through this report commends the *Information Bill* (Bill No. 34) 2016 to the Parliament.



# APPENDICES

## **APPENDIX A**

### **COPIES OF SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS**



**VERBATIM REPORT OF THE MEETING OF THE STANDING COMMITTEE ON JUSTICE LAW & HUMAN RIGHTS, HELD IN THE SMALL COMMITTEE ROOM, PARLIAMENT HOUSE ON THURSDAY, 11<sup>TH</sup> AUGUST, 2016 AT 11.05 A.M.**

**Submittee:** Bua Urban Youth Network

**In Attendance:**

1. Ms. Vani Catanasiga Volunteer
  2. Ms. Filo Tuivanualevu
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MR. CHAIRMAN.- Good morning, Honourable Members, members of the media, public and the Secretariat. We can start today's proceedings. Of course, as I noted, Olympic fever is on, we have contrasting results this morning; rugby we did well, soccer we did not do very well or we did not do well at all. Today we have before us members of the Bua Urban Youth Network, , Ms. Vani Catanasiga (Volunteer) and Filo Tavanilevu, is here as well? Sorry?

MS. V. CATANASIGA.- Tuivanualevu.

MR. CHAIRMAN.- She is coming over as well?

MS. V. CATANASIGA.- Yes, I can start.

MR. CHAIRMAN.- So with that, this is the Standing Committee for Justice, Law and Human Rights.

*(Mr. Chairman introduces the Committee Members)*

First, we would like you to introduce yourself, what your Bua Youth Network does, where it is based and what sort of work do you do? The submission is primarily on which aspects?

MS. V. CATANASIGA.- I guess my introduction, the aspect that I am going to speak on is all built into this, as I speak you will understand that. But I have printed documents that relate to what I will talk about, Sir.

MR. CHAIRMAN.- As a point of reference we are currently dealing with six pieces of legislation, five in fact that is the Information Bill, the Parliamentary Privileges and Powers Bill, Code of Conduct Bill and three Reports which are the Supervisor of Elections, Electoral Commission and the Multinational Observer Group Report on the last Elections. These are the areas that we are looking at, we focusing on one of these areas.

MS. V. CATANASIGA.- Okay.

MR. CHAIRMAN.- So, with no further delay I will now allow you to continue.

MS. V. CATANASIGA.- Good morning, Honourable Members. To start, I wish to introduce myself, my name is Vani Catanasiga and I am a member of the Bua Urban Youth

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Network as you have heard. If you do not mind, I would like to briefly introduce what we do as a Volunteer Network as that explains my participation here this morning to discuss the Information Bill.

The Bua Urban Youth Network is a collective of young professionals who reside, work and study here in Suva and Lautoka and have traditional links to the Province of Bua in Vanua Levu. We are committed to ensuring that our villages and our traditional networks benefit from our education and professional experiences. As a network, we value passion, unity, dignity, stewardship, harmony, rule of law and our community's faith in God.

Bua Youth Network (BY Network) that is what we called ourselves in short started in 2007 as a social network to try and revitalise links between Bua Youths who reside in Suva by organising activities such as clean-up, sports day and *solu*. We use these activities to mobilise urban youth networks and establish a more structured base for supporting and lobbying for appropriate development for Bua. What we are not and what we will not do is attempt to replace the existing structures in rural Bua, that is, the Provincial Council instead we have worked to stand in the gap, link our rural communities to information and resources they may not have access to.

MR. CHAIRMAN.- What would be your number like, like membership?

MS. V. CATANASIGA.- When we started in 2007 we were about 130 strong but our activities has shifted towards advocacy because of the mining in Nawailevu and so with that come safety issues, so we have come down to about 20 members but we keep all our members informed through our *Facebook* page.

MR. CHAIRMAN.- And the high school you attended was Bua College, or Naikavaki Nadoria?

MS. V. CATANASIGA.- Well we have members who attended that but there are members of this network are both people who have grown up in the villages as well as in urban centres. So it is a sort of network to link.

MR. CHAIRMAN.- So, the traditional links are with Bua but people might be anywhere in the country?

MS. V. CATANASIGA.- Yes. So we are probably better known to many as an advocacy network. Our main message has been the need for Government to respect and inculcate the principle of Free Prior and Informed Consent (FPIC) in all of their engagements with rural communities; indigenous and non-indigenous alike. What really is FPIC? Allow me, Honourable Members, to unpack these principles so that you can better understand its connection to freedom to information.

Free Prior and Informed Consent is about indigenous communities having a specific right that others should respect. It is a collective right, this means my community as a whole has a right to give or deny our Free Prior and Informed Consent. Each part of the term has important meanings. Free refers to ensuring that community's consent or participation in decision making is free from force, intimidation, manipulation, coercion or pressure by any Government or company. Prior means communities must be given enough time to consider all the information and make a decision prior to or before Government allocates land for particular

land users and prior to approval of specific projects. Informed communities must be given all the relevant information to make a decision about whether to agree to a project or not. More importantly this information must be in a language that they can easily understand and they have access to independent information and not just information from the project developers or Government, they must also have access to experts on law and technical issues, if requested to help their decision.

Finally consent requires that the people involved in the project allow indigenous communities to say “yes” or “no” to the project and at each stage of the project according to the decision making processes of their choice. The right to give or withhold consent is the most important difference between the rights of indigenous peoples and other project- affected peoples. For non-indigenous peoples their right to consultation and negotiation in decision making process that affect them can and should also be guided by the principles of FPIC. This means one consultation and negotiation should be undertaken only when communities are not forced or pressed to participate, consultation and negotiation should be undertaken prior to decisions being made and consent should only be sought when communities are fully informed of the issues being discussed and negotiated.

FPIC protects community’s right to negotiate in decision which affect each of its members from a child to an elder. This means, it can be traditional decision making process.

Briefly, Sir, I want to go through the seven practical steps of FPIC that communities can follow to ensure their rights are respected:

- Step 1 - Find out who is developing the plan projects;
- Step 2 - Request information from the project developers;
- Step 3 - Hold discussion within your communities;
- Step 4 - Community negotiations with the project developers;
- Step 5 - Seek independent advice;
- Step 6 - Make decisions as a community; and
- Step 7 - On-going communications with the project developers.

Freedom to information is therefore fundamental to our community’s ability to demonstrate FPIC in their decision making particularly where it concerns environmental sustainability.

Copies of Oxfam’s guide to FPIC has been made available to you all for your further reading.

MR. CHAIRMAN.- Page 2 of your submission.

MS. V. CATANASIGA.- Yes and it goes into detail how that can be sort of played out in a community. I now turn my attention to specific portions of the Bill that particularly interest our network division to facilitation of request.

Bua Youth (BY) wishes to express its disagreement with aspects of Clause 12 which outlines that public agencies name pose a charge for the expense involved in making the information available. Government agencies often getting funding in their annual budgets for community liaisons, research and publications.

BY suggests that Government utilise this to make this information available, free of charge to those who request them. Charges can often be a deterrent for people needing to access information. We wish to commend Clause 13 which specifies the varieties of ways in which the public can receive the requested information. However, we would like to request that this specifically include the responsibility of Government agencies to provide requested information in either *iTaukei* or Hindi languages when requested and free of charge to the members of the public.

Honourable Members, the list of information exempted from disclosure as contained in division three is alarmingly long. International standards for freedom of information legislation carry with it a principle of limited scope of exceptions. In our opinion, disclosure promotes transparency, accountability and good governance and allows citizens to keep track of how their Government is performing. We feel that Government must learn to overcome its fear of an informed and empowered citizenry and instead learn how to utilise the strengths it represents for nation building.

Part 4 – promoting access to information holds so much promise, Honourable Members. We are confident that on the occasion that the Bill is passed and enacted, it will be widely welcomed by both communities as well as civil society partners because it will ensure that Government agencies are not being too open about the activities in the past will now need to be more transparent and accountable. In doing so, it enables development partners and communities to contribute to the effort of building the Fiji we all want.

I must say BY Network particularly looks forward to this because researches carried out in the Bua community such as Nawailevu and Wainunu indicate that most often women and youth lack specific information regarding the development of their natural resources. For example, in 2012 when our network conducted a baseline survey in Nawailevu in Bua, it found that majority of those surveyed witnessed or participated in the ceremonial issuance of the mining lease by Government. Yet, did not know what bauxite was nor did they understand the concept of open cut mining.

I also want to share here that our request at getting a copy of the Environmental Impact Assessment Report of Nawailevu from the Department of Environment was ignored in 2012. We were only able to sight it after an NGO partner shared their copy of the report with us in 2012. We hope that stories like this will become a thing of the past when the Bill is passed and enacted.

We particularly want to highlight here that the Ministry of Lands must be one of the first agencies to be targeted in any future capacity building or awareness on this proposed law. As a volunteer network, we pledge to support any effort towards sensitising their staff on the issue of FPIC, completely free of charge.

Promoting access to information must also mean that inter sectoral Committees established by Government agencies on issues that affect communities must ensure that these communities have representation at this discussions. Ministry of Land, *iTaukei* Affairs and other agencies have often convened discussions without ensuring this, an example is the discussion on the formulation of royalties. What we know of where this discussion is at is what we read in the media. We do not know who sits in this Committee, who represents our voice there, how they will design the formula and how such a formula will be implemented and why is there so much secrecy around Government activities such as this. We also welcome the idea

of and Accountability and Transparency Commission and wish to reiterate our offer of support in particular to capacity building on FPIC as well as youth as whistle blowers.

Finally, Honourable Members, we request an addition to the current title of the Bill. The current title, the Information Bill does not adequately reflect the good intentions of this proposed law. Why not a Freedom of Information Bill, such a change would demonstrate Government's good faith and commitment to enabling the environment for active citizenship and participatory democracy. I thank you for your attention and patience and wish you the best in your deliberations, thank you.

MR. CHAIRMAN.- Thank you very much, Madam for your submission to the Committee this morning. We understand from your submission that you are happy that the Information Bill is being tabled in Parliament and before this Committee. So that issue, for example, what you have pointed out happened in Bua is that there is a bauxite mining going there but people in Bua do not even know what bauxite is. So had there been an Information Bill earlier they would have been able to extract the information and would have been more informed before they gave their consent for the mining activity.

Now coming back to the Information Bill itself, it provides for certain mechanisms where for example if people of Bua want some information from the Department of Mineral Resources, they would seek the information and if they refused, they would have mechanisms available through the Accountability Transparency Commission to get the information and if they did not give that then there is a penalty applicable. But is there anything in the Bill that you think will be an impediment? There was something we heard yesterday is that whilst the words of the Bill actually says that, you are only entitled to ask for information if it directly affects you. So, it will be interpreted in many ways, that only the landowners of Bua can question because it directly affects them but your group is probably an advocacy group that is based in Suva, it does not directly affect a group there, so you could be deprived of that information. Do you have any views on that?

MS. V. CATANASIGA.- I think that we have expressed reservations on the list of exemptions but that in particular as well is open to interpretation what you referred to and we would probably appreciate that it be a bit more wider than that because mining affects people differently, it affects men, women and children differently and even though these particular landowners, mining is going to take place in a particular piece of land, the effects is far reaching. It can affect a different district because of the way the rivers or the streams flows. Those kinds of things need to be taken into consideration and that it involves both indigenous communities and other communities that live around project affected areas. We might need that to be a bit wider than what it is right now.

MR. CHAIRMAN.- Your advocacy group is in a unique position where it can assist the actual people, the landowners in Bua, they might not have the resources or the expertise to seek this information or attend to Government departments or to challenge matters in court or before the Commission, because as I said earlier, they might not have the resources, the knowledge, or the know how to do that. But your group based here can go and directly consult them what affects them and bring the information back here and then assist them that way. Do you have expertise in that area, does your group consist of lawyers, advocates, accountants, et cetera?

MS. V. CATANASIGA.- Yes, Sir. What we have done so far is we basically volunteered research, so we have done a particular research in Nawilevu as well as in Wainunu



where we have gone to people and said, were you given this information when you were being consulted, what kind of process was put in place to hear your voices, or to hear your views about a particular development and we have brought that research back and lobbied with NGOs as well as with Government departments. And some Government departments and agencies or NGOs have gone to these communities to deliver training to help them. An example is Wainunu where we have used research from Nawailevu as well as Wainunu to get a particular NGO to deliver a training on governance as well as on mining and mapping, so that they better understand their resources when they are negotiating with developers.

