

Frequently Asked Questions about the Jamaican Access to Information Act

1. What is the Access to Information Act?

The Access to Information Act 2002 was enacted by the Jamaican Government to give the public access to information held by Government and to promote accountability and transparency in Government decision-making. The Act gives a right for persons to request information from Government in the form of official documents.

2. What can I ask for?

You can ask for documents held by Government Authorities. It includes all type of information including copies of documents, computerized records, emails, maps, audio-visual etc. You may also ask to view or listen to the document.

3. What are my rights under the ATI ACT?

The ATI Act gives persons the legal right to obtain Government information. In the past persons could request information from Government and either be

- Given the information as it was readily available
- Given no response
- Told it would take some time to fulfill the request
- Denied information with no right of appeal,
- Denied it in the form requested,
- Sent to search a register or
- Given written answers to requests for information.

The Act gives the citizen the legally enforceable right to request information in the form they desire as long as it will not destroy the document or infringe copyright in the document.

4. Do I have to give a reason for my request?

No you do not. The Public Authority does require that you give a name and a correspondence address, post or email, to reply to.

5. Who do I make a request to?

All Ministries, Executive Agencies or other statutory bodies, parish councils and wholly owned government companies and companies which the Government holds 50% shares in fall under the Act. The Act also allows the Government to bring under the Act private companies where they provide public services, which are essential to the welfare of the Jamaican society. You must make your request to the relevant Ministry or Agency, which is most likely to have the document you want in their

custody or control. You may also make the same request to a number of public authorities that may all have documents relating to one issue.

6. How do I make an ATI request?

You can make a request by

- Letter,
- E-mail,
- Telephone,
- Fax or
- Fill out a government form available on-line or from the public authority to which you want to make a request.

You have to give information on the document that you would wish to have access to and identify the Government agency that is likely to have that information. You don't have to know the name of the document as long as you can give a description of its contents or the type of information you need. Don't worry if the public authority is not the correct one as the Act has a built in procedure for transfers to the appropriate authority with the document in its possession. A request must be transferred within 14 days of its receipt. You must be notified to which authority the application is transferred.

7. Can anybody use the Act to get information?

Yes, Everyone has the right to information and anyone can use the Act even if you are not a resident or citizen of Jamaica. The Act applies to all persons.

8. Will anyone, excluding the persons handling my request, know that I have made a request for particular documents?

Officers within the agency in which a person makes a request including the Access Officer and the Permanent Secretary may know that a person has made a request for a particular document. External persons outside of the agency will not know the names of persons making requests. The Regulations under the Act require that where the personal privacy of any person may be affected by the grant of access to an official document the access officer must consult with that person to state whether the disclosure would amount to an unreasonable disclosure of information.

9. How long does it take to process a request?

Your request must first be acknowledged and thereafter the public authority must respond to your application as soon as practicable but no later than 30 calendar days from the date they received your application. If the Authority to which you made the request finds it difficult to find or compile the document they must request an extension but they must give you reasons for this extension. The extension cannot be for a period longer than 30 days. If the Authority does not have the document in its

possession, custody or control it must transfer the application to the appropriate public authority.

10. What am I to expect after submitting a request?

The Public Authority is not required to create a document that does not already exist to fulfill your request. Thereafter the public authority may grant you access to the document, grant you access to some of the documents or parts of a document, refuse access or defer your application. If your application is granted the Authority must tell you the costs for copying and how you may access the document. If it is refused, or it is deferred the Authority must give you reasons for this and inform you of your right to internal review or to appeal. It is also possible to receive no response and that is deemed a refusal.