MR. CHAIRMAN.- Wainunu is that area where the Solevu church is, the first catholic church in the country. Past that?

MS. V. CATANASIGA.- Past that, Wainunu is the second last district to Cakaudrove.

MR. CHAIRMAN.- Before Dama or after Dama?

MS. V. CATANASIGA.- After Dama, it is nearer to the Cakaudrove boundary.

MR. CHAIRMAN.- Dama, this side, okay. I have travelled that road, I have just gone up to the Solevu Church and past that, I have not been further. Are there any plans by your group to have that Solevu Church declared as a national heritage? Heritage building.

MS. V. CATANASIGA.- We might have to talk to the people of Solevu to do that, but it is a good idea.

MR. CHAIRMAN.- Just a further question on your group. The membership of your group is predominantly it is a Bua youth? What is the maximum age?

MS. V. CATANASIGA.- We do not put a limit to people who participate. Our members are from secondary school to about 40 years old. We have a direct link to the *bose vanua* structure in Bua, we are not registered, we follow our traditional structure when we are organising around, even in Suva.

MR. CHAIRMAN.- Is it open to membership for all ethnic groups?

MS. V. CATANASIGA.- The good news is that our chiefs have decided to convene a meeting to get a multiracial committee going on in Bua of people who actually live there. So there is political will from our chiefs to do that in the *vanua* and we expect to meet with our chiefs next week when we get to Bua and discuss what the plans are for mobilising that.

In Suva, when we convene our meetings, it is attended by people who are not from Bua, of different races and they support some of our workshops and our activities, so we have not limited it but because we meet and discuss in our dialect, it is a bit of a hindrance. So we are trying to manoeuvre around how we can be inclusive and still maintain that.

MR. CHAIRMAN.- Honourable Members of the Committee, do you have any questions for the presenter?

HON. M.M.A. DEAN.- Thank you, Madam. This is not necessarily a question, but I just have two comments to make. I was going over your presentation and I think the negotiation

and communication between the indigenous people is very essential. You will never understand the perception and plights of *iTaukei* people until and unless you sit down and have a talk with them. I think that is something that in few projects has been denied to certain *iTaukei* communities and it is good to see that an organisation like yours is out there creating that advocacy.

The other comment is, I just want to appraise you for leading this movement. I think similar ideas should also be adopted by all the *iTaukei* communities out there to have some sort of movement led by the young people because when it comes to modern information that is where we have the advantage and how we are going to impart that modern knowledge for the benefit of the communities where our heritage lies. I think that becomes a very essential factor, so I appraise you for your commitment and I wish your organisation all the best in its future endeavours. Thank you.

HON. B. SINGH.- Thank you, Mr. Chairman, through you thank you Ma'am for the presentation. Naturally I would like to admit that I am thankful that a group like such exists.

A question in regards to your final remarks that advocacy should be done by the Ministry of Lands on the royalty. Are you referring to *iTaukei* royalty, is this a shift you might have seen that there should be a legislation of equal distribution or is there something else that you are trying to bring to this Committee?

MS. V. CATANASIGA.- I guess what I am particularly referring to, there is a committee that has been set up to look at particularly the formulation of the royalty. What we have heard are not official sources, what we need to be able to get from the Ministry of Lands is probably a regular update on how this is going. We do not know who sits on the Committee that is helping to come up with royalties or we do not know where they are. It has been the same thing from 2014 when they promised that there will be a royalty. The guarantee that that has been given but in terms of practical progress, we have not really heard anything concrete. We are wondering who sits on this committee, who is representing the *iTaukei* to this committee and are they able to share the discussions that they had so far so we can sort of have an input to try and help them with this because I think when you open up discussions you hear a lot of more views. There are different components that you might not have covered that the public can help you to better your policy or how you create a standard for royalties. That is probably what our concern is, it is around that area.

HON. B. SINGH.- Mr. Chairman, you are talking about the bauxite mining. The royalty that is paid back to the landowners for the extraction of bauxite, how resources has been used, the information is not being passed back to the landowners for their benefit and what is the economic leverage for them?

MS. V. CATANASIGA.- Yes, our concern is looking at how it is being formulated. We would like to be part of that discussion. Not a lot of information has been forthcoming from that and if it has, it has been really the same sorts of updates that we have heard in the past.

HON. B. SINGH.- So, the information has not been filtered down. If there is an opportunity given, because the international best practice might have been adopted. I have no idea about it. What we have noticed that the international best practice have been adopted but what is your view on that? You still think that you have been deprived?

MS. V. CATANASIGA.- Well, for me it is not about what the formula is, it is about involving the people who are going to be affected in the formulation. How much they get at the end of the day - secondary? What is primarily is that they are sitting at the table when the issues are being discussed. For me that is the main issue.

HON. S.D. KARAVAKI.- Thank you, Vani. I was just reading your presentation and I was trying to link it to the Information Bill. Interesting to me that when you read the Bill, the definition in Sections 2 and 6 provides some proviso which limits the prospect of providing the information as expected from the Bill. In the area of work that you do Vani it is extremely important that you provide the information to those people affected, to those who you are representing. Over here you are talking about the Bua Province. Would you want to see that those proviso be relooked at so that it does not limit the access of information in public bodies?

MS. V. CATANASIGA.- Yes, please. In my presentation I actually talked around that the Government continues to try and be as open as transparent because it will help communities understand what they are getting themselves into. I think it is the responsibility of Government to provide as much information as possible on this Bill. It also helps communities to plan ahead, be resilient that they are forecasting and anticipating -information is vital for that.

HON. S.D. KARAVAKI.- Thank you. And also there is the area whether discretion is given to the Commission to decide based on the qualifications that are there are in Section 6 without having it prescribed in the law the actual issues to be considered. You are giving quite a wide discretion to the Commission to decide whether the application to access information be allowed or not. Would you allow that to be relooked at, not to be giving open discretion like that which no one would know what actually is being taken into account and be considered to prescribe in the law itself so that it is open to the people to know and understand what other things that you do in order to access the information. Would you like to see that that is relooked at in terms of those discretion and make sure it is prescribed in the laws so that the people would see and know what factors would be taken into account in making the decision on the application to access information?

MS. V. CATANASIGA.- Yes, I agree with that. It provides sort of a framework within which they can operate, I think that is a pretty good idea that it must be relooked at so that communities have a bit more sort of scope when they are seeking information so they know, "okay, this is what the law says in terms of the Commission at their discretion. I agree with that, Honourable Member, I think that is a good idea that it should be reviewed.

MR. CHAIRMAN.- Honourable Members that brings us to the end of this submission. Ms. Vani, thank you for your submission to the Committee. We have heard that there are issues centred on the earlier submission that we had yesterday regarding Information Bill; how it affects people or how it will be easier if the information is not restricted to the people who are directly affected but groups like yours. We will consider your submission in our report and will definitely contact you with the given address if we need further clarification on your submission. Thank you very much for that and you are excused.

MS. V. CATANASIGA.- Thank you, Sir.

The Committee adjourned at 11.36 a.m.





# Chaudhary & Associates

BARRISTERS AND SOLICITORS  
COMMISSIONERS FOR OATHS  
NOTARIES PUBLIC

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Our Ref:

Your Ref:

6623/2014/RPSC/ku

28<sup>th</sup> October 2016

The Chairperson  
Standing Committee on Justice, Law and Human Rights  
P O Box 2352  
Government Buildings  
**SUVA**

Dear Sir

Re: **INFORMATION BILL 2016 (BILL NO 34 OF 2016)**

Section 25 of the Constitution reads as follows:-

## *Access to information*

25.—(1) Every person has the right of access to—

(a) information held by any public office; and

(b) information held by another person and required for the exercise or protection of any legal right.

- i) Our firm, and indeed, many law firms in Fiji handle compensation cases for victims of road accidents. When an accident happens the Police attend the scene of the accident. They draw up the sketch plan of the accident. The Police also take statements from the drivers and witnesses in due course. The person (i.e the driver) to be charged is also interviewed under caution.
- ii) From time immemorial the Police have released to Solicitors copies of all statements, interview notes and sketch plans of the accident for use in civil actions on behalf of victims of accidents. A fees was paid for this service. The above documents are invaluable in the preparation of the civil case and in the conduct of the case itself. It helps in the administration of Justice in that it assists the Court to arrive at the truth of the matter. In my experience quite often Judges enquire if the sketch plan of the accident site will be produced.

- iii) Since December 2014 the Police are refusing to release copies of statements, interview notes and the sketch plan to Solicitors. They simply release the bare Abstract of Particulars.

Section 25 (1) (b) of the Constitution mandates that "every person has the right of access to "information held by another person and required for the exercise or protection of any legal right". The victim of an accident has the legal right to claim compensation for the injuries suffered by him or her. This cannot be disputed. It is submitted that for the exercise and indeed proper and efficient exercise of his right, the above documents held only by the Police are required. By withholding or refusing to release those documents the police are failing to assist and indeed it can be said, actually hindering a person from properly exercising his legal rights. They are also failing to, indeed hindering, the proper and efficient administration of justice because Counsel for the victim is handicapped in preparation and in properly representing and advocating on behalf of the client. And the logical conclusion is that the police are failing to assist the court in the administration of Justice. The police Force is supported by the taxpayers of Fiji. Everybody is a tax payer. The motto of the Fiji Police Force is "Serving the People". They should do justice to the motto they so proudly display.

- iv) I would like the Standing Committee on Justice, Law and Human Rights to take this matter up with the Police Force with some urgency and in fact urge them to revert to the previous practice where upon payment of the appropriate fees copies of all statements, interview notes and the sketch plan were released to Solicitors. These documents are crucial for lawyers in the conduct of their cases to prove the negligence or otherwise of drivers and get appropriate compensation for the injured victims of accidents. It would be nonsensical for the Police to say that we should wait for the traffic case, if any, to be over. Traffic cases can drag on for years beyond the limitation period for the Civil cases. Also if the statements, interview notes and the sketch plan are in the hands of a Solicitor the matter can also be settled quite often. Without the above documents a Solicitor is greatly handicapped.

I am prepared to clarify any matter or answer any queries that the Committee may have.

Yours faithfully

**CHAUDHARY & ASSOCIATES**

Per:.....

**RAJENDRA P.S. CHAUDHARY**  
Barrister & Solicitor  
Commissioner For Oaths  
Notary Public  
Lautoka, Fiji

Our Ref:

Your Ref:

6623/2014/RPSC/ku

11<sup>th</sup> November 2016

The Chairperson  
Standing Committee on Justice, Law and Human Rights  
P O Box 2352  
Government Buildings  
**SUVA**

Dear Sir

Re: **INFORMATION BILL 2016 (BILL NO 34 OF 2016)**  
**MEDICAL REPORTS**

- i) A person who is injured in a motor vehicle accident or at a work place has the right to claim compensation and damages for the injuries suffered by him or her. This is a citizen's inherent basic human right. In order to claim compensation the injured person needs a medical report from the hospital where he was treated.
- ii) Section 25 of the Constitution which deals with *Access to information* reads as follows:-

25.—(1) Every person has the right of access to—  
(a) information held by any public office; and

(b) information held by another person and required for the exercise or protection of any legal right. (underlining mine)

The injured person needs his medical report "for the exercise" of his "legal right: (words used in Section 25 (1) (b). The medical report is a report prepared from the information contained in the patient's folder. Information from the folder is used to prepare the report and the report can also considered to be "information". It is submitted that the constitution gives a citizen the "right of access" to the above information.

- iii) Prior to May 2011 the medical reports used to be available upon payment of a nominal sum of \$5.00. Since May 2011 the fees payable by a citizen if he wants to claim compensation for injuries, is \$287.50. The injured person is



required to pay \$287.50 if he requests for a medical report through a Solicitor who needs the report to claim compensation. A copy of the relevant circular issue by the Ministry dated 10<sup>th</sup> May 2011 is enclosed. The fees for other purposes vary. This is discrimination but that is another story.

- iv) The majority of the people who suffer injuries at work and also on the road are ordinary people who are not rich. The injuries also put them out of work. They have no income and many times they seek help from friends and family or the wife (if husband is injured) goes out to seek any work in desperation. They simply cannot afford to pay \$287.50 for a report.
- v) The Ministry's directive to charge \$287.50 for a medical report is exorbitant and gross excessive. It is unaffordable by the majority of Fijian. It is tantamount to refusing to give or withholding "information" to which a citizen has a constitutional right of access under Section 25 of the Constitution. The Ministry is breaching Section 25 by imposing a prohibitive fees on information (the medical report) which a citizen needs for the exercise of his legal right. Section 25 of the Constitution is meaningless if a Government Ministry or "any public office" is allowed to impose an exorbitant/prohibitive fees as a pre condition for providing the information that a citizen is entitled to under the Constitution.
- vi) I respectfully urge the Committee to give consideration to my Submission and to right the wrong that the Ministry of Health has been imposing on the weak and vulnerable citizens of this County. A nominal sum, say \$20.00 should be charged for the report. When the Government has made many types of medicine free, why is there this prohibitive charge for a medical report? Assisting victims of accident to claim compensation should be part and parcel of the rehabilitative work carried out by hospitals and the Government. Payment of compensation by insurers would also release pressure for welfare payments from the Government. The Ministry should facilitate payment of compensation by readily providing reports to which a citizen is constitutionally entitled. They are doing the opposite now. I respectfully urge the Standing Committee to take this issue to the Government and the Ministry of Health.
- vii) If necessary I am prepared to clarify any matter where the committee needs clarification.

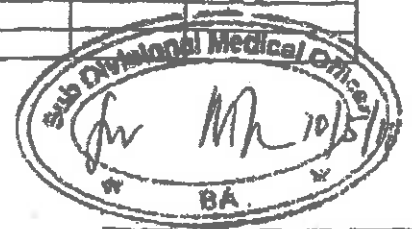
Yours faithfully

**CHAUDHARY & ASSOCIATES**

Per: 

Encl. 

:10122999230312	NSE	\$ 51.75	
:10122999230312	Cytokeratin	\$ 51.75	
:10122999230312	Vimentin	\$ 51.75	
:10122999230312	Desmin	\$ 51.75	
:10122999230312	EMA	\$ 51.75	
:10122999230312	Alpha Smooth Actin	\$ 51.75	
:10122999230312	Lambda	\$ 51.75	
:10122999230312	Kappa	\$ 51.75	
:10122999230312	ER	\$ 51.75	
:10122999230312	PR	\$ 51.75	
:10122999230312	Frozen Section	\$ 115.00	
:10122999230312	<b>13) Medical Certificates and Reports</b>		
	(a) For medical certificates on standard printed hospital or dispensary forms and containing only the standard information required by the person.		
	(b) For other certificates and reports where search and references to records involved	\$ 57.50	
:10122999230312	- initial reports		
:10122999230312	Solicitors	\$ 287.50	
:10122999230312	Initial Reports	\$ 115.00	✓
:10122999230312	Post Disability Assessment	\$ 115.00	
:10122999230312	Insurance	\$ 287.50	
	Standard Forms		
	Comprehensive Report		
:10122999230312	Workmen's Compensation, LD Form C/I		
:10122999230312	Individual/Self	\$ 115.00	
	FNPF withdrawal	\$ 115.00	
	Overseas Treatment		
	Employment		
	Educational		
:10122999230312	Social Welfare Assistance	\$ 57.50	
:10122999230312	Other	\$ 287.50	
:10122999230312	(c) For subsequent certificate or report relating to the same illness or injury.	\$ 23.00	
:10122999230312	Workmen's Compensation - Post Disability Assessment	\$ 172.50	
:10122999230312	(d) For each duplicate of certificate or report referred to in (b) and (c) above	\$ 11.50	
:10122999230312	Duplicate Notification of Births	\$ 23.00	
:10122999230312	Duplicate Notification of Deaths	\$ 23.00	
:10122999230312	(e) Where examinations of persons for reasons other than illness are carried out by government medical officers, e.g. in the case of proponents for life insurance, candidates for non-Government employees in respect of fitness for duty etc., the charge shall be	\$ 172.50	
	Provided that no such examination will be carried out by Government medical officers if there is a private medical practitioner within reasonable distance and by whom the examination could be carried out.		
	All Charges are inclusive of 15% VAT		







## **Submission: Information Bill Number 34 of 2016**

### **Introduction**

The proposed Information Bill is an opportunity to ensure a solid pathway towards an inclusive and transparent development process which will enable people of all diversities to access information which can enhance their ability to engage on their development priorities whether it is about access to water, health services, land tenure and development programmes.

femLINKpacific would like to use this opportunity to enhance the gender analysis of this bill particularly as Fiji is state party to the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and adopted a National Gender Policy in February 2014.

*As you know, CEDAW provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.*

So, while CEDAW pertains to a necessarily broad definition of discrimination experienced by women it also notes the importance of ensuring women's access to information to fully enjoy and exercise their "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

In its General Recommendations, CEDAW:

- Urges all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.

In this regard, it is essential that social equality accounts for the diversity of women and the application of the FOI legislation responds to the reality that men and women will not be affected equally by this legislation because of the persistent imbalances such as the under-representation of women in decision making structures and the gendered realities of women because of disability, age, location as well as sexual orientation and gender identity that further marginalises them.

As a community media organisation, we also bring to the committee's consideration that communications rights are a fundamental of human capacities and all people need to be able to communicate to fulfil their social, educational, emotional and vocational potential. This requires us to recognise that this can only happen when there is an equitable flow of information and to address the unequal power relations including by what is referred to as "the digital divide" and that this legislation can assist every citizen to be able to harness the freedom of expression because they are not impaired by a lack of access to basic education and literacy.

Communication Rights therefore should be seen for the potential it has to enhance the inter-linkages between human rights, sustainable development, democracy and the rule of law (as) *"a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential."*<sup>1</sup>

#### Communication Rights in an Information Society<sup>2</sup>:

*The potential power in the concept of communication rights is twofold. First it offers new ways of understanding fundamental human rights and freedoms. Secondly the demand for "the right to communicate" has emerged increasingly as a rallying cry of marginalised communities worldwide and of civil society organizations concerned as much by the rise of private media concentrations and new unaccountable multinational communications gatekeepers as by the more familiar problem of authoritarian governments. To address the relation between communication rights and the human rights system generally it is essential to look first of all at the right to freedom of expression. The right to freedom of expression is set out in Article 19 of the Universal Declaration Human Rights. It is incorporated into most national constitutions and the three regional human rights instruments although not always in such clear and strong language as the Universal Declaration. It is also understood to be subject to certain restrictions which are set out in particular in the International Covenant on Civil and Political Rights. The right to freedom of opinion and expression,*

<sup>1</sup> World Summit on the Information Society Declaration

<sup>2</sup> Steven Buckley, former President of the World Association of Community Radio Broadcasters (AMARC)

as it is formulated in the *Universal Declaration of Human Rights*, includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. The restrictions on this right, set out in the *International Covenant on Civil and Political Rights*, a treaty signed by 151 states, and refined in jurisprudence, are strictly limited to those which are provided by law and are necessary for respect of the rights or reputations of others, for the protection of national security or of public order or of public health or morals. The juxtaposition, in human rights law, of the right to freedom of expression as set out in Article 19 of the *Universal Declaration*, against this limited regime of restrictions tends to set the parameters of much of the public discourse on information and communication rights on the Internet including the debates on hate speech, pornography and national security. Communication rights however, can provide us with a more holistic understanding of the relation between human communication needs and fundamental human rights. The right to freedom of opinion and expression is a necessary precondition for communication rights but when we speak of communication rights we are also concerned, among others, with the right to privacy, the right to freedom of thought, the right to education, the rights to freedom of movement and to freedom of association, and the right to participation in cultural life. These rights are associated closely with and very often necessary for the realization of the right to freedom of expression. When we speak of communication rights we face a complex set of issues but we also begin to better understand their inter-relatedness. In this perspective, we see the limits to freedom of expression which result from lack of access to basic education and literacy. We see the defence of cultural diversity in the face of cultural dominance as reinforcing the need for a plurality of media and limits to media concentration. We see the defence of privacy rights in the face of the surveillance state mirrored in the demand for access to information in the face of state and corporate secrecy. We see the public interest in a global commons of knowledge and information confronted by the corporate defence of information as property through copyright, patents and trademarks. All of these issues pervade the wider debate about media freedom and the Internet. In order to understand the challenges they pose we have to take a step back and be more explicit about the sort of information society we really want to see. In many respects this is an aspect of the *World Summit on the Information Society* which can be considered a successful outcome. Given the very diverse actors involved there was a surprisingly high degree of consensus around the vision set out in the *WSIS Declaration of Principles*.

We note from many other countries (including the Indian Government FOI legislation) that while legislation on Freedom of Information can exempt certain types of information from disclosure, it should also provide for disciplinary action against civil servants who illegitimately refuse requests.

We stress that the implementation of the legislation must provide for rapid and easy access, and free of charge requests for the very poor, the elderly and persons with disabilities and that public authorities must provide information proactively, including but not limited through the Internet, to reduce the need for citizens to resort to requests.

The role of the proposed Accountability and Transparency Commission is not just the enforcer of the legislation but also as a key role in educating stakeholders.

The legislation also provides an opportunity on strengthening the role of civil society in ensuring that this legislation not only promotes a citizen-centric process and that citizen-government partnerships are being promoted in terms of design and implementation of projects at the local level, especially by means of pro-active disclosure of information. It must also take into account the need for a more intensified information literacy effort with civil society, including community media, and citizens to promote the legislation.

**We make the following specific recommendations in the context of the Bill:**

**In the context of Part 2 of the Bill**

- Division 2 (12) – (2) and all related sections where there is a mention of fees: Amendment is required in terms of the charges for access to information should be free for the very poor, the elderly and persons with disabilities

**In the context of Part 4 – and the promotion of the access to information section relating *the role of public agencies (Section 36)***

- In relation to the overall promotion of access to information it would be more practical that there be more than one information officer – and ensure that the position is senior (Director level) with a substantive communications budget to support media and public outreach

**In the context of Part 5 relating to the *Guidelines and Directions of the Accountability and Transparency Committee places responsibility on the committee (Section 38)***

- That where there is the promotion of public awareness of the legislation it is explicit that this will be across all media platforms and media agencies including through community media networks
- The commission must ensure that its responsibilities as mentioned above are undertaken in line with the gender policy. It must also ensure that all guidelines and training incorporate a gender perspective including linkages with CEDAW on women's right to access information which will "help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women."

Consideration therefore must be given to the practical implications of this Bill for women in Fiji. For many women, the reality is that there are still barriers that prevent them from being able to access information held by public agencies.

Sharon Bhagwan Rolls

18 November 2016

On behalf of femLINKpacific





# NGO Coalition on Human Rights

## *Towards a Fiji that respects and protects human rights*

### NGOCHR Information Bill 2016 Submission

18 July 2016

The NGO Coalition on Human Rights is a coalition of civil society organisations that works towards a Fiji that respects and protects human rights and fundamental freedoms within the framework of the rule of law.

The Coalition welcomes the State's proposed Information Bill of 2016 (hereafter referred to as 'the Bill'), acknowledging that it has taken nearly two decades for Fiji to initiate a freedom of information legislative framework. The right to Information encapsulated under Article 19 of the Universal Declaration of Human Rights, states that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (sic).*

Information has been described as the 'oxygen of democracy'<sup>1</sup> and rightly so. It is a necessity for people to be informed as active citizens, as well as an essential component of a good government. Information provides opportunity for people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions.<sup>2</sup>

The NGOCHR Secretariat, the Fiji Women's Rights Movement makes this submission on behalf of the Coalition. This submission is made up of two parts (1) a comparative analysis of the proposed Bill and established principles on the freedom of information (est. by [www.article19.org](http://www.article19.org))<sup>3</sup>, and (2) follow up recommendations to legislative gaps identified.

#### I. Comparison of the Bill and Principles on Freedom of Information

##### Principle 1. Maximum Disclosure

The NGOCHR welcomes that the Bill gives effect to section 25 and section 150 of the 2013 Constitution by providing a legal framework for access to official information as a basic right of active citizenry. Sections 4 to 6 which outline the objectives, the right to access to

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Article 19, 1999. *The Public's Right to Know: Principles on Freedom of Information Legislation*, London: s.n.

<sup>2</sup> Mendel, T., 2008. *Freedom of Information: A Comparative Legal Survey*, London: UNESCO.