11. What are the types of official documents that I cannot access (exempt documents)?

Access to information cannot be refused with arguments and explanations such as “this is an internal memo” or this information is “confidential”. The ATI Act requires that the government may not provide information if it is an exempt document. There is an accepted principle internationally that there are documents held by Government which should not be released to the public, this is because there is a need to protect certain limited categories of sensitive and private information. The Act has 9 exemptions that restrict access to some categories of information but the Act includes a requirement in some cases that even where the document is exempt it may still be released if it is in the public interest. Release of exempt documents may also occur where the Minister makes an order for the release of information or after the expiration of 20 years after the documents creation, or such shorter or longer period as the Minister may specify by Order. There is also the possibility of release of some of the material with exempt matter deleted.

The exemptions in the Jamaican law are limited in scope under broad categories. Some of the exemptions are mentioned below and include official documents which:

- Would prejudice the security, defense, and international relations of Jamaica
- Relate to law enforcement and would endanger a person’s life or safety, prejudice the conduct of an investigation or the fair trial of any person in a case
- Have a substantial adverse effect on the Jamaican economy or affect the Government’s ability to manage the economy
- Reveal a trade secret or would destroy or diminish commercial valuable information
- Would involve the unreasonable disclosure of information relating to the personal affairs of any person whether living or dead.

Even where an applicant is denied information on one of these grounds there is still the possibility of requesting an internal review or making an appeal to an Independent Appeals Tribunal set up under the Act.

12.How much will it cost me?

There are no charges for you to view, inspect or listen to the document or for the time it takes for the access officer to conduct searches. Fees are only payable for the reproduction of documents. The cost for reproduction may be obtained from the relevant government entity but these are fees that are prescribed in law and are the same across the entire Government. You may request a waiver of fees, this will be granted at the discretion of the Minister.

13.What rights do I have if my request is refused?

You have the right to internal review of the decision of the Access Officer. The Minister (for certain refusals), the Permanent Secretary or head of the public authority to which you made the request may conduct this internal review. There is no right of internal review if the original decision was made by the public official who would conduct an Internal Review.

The review may be requested when there is

- Refusal of a grant of access
- The grant of access to only some of the documents requested
- Deferral of the grant of access
- Refusal to amend or annotate a personal record
- The charging of, or amount of a fee

14.How do I make an internal review?

You must make a request for internal review within 30 days of the refusal or if you have received no response to your request (a deemed refusal) within 30 days allowed for the authority to respond. You must receive a response from the Minister, Permanent Secretary or head of the agency within 30 days of your request for internal review.

15. How do I appeal a decision?

You may also Appeal to an Access to Information Appeals Tribunal set up under the Act after making a request for internal review if you received a refusal to your request after an internal review or if you have received a deemed refusal by having no response to your request within 30 days. There is also an option to go directly to the Appeals Tribunal where the Minister, Permanent Secretary or head of the agency, made the original decision to refuse your request. Applicants are given 60 days from the date of the decision on internal review or the date of the original decision to make an appeal. On Appeal before the Appeals Tribunal the burden is on the Government to show why they should not grant the information to the applicant. Rules have been passed entitled the Access to Information (Appeals Tribunal) Rules 2005 that govern the Appeals Process. You may take a lawyer to the Appeal or you may appear on your own behalf. If you do not have a lawyer you may contact one who works on the Volunteer Attorneys Panel for Access to Information, which has been formed by the Carter Center, the Jamaican Bar

Association and the Independent Jamaica Council for Human Rights. They can provide the service of a lawyer if you are indigent and unable to pay for an attorney or a civil society organization that has been denied information. If you have failed in your appeal there is also the option to go to the Supreme Court and seek judicial review.

16. What are the Offences and Penalties under the Act?

The Access to Information Act provides offences and penalties for Government employees to alter or deface, block or erase, destroy or conceal an official document to which the public has a right of access, with the intention of preventing its disclosure.

A fine of a maximum of five hundred thousand dollars (\$500,000.00) or six (6) months imprisonment or both are applicable.

17. Can I share the information once it is given to me, or is it just for personal use?

Yes you can share this information, however you cannot use the information to defame any person or publish this information to obtain a commercial benefit that would infringe the author's right to the information.

Prepared by Carter Center, 2005