<sup>3</sup> The 9 principles established by Article 19 provide a set standard with which to measure whether a domestic law genuinely permits access to official information. These principles have been endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his report to the 2000 session of the United Nations Commission on Human Rights and cited by the same Commission in its 2000 resolution on freedom of expression.

information and process of requesting access to information from a public agency appear to establish the presumption that most if not all information held by public agencies is accessible to the public except those subject to very limited exceptions.

#### **Principle 2. Obligation to publish**

The NGOCHR notes section 35 of the Bill, which outlines particulars on what public agencies are obligated to publish or make available on request to members of the public.

#### **Principle 3. Promotion of Open Government**

Promotional activities on accessing information held by public agents would assist in public awareness raising on the goals of the Bill, as prescribed by Part 4 (sections 35-36) on 'Promoting Access to Information'. The Bill lacks a provision that mandates that adequate resources and attention are devoted to public awareness initiatives that promote access to information and an open government.

#### **Principle 4. Limited scope of exceptions**

The Bill outlines a fair and reasonable scope of exceptions under section 20 of Division 3.

#### **Principle 5. Process to facilitate access**

The NGOCHR notes that the Bill's following sections exemplify principle 5 i.e.

- Division 2- on the facilitation of a request for access to information;
- Division 4- on the complaints process where a request by a member of the public has been denied by a public agency;
- Division 5 on the application and appeals process to the Accountability and Transparency Commission and where that fails, to the High Court;
- And section 35-36 under Part 4, which specifically provides particulars on the promotion of access to information.

However, the NGOCHR notes that full realization of this principle is hindered as there is no provision in the Bill that ensures full access to information for certain groups, for example those that cannot read or write, speak the language of the record, or live with disabilities that hinder their access even further. It is critical to promote the equal enjoyment of the right to freedom of expression. This includes addressing the needs of historically disadvantaged groups – including women, ethnic minorities, people living with disabilities and sexual minorities – who often struggle to have their voices heard and to access information of relevance to them.<sup>4</sup>

#### **Principle 6. Costs**

The NGOCHR notes that section 12. (2), under Division 2 provides a proviso that public agents may impose costs for making requested information available.

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<sup>4</sup> Report of the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, 25 March 2010.

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.Add.2_en.pdf)

In the pursuit of exemplifying principle 6, the costs imposed by public agents under this Bill must not be so high as to deter potential applicants as this would be counter intuitive to an information law that promotes open access to information.

#### **Principle 7. Open meetings**

Aside from provisions that outline procedures on public access to information held by public agencies, the Bill lacks clarity on procedures for meeting of public bodies to be open to the public, including the media. Freedom of information in this regard, requires the public's right to know what the government is doing on its behalf and provided opportunities to the public to participate in decision-making processes. In pursuance to exemplifying this principle, the Bill fails to explicitly establish a presumption that all meetings of governing bodies are open to the public with clear and inclusive information and communication channels.

#### **Principle 8. Disclosure takes precedence**

Section 42 of the Bill outlines the relationship of the Bill with other written laws. This Section fails to provide a requirement that other legislation, as far as possible, be interpreted in a manner consistent with the Bill itself. Even where this is not possible, other legislation dealing with publicly held information should be subject to the principles that encompass the Bill i.e. Freedom of Information or Access to Information by the public held by public agents.

The Bill lacks a constructive provision that encompasses the principle of disclosure having precedence where practicable.

#### **Principle 9. Protection for whistle-blowers**

The NGOCHR notes that the Bill under Division 3 section 20.(h) provides a proviso on the protection for whistle-blowers.

## **II. Recommendation**

### **a. Promotion of Open Government**

Include a provision that mandates that adequate resources and attention is devoted to public awareness initiatives that promote access to information and shifts the culture towards an open government.

### **b. Facilitate access for all members of the public**

Include a provision that ensures full access to information by all members of the public, including those that cannot read or write, speak the language of the record and/or live with disabilities that further hinder their access to information. The provision should explicitly reiterate the grounds of non-discrimination contained in Fiji's Bill of Rights, to ensure that those who face historical disadvantage on the basis of ethnicity, gender, gender identity and sexual orientation, are not further denied their right to information.

### **c. Ensure that Costs for accessing information is affordable**

Include a provision that ensure that costs imposed by public agents for providing access to information as mandated by this Bill is affordable, so as not to deter potential applicants.

- d. Establish a presumption that all meetings of governing bodies are open to the public by promoting and clarifying process of Open Meetings**

**Include provision(s) that:**

- **Outlines procedures on access to meetings of public bodies to the public. This provision should expand on the definition of “public bodies” to include meetings of elected bodies and their committees, planning and zoning boards, boards of public and educational authorities and public industrial development agencies.**
- **Defines “meeting” to refer specifically to formal meetings such as the convening of a public body for the purpose of conducting public business. This should include the factors that a meeting is formal such as a requirement for a quorum and the applicability of formal procedural rules.**
- **Notice of such meetings is provided sufficiently in advance to allow public attendance. As notice of such meetings is necessary for the public to have substantive opportunity to participate.**
  - **Alternatively, meetings may be closed only in accordance with established procedures and where adequate reasons for closure exists.**
  - **Any decision to close a meeting should itself be open to the public.**

**ENDS**

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**SUBMISSION TO**  
**THE STANDING COMMITTEE ON LAW, JUSTICE AND HUMAN RIGHTS,**  
**PARLIAMENT OF FIJI**  
**ON**  
**THE INFORMATION BILL (No 34 of 2016)**

**Office of the United Nations High Commissioner for Human Rights,**  
**Regional Office for the Pacific (OHCHR)\***

OHCHR welcomes the proposed Information Bill 2016 by the Government of Fiji. The adoption of freedom of Information legislation which is compliant with international standards would constitute another step towards the consolidation of democracy in the country. Indeed, the UN Special Rapporteur on the right of freedom of expression has stated that:

“the right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the right to participate which has been acknowledged as fundamental to, for example, the realization of the right to development.”<sup>1</sup>

Adoption of freedom of information legislation would also contribute to the implementation of Recommendation 101.39 made during the 2<sup>nd</sup> Universal Periodic Review of Fiji.<sup>2</sup>

While the Bill contains a number of positive elements, OHCHR would like to submit some suggestions focusing on possible areas of improvement which would ensure that the legislation accords with international human rights standards. References will be made to Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, as well as to General Comment no.34 of the Human Rights

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<sup>1</sup> Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, E/CN.4/2000/63, 18 January 2000, para 42.

<sup>2</sup> Report of the Working Group on the Universal Periodic Review of Fiji, A/HRC/28/8, 17 December 2014, para.101.

Committee.<sup>3</sup> The comments will also refer to the principles entitled “The Public’s Right to Know: Principles on Freedom of Information Legislation”, which are based on international and regional law and standards, evolving State practice, and the general principles of law recognized by the community of nations.<sup>4</sup>

The main areas for possible improvement of the Bill refer to exemptions and expanding areas for accessing information. The Bill as currently drafted allows the Minister, after consultation with the Commission, to exempt a public agency from the provisions of the Act and does not provide maximum disclosure of public information, nor does it require public bodies to actively publish key information. There is a mechanism for the public to access information. Such access is only available to certain members of the public and limited to information that came into existence after the commencement of the Act. The Bill could also include provisions relating to the protection of whistleblowers, and a clause stating that the Act (more specifically disclosure of information) takes precedence and that other legislation should be interpreted in a manner consistent with the provisions of the Act. The Bill could also be strengthened by providing greater access for the public to have a decision of a public body reviewed on its merits.

#### **1. General principles – Objectives of the law**

The law should include a reference to the principle of maximum disclosure from the outset. The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.<sup>5</sup>

The law should also establish a presumption that all meetings of governing bodies are open to the public. Meetings may be closed, but only in accordance with established procedures and where adequate reasons for closure exist. Any decision to close a meeting should itself be available to the public and open to scrutiny. The grounds for closure are broader than the list of exceptions to the rule of disclosure but are not unlimited. Reasons for closure might, in appropriate circumstances, include public health and safety, law enforcement or investigation, employee or personnel matters, privacy, commercial matters and national security.<sup>6</sup>

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<sup>3</sup> Human Rights Committee, General Comment no.34 on Article 19 on Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

<sup>4</sup> Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, E/CN.4/2000/63, 18 January 2000, Annex II. UNESCO has also published a comparative legal survey of freedom of information legislation, see [http://portal.unesco.org/ci/en/files/26159/12054862803freedom\\_information\\_en.pdf/freedom\\_information\\_en.pdf](http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf)

<sup>5</sup> See E/CN.4/2000/63, Annex II, Principle 1.

<sup>6</sup> See E/CN.4/2000/63, Annex II, Principle 7.

## **2. Definitions (clause 2)**

Under the Bill as currently drafted, the definition of "information" is broad. Nonetheless, it includes an important limitation to the extent that it excludes any material that does not 'directly affect' a decision made by a public agency in relation to the person making a request. This excludes access to information that is in the public interest and does not promote the principle of maximum disclosure. It also limits the sector of the public that is able to request information.

The definition of "public agency" is again broad. However, it specifically excludes offices exempt by the Minister, in consultation with the Commission. The Bill does not include any criteria to guide the decision of the Minister in exempting a public agency, nor does there seem to be any requirement to provide reasons for the decision to exempt a public agency from the provisions of this Act.

It should be recalled that the Principles on freedom of information legislation establish that

No public bodies should be completely excluded from the ambit of the law, even if the majority of their functions fall within the zone of exceptions. This applies to all branches of Government (that is, the executive, legislative and judicial branches) as well as to all functions of Government (including, for example, functions of security and defence bodies). Non-disclosure of information must be justified on a case-by-case basis.<sup>7</sup>

The Minister's role in this process should be limited to refusal to release a document if it falls within a legitimate exemption, or discretion to grant access to information despite that information being exempt if it is in the public interest.

Exemptions should relate to a legitimate aim of the government that would be harmed if information from particular agencies were disclosed, such as protecting intelligence information or information relating to agencies that compete on the open market with private sector counterparts. Further, it should be open to an exempt agency to grant access if it does not harm a legitimate aim, it is in the public interest to do so, and it is not subject to secrecy provisions in other legislation.

## **3. Accountability and Transparency Commission and Minister for accountability and transparency (clause 2).**

The relevant Commission responsible for administering the Information Bill is the Accountability and Transparency Commission, which is yet to be formally established. The

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<sup>7</sup> See E/CN.4/2000/63, Annex II, Principle 4.



process of establishing the Commission should be transparent and inclusive. Its membership should be diverse. The relevant Minister is the Minister responsible for information.

The Minister is granted wide powers under the Bill to exempt an agency from application of the Act (see above) and to make regulations 'prescribing matters that are required or permitted by this Act', in consultation with the Commission. In each of these cases, the legislation should specifically state which agencies are exempt, and specifically what regulations the Minister is required to make.

#### **4. Requests for access to information ( clause 6)**

Only natural persons who are citizens or permanent residents of Fiji can submit requests to access information under the Bill. This excludes other interested parties from making requests. In this regard, access to information derives from the right to receive and seek information in Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights and thus should be afforded to "everyone". General Comment no. 34 of the Human Rights Committee states that "every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files."<sup>8</sup> Accordingly, anyone should be able to file information requests.

Although the right to access information is specifically recognised in the Information Bill, information may only be obtained if it 'directly affects' the person requesting it, and *only information which comes into existence upon or after the commencement of the Act*. This clause appears to restrict the recognised right of access to information and excludes information being requested in the public interest. It also prevents the public from gaining access to information produced before the Act commences. This would be inconsistent with the principle of maximum disclosure. In this regard, General Comment no. 34 states that the right to access information includes records held by a public body, regardless of the form in which the information is stored, its source *and the date of production*.<sup>9</sup>

Under the Bill, requests for access to information are also subject to 'any other requirement of the Commission'. Requirements to submit a request should be clear and transparent, and not subject to the discretion of the Commission. Inclusion of requirements in the legislation is necessary to facilitate compliance and consistency amongst requests, facilitating access to information.

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<sup>8</sup> General Comment no.34, para.18.

<sup>9</sup> Ibid.

It should be noted here that most countries do not require any reasons to be given for a request of access to information.<sup>10</sup>

#### **5. Exemptions (clauses 9, 20 and 21)**

The lists of exemptions included in the Bill appear to be very broad. The Bill mandates that the Commission *must* refuse a request for information if the information is exempt or if it is held by an exempt public agency (clause 9).

Under clause 20, exempt information includes, but is not limited to, national security, scientific or economic interest of the State and contempt of court. It also includes 'any other information, the disclosure of which, the Commission deems is not in the public interest' (clause 20(o)). If disclosure does not harm a legitimate State interest, there should be no basis for preventing such disclosure.<sup>11</sup> Exempt information should be subject to a public interest disclosure test. Information should only be classified as exempt if the harm caused by releasing information outweighs the public interest in disclosure. Some matters should be considered presumptively in the public interest, such as criminal offences and human rights or international humanitarian law violations, corruption, public safety and environmental harm and abuse of public office.<sup>12</sup>

The Bill grants wide discretion to the Commission to refuse disclosure in clause 20(o). Any grounds for denying a request should be included in the legislation and be made explicit in each case. If this is to apply as a 'public interest disclosure' test, then a list of information subject to this test must be identified in the legislation, as well as the criteria to be considered when considering if the information is in the public interest to disclose. Factors to favour access should include scrutiny of government activity and promoting public participation in decision-making.

The Bill also grants wide ministerial discretion to exempt public agencies, in consultation with the Commission under clause 21. This lack of transparency over which public agencies are to be excluded from the Act is particularly concerning, as the provision appears to lack any criteria for decision. As mentioned above, no public bodies should be completely excluded from the scope of the law.

The principle of maximum disclosure (which should be added to the Act) requires that any exemptions be narrowly drawn and that access to information may only be refused if the body concerned established that the disclosure would satisfy a two-part test, namely that

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<sup>10</sup> See UNESCO's comparative legal survey of freedom of information legislation, page 144.

<sup>11</sup> General comment No. 34, para. 30.

<sup>12</sup> See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 8 September 2015, A/70/361, para.10.

- the disclosure would cause substantial harm to a legitimate interest protected by the exemption,
- AND that the harm resulting from the disclosure outweighs the public interest in having the information.

**6. Public Offices may refuse a request to provide or amend information (clauses 19 and 29)**

Under clause 19, a public office may refuse a request if the information cannot be located, or processing the request would substantially and unreasonably divert resources. Reasons for refusal of this request must be provided to the Commission and the person making the request.

In order to facilitate the efficient administration of requests, if a request to disclose information is refused, a reasonable timeframe to provide notice of that decision, and reasons, should be included in the legislation. This timeframe should mirror that provided in the corresponding provision relating to correcting or deleting information under clause 29, which presently allows for 20 days.

As presently drafted, the Bill does not require the public to be notified of avenues to review or appeal a decision to refuse a request. If a request is refused, the person making the request should also be notified of their rights in relation to challenging the decision.

Under clause 29, a public agency must refuse to amend a document if the information is correct, accurate, complete and not misleading, if the request is incorrect, inaccurate, incomplete or misleading or if amendment to the document is specified in another law. Reasons for refusal must be provided to the person.

When making corrections to personal information, public offices must bear in mind if there is an overriding public interest in the information (e.g. information on a perpetrator of a human rights violation, who would like to have that information deleted). This may affect the right to know the truth and accountability efforts. An important aspect of access to public information is access to historical information and/or archives and to information on current procedures that may shed light on human rights violations. Such access allows victims to exercise their right to truth, bearing in mind that the truth is the first step towards the right to justice and then the right to compensation, which are fundamental rights of victims. Victims not only have the right to establish the truth: why, how and who violated their human rights; they also have the right to make it public if they so wish, and this is particularly the case when they wish to honour the memory of those whose right to life has been violated.

## **7. Right to review and appeal a decision (clauses 22-26 and 32-34)**

Under the Bill, a person may submit a complaint to the Commission if a public agency refuses to provide the information requested. The Commission will then engage with the public agency concerned to facilitate access to the information requested. If such efforts do not resolve the situation, the Commission may make an application to the High Court for an order requiring the public agency concerned to provide access to the information requested. Any person who is aggrieved by a decision of the Commission may appeal to the High Court on a question of law.

According to General Comment no.34, arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests. An accessible and independent appeals system is essential to prevent undue administrative discretion in interpreting the scope of exceptions to the right of access, as well as other aspects of the law.

As presently drafted, the Bill narrows the avenues whereby a person aggrieved by a decision is able to challenge that decision on its merits. To this extent, review of a decision should be available in relation to all decisions made by a public body regarding an information request, and an internal review mechanism should be considered where appropriate. Additionally, internal review decisions should be made subject to appeal to an external review mechanism, such as a Court. In this instance, it should be open to the court to conduct administrative review of the decision, and not be limited to evaluating the legality of the decision made, but also the merits of the decision.

Additionally, the review and appeal process should be subject to a reasonable timeframe including how long the aggrieved applicant has to lodge a complaint, as well as how long the public body or Commission has to address and respond to the complaint.

## **8. Publication of information (clauses 35-36)**

The Bill as currently drafted does not require public offices to publish key information relating to their activities. Rather, a public office is only required to make certain categories of information available upon request by a member of the public.

Public bodies should be under an obligation to actively publish and disseminate key categories of information, even in the absence of a request.<sup>13</sup> The Special Rapporteur on freedom of expression has specifically recognised this obligation by stating that “freedom of

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<sup>13</sup> See General Comment no.34, para.19.

information implies that public bodies publish and disseminate widely documents of significant public interest".<sup>14</sup>

Clause 35 of the Bill contains a list of information to be made available *upon request*, but does not require its publication. Most freedom of information laws provide a list of the categories of documents that must be published. For instance, India's Right to Information Law includes very broad obligations of proactive or routine publication.<sup>15</sup>

Clause 35 could be amended to read -

Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to: --

- (a) a description of its structure, functions, duties and finances;
- (b) relevant details concerning any services it provides directly to members of the public;
- (c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;
- (d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- (e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- (f) any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;
- (g) the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- (h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.<sup>16</sup>

## 9. Protection of whistle-blowers

The Bill does not currently include any reference to the protection of whistle-blowers. A whistle-blower has been defined as

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<sup>14</sup> Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para 44.

<sup>15</sup> See UNESCO's comparative legal survey of freedom of information legislation, page 58.

<sup>16</sup> See Model Freedom of Information Law developed by Article 19, available at <https://www.article19.org/data/files/pdfs/standards/modelfoilaw.pdf>

**“a person who exposes information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety”<sup>17</sup>**

Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body. For instance, the United Nations Convention against Corruption, to which Fiji is a State party, protect persons who report corruption offences (Article 33).

The following provision could for instance be inserted in the Bill to provide protection to whistle-blowers –

- (1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.**
- (2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.<sup>18</sup>**

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<sup>17</sup> See A/70/361, para.28. For more details on the protection of whistle-blowers, see paras.26-57 of the same report.

<sup>18</sup> See Model Freedom of Information Law developed by Article 19.



# Consumer Council of Fiji

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12 January 2017

## The Chairperson

Standing Committee on Justice, Law and Human Rights  
P O Box 2352  
Government Buildings  
SUVA

Dear Sir

### RE: INFORMATION BILL 2016

*Warm Greetings from the Consumer Council of Fiji!*

Please find attached the Council's submission on the Information Bill 2016.

We sincerely hope the issues raised and the recommendations in the submission will be given a favourable response.

We would be happy to provide further clarifications should these be required.

Yours sincerely,

Ms Bindula Devi  
Officer-in-Charge

FOR: Chief Executive Officer, Consumer Council of Fiji



***A Submission to the  
Standing Committee on Justice, Law and Human  
Rights  
of the Parliament of the Republic of Fiji  
on  
the Information Bill 2016***

**12 January 2017**

## **1.0 Role of Consumer Council of Fiji**

The Council has statutory obligations under *the Consumer Council of Fiji Act (Cap 235)* to ***“to do all such acts and things which it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected.”*** The Council is also obliged to advise and make recommendations to the Minister responsible for consumer affairs in Fiji or any other Minister on issues affecting the interests of consumers. The Council is a key stakeholder in the formulation of policies, legislations and standards in the country. The Council being the frontline or first point of contact for consumer grievances has a strong mandate from consumers to express their viewpoints on issues affecting them.

The Council wishes to make a submission to the Parliament Standing Committee on Justice, Law and Human Rights Fiji on the *Information Bill 2016*. The Council sincerely hopes that the issues it raises here are given due consideration which are in the interest of consumer justice and fairness.

## **2.0 Information Bill 2016**

The Consumer Council of Fiji understands the objectives of the Information Bill 2016, which are to give effect to the right of access to information under sections 25 and 150 of the Constitution; recognise the right of a person to access information held by a public agency; ensure that a person is informed of the operations of a public agency; and allow a person to make a request to correct or delete personal information held by a public agency in respect of the person to ensure that the information is correct, accurate, complete and not misleading.

We comprehend that the purpose of the Bill is to allow consumers to execute their right to information and have some form of control over their personal information which is held by the public agencies. The consumer watchdog agrees with the framework for the right to access information held by a public agency, complaints mechanism and appeals processes stated in the Bill to address issues faced by consumers against public agencies.

## **3.0 Section 25 and 150 of the Constitution of the Republic of Fiji**

**Section 25** of the Constitution of the Republic of Fiji provides:

*“Every person has the right to access information-*

*(a) Information held by any public office; and*

*(b) Information held by another person required for the exercise or protection of any legal right.”*

**Section 150** of the Constitution of the Republic of Fiji stipulates:

*“A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.”*

The above provisions allow individuals to access information at any given time. Nonetheless, there are no specific provisions in the Constitution that allows the individuals to amend incorrect or misleading personal information.

It is important to note that at present, it is difficult for consumers to access (or change) information, especially if the information is personal in nature. Consumers are unable to

access (or change) information with the public agencies in a timely manner, at a reasonable cost and with minimum run around. Having a proper national legislation that requires the public agencies to be accountable for its actions in being the custodians of public information will create an easy access to information. It will further enable the consumers to raise grievances with the Accountability and Transparency Commission (herein after referred to as the “Commission”) in instances where the public agency refuses to provide them with information (excluding exempt matters<sup>1</sup>).

#### **4.0 Consumer Concerns**

The Council has been highlighting the issue of poor service delivery by Government ministries and departments who take a considerable amount of time amending and/or releasing information to consumers. This causes frustration in consumers due to the numerous follow-ups they make in the form of phone calls, emails and personally visiting the public agencies to follow-up on their requests at their own cost.

The below table shows the number of complaints received by the Council from consumers against public agencies.

<b>Year</b>	<b>Complaints</b>	<b>Monetary Value</b>
2014	18	\$ 13,372.59
2015	33	\$ 89,076.52
2016	37	\$ 38,941.19
<b>Total</b>	<b>88</b>	<b>\$ 141,390.30</b>

The nature of complaints received by the Council against public agencies are:-

- Consumer information not updated and amended in public offices in a timely manner e.g. amenity billing system.
- Lengthy turnaround time for information requested e.g. medical report requested from the health department.
- Inefficiency in delivery of consumer information e.g. postal services, title transfers, renewal of expiry leases, etc.
- Incorrect and misplaced consumer information.

Public agencies do not have clear timeframes to process such requests. Since various public agencies are interconnected and follow a channel to provide the consumer with their request, the channel is often seen to be inefficient. It is also seen that if one public agency fulfils its part in the channel within a short timeframe, the next public agency shows laxity on its part and sits with the request for an unreasonable and unjustified timeframe hence, the process for the request being delayed. For example, the Lands Department usually has a standard procedure of 3 months to process transfer of titles to consumers.

It must be noted that consumers pay for such services and expect the responsible public agency to act efficiently and effectively in fulfilling their request in a certain period of time. There needs to be some level of commitment by the public officials to ensure consumers receive the information they request for the price they pay.

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<sup>1</sup>Exempt matters include information whose disclosure would adversely affect the sovereignty, security or scientific or economic interests of the State; lead to the incitement or commission of an offence; and forbidden to be published by any court of law or tribunal or which would constitute a contempt of court, etc. Examples include Cabinet deliberations or decisions, trade secrets, etc.

## **5.0 Strengths in the Information Bill 2016**

- a. The Bill applies to the public agencies in them fulfilling requests for information demanded by the public.
- b. The Commission is the overseer of both the public agencies and the consumers, and acts as an independent and a neutral party to either accept or refuse release of information.
- c. The penalties attached to persons (inclusive of the Commission and the consumers) who commit an offence under such circumstances are fair to the parties involved:-
  - i. Any member, staff, employee, agent or consultant of the Commission must not make a record of, or disclose or communicate to any person any information acquired in the performance of the Commission's functions under this Act; and
  - ii. A consumer who, in order to gain access to personal information of another person, knowingly deceives or misleads the Commission or any public agency to provide such information.
- d. There are provisions on implementing regulations by the appropriate Minister.

## **6.0 Weaknesses in the Information Bill 2016**

- a. The Bill currently has a timeframe of 20 days for the Commission to provide a consumer access to information or refusal of request.
- b. The current proposed Bill only states reimbursement of fees for consumers if the public agency provides the information out of time. It fails to state whether reimbursement will be given to consumers if the public agency provides information that has errors made by the public agency itself and in instances where the public agency was unable to find misplaced records of personal information of a consumer.
- c. There is no provision for a refund for the application fee paid by a consumer whose request has been refused by both the public agency and the Commission.
- d. In terms of promoting access to information to the consumer, a public agency does not have a disclosure of the relevant charges to the consumer before the request is executed.

## **7.0 Current Practice in Australia**

The Freedom of Information Act 1982 (FOI) gives members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies.

The request for access to a document must be in writing, and contain a reasonable amount of information about the requested document in order for it to be easier to locate. Upon receiving the application, the government agency or Minister who receives the application must take all reasonable steps to inform the applicant that their request has been received within 14 days, and must also notify the applicant of their decision in relation to the request within 30 days of receiving the request.

The Freedom of Information Amendment (Reform) Act 2010 was passed in May 2010, and came into effect from November 2010. The changes were largely targeted at reducing the cost of FOI applications, which had been criticised by journalists as prohibitively costly. Some of the changes (Freedom of Information Amendment (Reform) Act 2010) for applications received on or after 1 November 2010 include:

- ❖ no application fee is payable for an FOI request or application for internal review;
- ❖ an applicant who seeks access to their own personal information does not pay any charges; and
- ❖ for all other applications, the first five hours of decision-making time is free of charge.

## **8.0 Current Practice in New Zealand**

The Official Information Act 1982 which replaced the Official Secrets Act of 1951 that made the release of information held by Government agencies an offence. The Official Information Act takes the opposite approach and is designed to promote access to information held by various Government agencies. Its guiding principle is that information should be made available unless a good reason exists under the Act for withholding it.

Requests to Government Departments or State agencies for information are supposed to be answered within 20 working days. When a Government agency refuses to supply requested information, the Act provides that where a judgment not to release information might be made because of harmful consequences, those consequences can be outweighed by the public interest in making the information available.

Under the Official Information Act 1982, the consumer is not charged any fees for requesting personal information from public agencies.

## **9.0 Recommendations**

The Council submits the following recommendations based on the discussions in the preceding sections.

- Access to information should be made available to all individuals whose information is retained with the public agencies in Fiji regardless of ethnicity, age, gender, qualification, occupation etc.
- The timeframe of 20 days for the Commission to facilitate consumer requests shall be shortened to 7 working days. Looking at the small economy size of Fiji in comparison to Australia and New Zealand, access to information should be easier and provided in a shorter period of time. Also, being resource constraint, public agencies and the Commission must ensure that access to information is carried out effectively and efficiently with adequate use of resources. The reason for having a shorter turnaround time is because some information requested may be quite critical and needs to be provided to the consumer in a timely manner. Therefore, 20 days as proposed in the Bill is unreasonable.

- The current proposed Bill states the turnaround time of processing request in 'days' however, in comparison with New Zealand, we recommend that this be changed to 'working days'. The reason for this is neither the public agency nor the Commission would operate during weekends to facilitate requests.
- Before a request for access to information is facilitated, the fees by the public agency must be disclosed to the consumer. This will enhance clarity on the part of the public agency.
- If the public agency provides information that has errors made by the public agency itself and in instances where the public agency was unable to find misplaced records of personal information of a consumer, the consumer should be provided a refund of fees charged to facilitate the request.
- In circumstances where the request has been refused, the public agency should provide reasonable compensation and refund to the consumer for the fee paid. The Council would even propose to include other types of relief (transportation costs and other incidental costs) that could be made available under this Bill. It must be noted that when a consumer requests for personal information from a public agency, he/she ends up doing numerous follow-ups in the form of phone calls, emails and personally visiting the public agencies at their own cost. Therefore, these costs must be compensated.
- In terms of records management and the archiving and disposal of records, the public agency, who is the custodian of consumers' personal information, should ensure that information is appropriately and safely stored, maintained and retrieved.
- In comparison with Australia, the Freedom of Information Amendment (Reform) Act 2010 states that 'no application fee is payable for an FOI request or application for internal review.' This may be considered in the current proposed Bill as the application fee is only paid for a decision on the acceptance or refusal of the request made.
- In situations where the consumer request for access to information has been refused by both the public agency and the Commission, the consumer should have the option to appeal the matter with the Minister responsible rather than instituting legal proceedings in the High Court. This is due to the fact that the High Court is complex and legalistic in nature, expensive and time consuming.

--- ENDS ---





FIJI

# LABOUR PARTY

Peace Freedom Justice Democracy

10 August 2016

The Chairperson and Members of the  
Parliamentary Standing Committee on  
Justice, Law and Human Rights

## Information Bill No. 34 of 2016

We outline hereunder the main points of our submissions on the Bill 34.

### **Introduction**

#### **Freedom of Information (FoI)**

1. These submissions relate to Bill 34 of 2016 with its objects stated as "... to give effect to sections 25 and 150 of the 2013 Constitution to facilitate the right of access to information held by Government and public agencies; to correct or delete false or misleading information that directly affects a person; to promote access to information and related matters.
2. A FOI law for Fiji has been long overdue. We have had numerous statements from the Bainimarama administration, both pre and post 2014 elections, about the enactment of freedom of information legislation.
3. While freedom of information legislation should be generally welcomed by the public, the same cannot be said for the proposed legislation as we explain in these submissions.



4. The Fiji Labour Party was in fact one of the first political parties to call for freedom of information legislation. Such policy was part of its 1999 election manifesto. Post elections and in government, it had published draft FOI and Code of Conduct legislations but could not see its fruition into law on account of the 2000 coup.
5. We note that the legislation as proposed in Bill 34 severely restricts access to information held by the State or its agencies, confining it only to information which directly affects the person making the request.
6. Furthermore, it also places a prohibition on accessing any information which predates the commencement of the Act.
7. The Constitution – Chapter 8 – Accountability Part B – Freedom of Information s150- requires that a written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by Government and its agencies.
8. Note the title given to this part of the Constitution ie Freedom of Information. Note the words in S150 “...*the right to access official information and documents...*”

We submit that this constitutional right must not be diminished by subsidiary legislation except in situations where national interest may be impaired as a result of the information being made public.

9. Mr. Chairman access to information is a fundamental right of the people. To underscore the extreme importance of the public's right to freedom of information allow me to quote from an article by Toby Mendel, a UK based human rights lawyer – This is what he says:

“The importance of freedom of information as a fundamental right is beyond question.

In its very first session in 1946, the UN General Assembly adopted Resolution 59 (I) stating:

*“Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”*

Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his 1995 Report to the UN Commission on Human Rights, stating:

*“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”*

“These quotations highlight the importance of freedom of information at a number of different levels: in itself, for the fulfillment of all other rights and as an underpinning of democracy.

It is perhaps as an underpinning of democracy that freedom of information is most important. Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole.

Unless there are good reasons for withholding such information, everyone should be able to access it.

More importantly, freedom of information is a key component of transparent and accountable government.

It plays a key role in enabling citizens to see what is going on within government, and in exposing corruption and mismanagement.

Open government is also essential if voters are to be able to assess the importance of elected officials and if individuals are to exercise their democratic rights effectively, for example through timely protests against new policies.” Unquote.

10. We, therefore, propose that the right to access information be open to all official information and documents held by government and its agencies as provided for in the Constitution and that the Act make adequate provisions to facilitate this requirement.

11. We point out that the proposed legislation as it stands in Bill 34 does not fully satisfy the provisions of s150 of the Constitution.
12. Whilst s25(3) of the Constitution provides that a law may limit, or may authorize the limitation of this right – and may regulate the procedure under which information held by a public office may be made available, this, in our view, is limited to the extent where it is necessary to do so in the public interest.
13. It must not be interpreted as a provision authorizing the State to withhold or restrict access to information which does not impair national interest or information the disclosure of which promotes good governance or makes the State accountable to the people.

This is particularly so where citizens wish to access information on public expenditure, and the management of State finances, award of contracts etc.

14. Access to information held by the State and its agencies is a fundamental part of good governance. Many countries around the world have laws which give the public access to information held by the State, with the only caveats being that it would not be in the public interest to release some information as it concerns national security or privacy of individuals.

15. As early as 1759, Swedish explorer Peter Forsskal<sup>1</sup> in wrote:

*“... it is also an important right in a free society to be freely allowed to contribute to society’s well-being. However, if that is to occur, it must be possible for society’s state of affairs to become known to everyone, and it must be possible for everyone to speak his mind freely about it. Where this is lacking, liberty is not worth its name.”*

#### 16. Definition of “information” (Clause 2)

The whole purpose of this legislation is defeated by the proviso to the definition of “information” in the Bill :

*“information” means any material in any form, including a record, report, correspondence, opinion, recommendation, press statement, circular, order, logbook, agreement, sample, model, data or document such as -*

*(a) a map, plan, drawing or photograph;*

*(b) any paper or other material on which there is a mark, figure, symbol or perforation that is capable of being interpreted;*

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<sup>1</sup> Peter Forsskal, 1759. Paragraph 21 of a pamphlet called Thoughts on Civil Liberty.

(c) any article or material from which a sound, image, or writing is capable of being reproduced with or without the aid of any other article or device; or

(d) any article on which information has been stored or recorded either mechanically or electronically, provided that the material directly affects a determination or decision made by a public agency in relation to the person making a request under section 6:"

17. What this means is that a person can only request information that directly affects a determination or decision made by a public agency in relation to the person making the request. The whole purpose of the Bill is thus defeated by this limitation.

18. What it means is that an individual or an organisation can only request access to information which directly affects the person or the organisation making the request. No other information held by the State or its agencies can be accessed under this proposed legislation. It is in reality, a grave act of deception to pass it off as a law permitting access to information held by the State.

19. If this legislation is passed as it stands in the form of Bill 34 of 2016, it could effectively block even the information which members of the public are currently able to obtain from Ministries and departments through a written request, such as statistical data, reports on socio-economic issues etc.
20. Of concern also is the implication of the Bill on the Media. As the Bill stands, it is likely to affect the media in terms of obtaining information for the purposes of news. Will they be denied access to information unless it directly affects one of them?
21. Will they also have to go through the circuitous processes prescribed in the Bill and wait for as long as three months, in some cases, to obtain information?
22. Have the initiators of this Bill thought through the implications and repercussions of this morbid piece of legislation they are proposing?
23. In New Zealand, the *Official Information Act 1982* (OIA) under s12(1) prescribes who may request what information and reads:  
*12 Requests:*

*(1) Any person, being—*

*(a) a New Zealand citizen; or*

*(b) a permanent resident of New Zealand; or*

*(c) a person who is in New Zealand; or*

*(d) a body corporate which is incorporated in New Zealand; or*

*(e) a body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand,—*

*may request a department or Minister of the Crown or organisation to make available to him or it any specified official information.*

24. Official information is defined in the New Zealand OIA as:

official information—

(a) means any information held by—

(i) a department; or

(ii) a Minister of the Crown in his official capacity;

(iii) or an organisation; and

(b) includes any information held outside New Zealand by any branch or post of—

(i) a department; or (ii) an organisation;

25. It is our submission that the restrictive definition of information under the Bill be enlarged/ extended to cover broader requests as it concerns State information.



### Definition of "Government Company"

26. The definition under the proposed legislation of "Government company" restricts it to a company in which Government owns all stock or shares. It is common knowledge that with public enterprise reform and partial privatization of public entities some government interest has been divested but the Government still has a controlling interest for example in FPCL. With more such divestment of Government shares contemplated, the definition of government company should be amended to include any company in which the State holds majority shares or interest.

### **27. Objects of the proposed FOI legislation (Clause 4)**

The object (purpose) of the proposed law as stated in Cl 4 of the Bill is too narrow and limiting, and does not satisfy the requirements of the Constitution. Any credible FOI legislation needs to have processes that are participatory and promotes the accountability of the State, its Ministers and its officials with the primary purpose being to enhance and promote good governance and adherence to the rule of law.

28. Here again, the New Zealand OIA is again helpfully instructive and reads at s4:

*4 Purposes*

*The purposes of this Act are, consistent with the principle of the Executive Government's responsibility to Parliament,—*

*(a) to increase progressively the availability of official information to the people of New Zealand in order—*

*(i) to enable their more effective participation in the making and administration of laws and policies; and*

*(ii) to promote the accountability of Ministers of the Crown and officials,— and thereby to enhance respect for the law and to promote the good government of New Zealand:*

*(b) to provide for proper access by each person to official information relating to that person:*

*(c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.*

29. Similarly, the corresponding Australian legislation is also helpful and reads:

**Objects- general**

*(1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:*

*(a) requiring agencies to publish the information; and*

*(b) providing for a right of access to documents.*

*(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:*

- (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;*
- (b) increasing scrutiny, discussion, comment and review of the Government's activities.*

*(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.*

*(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.*

23. We submit that the objects of the legislation be enlarged to include the matters as per the New Zealand and Australian FOI legislations.

## **Requests for access to information**

24. Under Cl 6 (1) requests for official information are to be made to the Accountability and Transparency Commission (ATC) which will decide (Cl 7) whether such requests are to be granted or refused.
25. Cl 6 (2) limits the information that can be requested confining it to that which:
  - (a) directly affects the person making the application, and
  - (b) comes into existence upon or after the commencement of the Act
26. I have already elaborated on the absurdity of the first limitation. The second limitation is equally preposterous in that it restricts information that can be accessed to that which comes into existence on or after the commencement of the Act.
27. This can mean that one is even precluded from accessing information that directly affects him or her if the date of the information precedes the legislation. How ridiculous!

28. What precisely is the purpose of this clause? Has it been deliberately inserted to block access to information which the government does not want disclosed because it may expose corrupt practices that prevailed following the military coup of 2006?
29. The plain truth about this proposed legislation is that the people will only get to know what the government wants them to know.
30. We submit that both of these limitations be removed by deleting Cl 6(2)(a) and (b). In relation to (b) we say that all information in possession of the State agencies should be made accessible, including that the origin of which precedes the date of the coming into force of this proposed legislation.
31. We submit that members of the public must be permitted to directly request information from the relevant public agency/ies. The proposal that the ATC is to decide within 10 days whether the requested information is to be made available or otherwise is firstly a further restriction on the right of the public to readily access information held by the State and its agencies.

32. Secondly, it removes the accountability requirements of public officials themselves with respect to requests for such information.
33. It is unclear why the ATC has been assigned such an administrative function which can and has been shown to be easily managed by the relevant government agencies in countries like Australia, New Zealand and England. The public must have the right to access information directly from the concerned public entity and not be subjected to numerous administrative prescriptions as proposed under the Bill.
34. The request for information should be directly to the Minister or public official or department which has such information in its possession. The ATC is envisaged to be an independent body under s121 of the 2013 Constitution whose primary duty is to investigate complaints against permanent secretaries and all persons holding high public office.
35. We note that Cl 6(3) (a) provides for regulations to be made prescribing the official format for requests for information. These have yet to be published. In the event, a request cannot be made unless the regulations are first published. We are faced here with a situation akin to putting the cart before the horse.

36. Moreover, for the moment appointments to the ATC have not been made. It is, therefore, plain silly to confer administrative functions and responsibilities on the Commission on which the 2013 Constitution has conferred quasi judicial powers. For this reason it is not proper to assign it administrative functions which may not be in concert with its primary role.
37. In this regard, it is a matter of some concern that the effective date of the proposed legislation could be delayed unduly because the regulations may not be published in good time. This is fair comment noting the apparent reluctance of the government to enact this and the Code of Conduct legislations.
38. Cl 7-11 deal with processes and timeframes which apply following the receipt of a request for information and until such time as it is disposed of by the ATC and/ or relevant government agency.
39. There is a span of between 30 to 50 days from the time a request is received, accepted and forwarded to the relevant government agency for action.
40. Cls 12-19 deal with facilitation requests. Cl 12(1)(c) provides for information to be released within 20 days once a request is accepted.

41. Cl 12(1)(a) calls for effective and timely assistance to approved requests. It is to be noted that under the Bill it may take between 30-50 days before a request is referred to the relevant government agency for actioning. Adding a further 20 working days to provide the information would extend it to between 58-78 days which is overly long.
42. We propose that the information requested be provided within 15 working days from the day on which a request is received. We further say that the requests be made directly to the concerned agency rather than via the ATC.
43. Cl 12(2)-(4) provides for charges to be paid for such information requests. Such fees should be minimal so as not to deter the flow of information to those who seek to access it.

### **Forms of Access**

44. Cl 13(2)(a-c) (3)-(4) should be deleted as it runs contrary to the norms of accountability and transparency given that it seeks to unfairly protect the interests of the State rather than serve the purpose for which the legislation is intended.



45. Cl 18 – the 90 day extension of time to provide requested information is unreasonable and will derogate from the objects of the proposed legislation. It should be halved to 45 days.
46. Cl 19 deals with refusal of requests on account of the requested information not being able to be located. This is unacceptable given that there are/ were adequate measures in place for storing information by public agencies. This could also be used as an excuse by the State to deny requests for information which may be considered embarrassing to it or to the agency concerned.
47. Cl 21 provides for exemption to be given to listed public agencies. This clause should be removed as it is open to abuse and can be used to prevent exposure of corrupt and improper practices by a State agency or holders of public office. It is our submission that exemptions should only apply to documents which are categorized in Cl 20 and there should be no blanket exemption cover for State agencies.

#### **Part 4: Providing access to information**

48. This part of the Bill deals with promoting access to information. It is rather cynical given the restrictive definition of information, the manner in which information requests are to be made and the prescribed exemptions of certain State agencies. We believe that information listed under Cl 35 should be published on the website of the relevant public agency within 3 months from the date of coming into force of the Information Act (which we believe should be named the Freedom of Information Act) or be made otherwise available to the public free of charge.
49. Cl 20 relates to exemption from disclosure. It is our submission that subclauses (f) and (o) be deleted and that classified Cabinet documents aged 25 years and over be made accessible.

#### **Part 5 – Accountability and Transparency Commission**

50. Part 5 of the Bill relates to the ATC. We repeat our earlier submissions with respect to our objections on the role of the ATC under the Bill. We further say that the Bill should be appropriately amended so as to substitute an Information Commissioner for the ATC and for such Information Commissioner to be empowered to ensure that State and public agencies Comply with requests for information held by them.

Such an appointee should be independent of State agencies and should assume all functions of the ATC as proposed under the Bill except that requests for access to information would be made directly to the concerned agency.

51. The Information Commissioner should be empowered to receive and determine any appeals arising out of a refusal to provide a member of the public with the requested information.
52. It may be appropriate to finish these submissions by quoting Atifete Jahjaga, a Kosovar politician who served as the fourth President of Kosovo:  
*“Democracy must be built through open societies that share information. When there is information, there is enlightenment. When there is debate, there are solutions. When there is no sharing of power, no rule of law, no accountability, there is abuse, corruption, subjugation and indignation.”*

### Conclusion

53. To recap then: We submit that, for the reasons stated in our submission, this Bill (34 of 2016) be withdrawn and substituted by a Bill that will meet the requirements of the Constitution and conform to internationally acceptable standards for Freedom of information legislation.

54. The new Bill must provide for:

- Public access to any information held by the State or its agencies – the only caveats being where the release of such information may impair public or national interest or threaten national security
- Requests for information to be made available speedily
- Appeals against refusal by the State agencies to release information to be determined by an independent Tribunal whose decision would be binding on the parties.

Thank you.



*Mahendra P. Chaudhry*  
Leader/ Secretary-General





**SUBMISSION**

**TO THE PARLIAMENTARY STANDING COMMITTEE ON JUSTICE, LAW & HUMAN  
RIGHTS**

**ON THE INFORMATION BILL: NO. 34 OF 2016**

**BY THE SOCIAL DEMOCRATIC LIBERAL PARTY OF FIJI**

17 November 2016

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*ethics of transparency*

**SUBMISSION ON THE INFORMATION BILL NO. 34 OF 2016  
BY THE SOCIAL DEMOCRATIC LIBERAL PARTY OF FIJI**

17 November 2016

**Salutations**

The Chairman and Members of the Parliamentary Standing Committee on Law, Justice and Human Rights, this submission on Bill No. 34 of 2016, Information Bill is made by the Social Democratic Liberal Party of Fiji. I thank you for this opportunity to make known the Party's views on the Bill.

The Party would welcome a long-overdue Freedom of Information Bill. However this Bill, titled simply, Information Bill, would more correctly be called the Restriction of Information Bill because it is a very limited information that may be accessed, and only through a long circuitous and expensive process, where in the end, the government may deem it too sensitive or a threat to national security to release it.

**Introduction**

A democracy is one where the people have the right to participate in the decisions that affect them. To be able to participate effectively, the people must have the freedom to seek and to exchange information and ideas. The freedom of information therefore is an important right in the parcel of democratic rights that include freedom of speech, assembly and association, as well as the right to vote and participate in the politics of the nation.

The exercise of this right to participate in your governance includes taking part in the debate on a proposed law, or voicing your views on a government policy, scrutinizing the performance of our political leaders and assessing their performance as well as voting in elections, or standing for election. But all these are dependent on your being able to access information.

As Prime Minister in 1997, my government approved the 1997 Constitution Amendment Act and we included the right to freedom of information at section 174:

***Freedom of information***

174. As soon as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.



Section 17(1)(a) of the 2013 Constitution echoes the right to freedom of expression in section 30(1)(a) of the 1997 Constitution, in guaranteeing the freedom to seek, receive and impart information and ideas.

***Freedom of Expression and Publication***

17.—(1) Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes—

- (a) freedom to seek, receive and impart information, knowledge and ideas;

The long title of Bill No. 34 refers to sections 25 and 150 of the 2013 Constitution Decree.

Section 25 of the 2013 Constitution outlines the right of access to information, including the right to information held by any public office, the right to access information required for the exercise of protection of a right and the right to correct or delete false or misleading information, but these rights may be limited by a law - and it appears that is the focus of this Bill.

***Access to information***

25.—(1) Every person has the right of access to—

- (a) information held by any public office; and
- (b) information held by another person and required for the exercise or protection of any legal right.

(2) Every person has the right to the correction or deletion of false or misleading information that affects that person.

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.

Section 150 of the 2013 Constitution is drafted on the same lines as section 174 of the 1997 Constitution, it requires that a law provide for the exercise of the right to official information and documents held by Government and its agencies:

***Freedom of information***

150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its Agencies.

Contrary to the promise of the 2013 Constitution, the Information Bill severely limits the right of access to official information, to only the information that is personal or related to the person making the request.

A second severe limitation is that it applies only to official information that is created after the coming into force of the Bill - unfortunately, it does not give access to information created prior to the commencement of the Bill. The reason for this is unclear and we ask the Committee to seek the reason for this from the Ministry sponsoring this Bill.

Given that Government serves at the pleasure and with the funding of the taxpayers of Fiji, it is only right that Government information, except that which may jeopardise national security, is made available to the people of Fiji.

Freedom of Information is the cornerstone of good governance, transparency and accountable government.

Secrecy on the other hand, is the keystone of tyranny and the tendency to withhold government information should be checked in the interests of democracy and good governance. I quote from Robert A Heilein:

*"Secrecy is the keystone to all tyranny. Not force, but secrecy and censorship. When any government ... undertakes to say to its subjects, "This you may not read, this you must not know," the end result is tyranny and oppression, no matter how holy the motives. Mighty little force is needed to control a man who has been hoodwinked in this fashion; contrariwise, no amount of force can control a free man, whose mind is free."*<sup>1</sup>


- ψ Freedom of Information is aimed at enabling the people of Fiji to see what is going on within the government and to expose mismanagement and corruption. So the limitation of access to information is not conducive to good government, accountability and may promote mismanagement and corruption.

Fiji needs all the resources of government to be well managed and not wasted through corruption, our people affected by Tropical Cyclone Winston nine months ago, are still in tents, schools have not yet been repaired because of the reported lack of government resources.

The Party therefore recommends and urges the government to reconsider this Bill, to open up the right of access to not only information personal to the person making the request, but to all government information, unless there is certification, that the release of information would be a threat

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<sup>1</sup> Robert Anson Heinlein was an American novelist and science fiction writer. Often called "the dean of science fiction writers", he is one of the most popular, influential, and controversial authors of "hard science fiction"

 to national security. We urge your committee to make a recommendation to open up the category of information that may be applied for, to promote accountability, good governance, and to limit the opportunities for corruption and mismanagement to flourish.

Open Government is essential to inform our people when they make decisions at the polls, to make a decision on the efficacy of government policies and programs. Does a government that seeks to limit the peoples' right to access government information have something to hide?

The public interest must be weighed against national security, and not the government's political interests. In particular, the management of state finances, the awarding of contracts, should all be available, and the current limitation in the Bill, for information only that is personal to the individual, would make information on the management of state finances and the awarding of contract (for example), secret and unavailable to the public when public expenditure is funded by the taxpayers.

If the information that can be accessed is limited only to the information personal to the individual making the request, then the Bill would more properly be called the "Restriction of Information Bill" rather than the "Information Bill".

In its current format, the information currently publicly available like statistics (and even those are difficult to access), would not be available, whether to researchers, or students writing essays or members of the public interested in the information about Fiji.

Another grave worry is the effect of the Bill on the media - will they be able to access official information?

### **Recommendation 1**

*The Social Democratic Liberal Party recommends that right of access to information be opened to all government documents and information whether held in electronic or other format and that the Information Bill be so amended to facilitate the right of access to all government information unless certified that it would be a threat to national security to release the information that is requested. The right should not be limited to only information that is personal to the person applying. All information, not only information that is created after the coming into force of the Bill, should be available.*

### **Definitions**

The Party makes a general comment that as far as possible, definitions in the interpretation section of Bills must be consistent with existing definitions. This reduces confusion and does not 'reinvent the wheel'.

## **Recommendation 2**

*We submit that "public agency" is inappropriate and that the new Information law should apply to all public offices, as defined in the 2013 Constitution Decree, and as referred to in the State Services Decree. We recommend further, the removal of section 21 of the Bill which allows the exemption of public offices from the requirements of the law - ALL government agencies, statutory bodies and government commercial companies must be subject to the Information law.*

## **Recommendation 3**

*The Party recommends that information from statutory bodies and government commercial companies be also available, in particular, all government bodies where a government Minister appoints Directors, should be included in the list of bodies from which government can be requested. These bodies all receive funds from the government, whether government owns all the shares or not, and so the information should be publicly available.*

## **Recommendation 4**

*The current definition in the Bill for "government companies" is only companies where government owns 100% of shares - this is unacceptable and the Party recommends that all public enterprises, all statutory bodies, all government commercial companies, be included as agencies from which information may be requested under the Bill.*

## **Recommendation 5**

*The definition of "information" in the Bill is restricted to forms of information storage, rather than referring to the holder of the information, as defined in other Freedom of Information laws. The Party recommends that the definition of information be redrafted, to include not only the forms of information storage, but to refer to the holders of information - being public officials and public officers like Cabinet Minister, Permanent Secretaries, the Commissioner of Police, the Military Commander, heads of statutory bodies, CEOs of government commercial companies etc. We recommend the revision of this definition and its redrafting.*

## **The Accountability and Transparency Commission (ATC)**

The Accountability and Transparency Commission (ATC) is established by the 2013 Constitution and the Bill is the first law that would give the Commission some functions. It is now 3 years since the Constitution Decree was issued and two years since the elections and the Party is concerned at the delay in the appointment of the Commission and the delay in the drafting of a Bill to set out its functions to investigate Permanent Secretaries and all persons holding public office.

- 121.—(1) This section establishes the Accountability and Transparency Commission.
- (2) The Commission shall consist of a chairperson and 2 other members appointed by the President, on the advice of the Judicial Services Commission following consultation by it with the Attorney-General.
- (8) The authority, functions and responsibilities of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.
- (9) A written law shall provide the Commission with the jurisdiction, authority and powers to receive and investigate complaints against permanent secretaries and all persons holding a public office.
- (10) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law.

The Party is of the view that requests made under the Bill should be made directly to the Ministry, Statutory Body or Government Commercial Company concerned, rather than through a circuitous process through the ATC (under section 6 of the Bill). The ATC has not yet been appointed, neither is its legislation in place. Alternatively, that an Information Commissioner be appointed, in order that the ATC focus on its duty to investigate public offices, like the Ombudsman's Office did previously until 2009 when the Ombudsman was abolished.

We make a general comment that the Ombudsman was a fetter on the assault of persons in custody by the Police and Prison authorities and the abolition of the Ombudsman in 2009 has removed an avenue of redress for members of the public against maladministration by public bodies.

The lack of a law for the ATC, and the delay in its appointment will all further delay the coming into force of this Bill.

The grant of this function to the ATC is unclear - it adds a layer of administration and delay to information requests. In larger jurisdictions like Australia, New Zealand and the UK, information requests are managed at department level and not through a central body as is proposed here in the Bill through the ATC.

### **Recommendation 6**

*The Party recommends that the Government draft a Bill to enable the Commission to be appointed and to carry out its functions, as set out in the Constitution. We urge the Committee to consider the option for requests under the Bill to be made directly to the Ministry or agency concerned rather than through the ATC, or alternatively, that an Information Commissioner be appointed for this purpose,*

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The grant of this function to the ATC is unclear - it adds a layer of administration and delay to information requests. In larger jurisdictions like Australia, New Zealand and the UK, information requests are managed at department level and not through a central body as is proposed here in the Bill through the ATC.

In other jurisdictions like the State of Victoria in Australia, an Information or FOI Commissioner is appointed to whom appeals can be made where departments refuse to grant information requests. The Information Commissioner also has a role to advise departments on best practices and their procedures, monitors compliance with the freedom of information legislation and provides advice and education to the public and agencies and reports annually to Parliament. If the ATC is granted this role, arguably, this would take away from their constitutional role to investigate and maintain the integrity of senior government officials.

### **Recommendation 3**

*The Party recommends that the Government draft a Bill to enable the Commission to be appointed and to carry out its functions, as set out in the Constitution. We urge the Committee to consider the option for requests under the Bill to be made directly to the Ministry or agency concerned rather than through the ATC, or alternatively, that an Information Commissioner be appointed for this purpose, so that the ATC can focus on maladministration, accountability and transparency of government agencies.*

### **Timelines**

Section 12(1)(c) of the Bill provides that information be released within 20 days from receipt of a request. Yet the Bill provides that it may take between 30-50 days for a request to be referred to the relevant agency - this is unacceptable and the reason why adding the ATC is an added administrative and delay factor. Clause 19 adds an additional 90 days extension of time.

### **Recommendation 4**

*The Party recommends that information requested be provided within 30 days, and any extension of time should be limited to another 30 days only, with good reason provided and made known to the applicant.*

## **Fees**

Section 12 provides that a fee may be set for information requests.

### **Recommendation 5**

*The Party recommends that the fee be a minimal one, rather than punitive, to enable all our people to be able to access official information. This should not be a revenue raising exercise for the government.*

## **Forms of Access**

An exception that would allow an agency to refuse release of information is outlined in section 13(2)(a) of the Bill on the ground that it would “impair the effective administration of the public agency.” This appears to be a subjective test and not objective. There is no provision for a third party like the ATC to make the determination.

### **Recommendation 6**

*The party recommends the review of section 13(2)(a) of the Bill and we recommend its deletion or the insertion of a process where this decision can be reviewed by a third party like the ATC or other judicial body.*

## **Where the information cannot be located**

Section 19 allows a public office to say that the information cannot be located. In this modern age and given the law applies only to information created after the Bill is passed, this is unacceptable.

### **Recommendation 7**

*The Party recommends that section 19 be reviewed and deleted, or an additional process be added where this assertion is tested and verified either by the ATC or other judicial body.*

## **Exemption from Disclosure**

Section 20 of the Bill allows information to be exempt from disclosure. The Party is of the view that the exemption be granted only in specific circumstances and that a third party be appointed to oversee decisions to exempt information from disclosure. The exemptions cited are extensive and vague in their construction, meaning that they are so wide so as to catch basically all government information. The exemptions are so vague and capable of very wide interpretation, so even where

the information is personal to the applicant, it can be refused on the basis that it would be "inciteful" (20(b)) or not in the public interest (20(o)). We recommend the committee reviews the exemptions thoroughly and that the legal drafters be requested to revise and remove the vague and wide ambit of the exceptions.

In the U.S.A, the exemptions are specific and protect against disclosure of information which would substantially harm national defense or foreign policy, individual privacy interests, business proprietary interests, and the efficient operation of governmental functions.

Further, we recommend that an agency be prohibited from withholding an entire document simply because one sentence or one picture is exempt - and that the Bill be revised to allow release of a document with only the exempt portions redacted.

We refer to the position in the U.S.A in that when a requested document contains some information which falls under one of the exemptions, the FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b). This is a very important aspect of FOIA because it prohibits an agency from withholding an entire document merely because one line, one page or one picture are exempt.

#### **Exemption for indigenous genealogy records, fishing grounds and land owning records**

The Party would like to raise the issue of indigenous genealogy information stored in the Register of Native Fijians or the Vola ni Kawa Bula (VKB) and recommends that the VKB information not be available publicly, except directly to the individual concerned. We also raise concern and make a request and recommendation that information on landowning units, the ownership of indigenous land also be exempted from public release through the Bill, except only to the indigenous individual who makes an application. This would be in line with exceptions recognised in the Freedom of Information Act(FOIA) in the United States of America, where even sacred sites of native Americans are exempt from the FOIA law.

The 2008 Farm Bill provides specific authority to the USDA Forest Service in Section 3056 of the Cultural and Heritage Cooperation Authority (25 USC 32A Section 3056) to protect tribal information from release under FOIA. This authority refers to nondisclosure of information about resources, cultural items, uses, or activities that have a traditional and cultural purpose (including ceremonial use), or are provided under an express expectation of confidentiality in the context of Forest Service research, with a prospect of limited release in consultation with the Indian tribe.



Section 304 of the National Historic Preservation Act (NHPA) provides limited authority for withholding disclosure to the public of information about the “location, character and ownership” of historic resources. Defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places.

Section 9 of the Archaeological Resources Protection Act (ARPA) provides authority to limit information on the “nature and location” of archaeological resources. Defined as any material remains of past human life or activities that are of archaeological interest more than 100 years old, and on public or Indian land. Such resources include, but are not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, and human skeletal materials.

### **Recommendation 8**

1. *The Party recommends that national security, national defense or foreign policy, individual privacy interests, business proprietary interests be the bar to disclosure and that section 20 be reviewed by the Committee.*
2. *The party recommends that where a document contains some exempted information, that the document still be released, but with the exempt paragraph or photo or content be redacted.*
3. *The party recommends an exemption to the release of indigenous geneology records, archeological sites and items, landowning records and fishing ground records be exempt under the Bill.*

### **Consultation**

Before we conclude, we wish to discuss briefly the benefits of effective consultations on reform of legislation, as well as any policy reform.

We are gratified that this important Bill is not being fast-tracked, that Parliament has referred it to this Committee for consultation, which is an opportunity for the public and our community to make known their views on the Bill.

One of the benefits of effective consultation, is that the people are fully aware of and have contributed to the reforms you are making, so they are supportive of the changes. This aids in the implementation and respect for the reforms and new laws, because you have the buy-in and participation of the affected community, so they can consider that they have ‘ownership’ of the reform. We therefore urge and we highly recommend that consultations are undertaken in all legislative drafting and government reform programs.

Another benefit of consultation, is to hear the views of other political parties, those on the Opposition side, and to work together to come up with the best possible law for Fiji. This prevents wholesale changes to laws if the administration changes after elections, and enables Fiji to continue to move forward rather than to engage in tit-for-tat payback punitive legislation program, if the government changes.

While we appreciate the current consultation process, we are concerned that some provisions of the Bill would have benefitted from more consultation.

## **Conclusion**

To conclude Honorable Chair and Members of the Committee, on behalf of the the Party Leadership and our members, I expresses again our gratitude for the opportunity to appear before you today.

I hope our observations and recommendations are helpful to the committee, and that we have effectively communicated the concerns we have about this Bill to you.

We are happy to answer any questions you may have regarding this submission.

Vinaka vakalevu.

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