

Public Interest

Where a Public Authority considers that substantial prejudice would result from disclosure of requested information by virtue of the exempting provisions under the Act, under some of those provisions it will still be necessary to consider the public interest in making the information available. The public interest has been described as something that is of serious concern or benefit to the public and not being merely of individual interest. It has also been stated that public interest does not mean “of interest to the public” but “in the interest of the public”. The term is not defined in the Act. Because of this, Public Authorities will need to judge each case on its merit and in light of any emerging guidance or best practice.

Factors however, which may inform a decision about public interest includes:

- A. Whether disclosure would enhance scrutiny of decision making processes thereby improving accountability and participation;
- B. Whether disclosure would contribute to the administration of justice and enforcement of law or would prejudice the prevention or detection of crime or the apprehension or prosecution of offenders;
- C. Whether disclosure would affect the economic interests of the whole or part of Jamaica;
- D. Whether disclosure would contribute to effective oversight of expenditure of public funds;
- E. Whether disclosure keeps the public adequately informed of any danger to public health or safety or to the environment;
- F. Whether disclosure would contribute to ensuring that any government entity with regulatory responsibilities is adequately discharging its functions;
- G. Whether disclosure would prejudice the protection of an individual’s right to privacy

In deciding whether the release of information would be in the public interest, Public Authorities should not take into account:

- I. possible embarrassment of government or other Public Authority officials;
- II. possible loss of confidence in government or other Public Authority;
- III. the seniority of persons involved in the subject matter;
- IV. the risk of misinterpretation of the information by the Applicant

Points to Note on Exemptions

In applying the exemptions under S. 14 – 22 of the Act, Access to Information personnel should:

1. Exercise discretion as far as possible to facilitate and promote the disclosure of information;
2. Weigh carefully the public interest in disclosure against the interest in withholding information, including consideration of any probable harm from disclosure and the fact that

information generally becomes less sensitive over time. Be proactive and consider whether the exemption as applies to an official document has outlived its purpose;

3. Have good, cogent reasons for withholding information when claiming a discretionary exemption (eg. S 16, 18, 19, 20, 21, 22);
4. An entire document may not be withheld on account of some of its contents being exempt;
5. When assessing the applicability of an exemption, careful regard should be had to the “mischief” that the exemption is directed towards. A better understanding of it will aid proper application of the exemption.

So, for example, in the case of the deliberative process exemption, the exemption is intended, according to international standards and jurisprudence, to provide government ministers with an opportunity to be candid with each other in relation to the political element of the decision-making (which is why factual and other reports must be released) and to avoid driving government underground. This does not provide a wide exemption for the whole policy-making process. On the contrary, public participation should be encouraged, which means disclosure of draft policies and supporting documentation. Thus, care must be taken to ensure that exemptions are understood and interpreted properly. Applying them as narrowly as the law defines them is the appropriate approach. Using the language of the exemptions, and the public interest they are aimed at serving, is crucial to the operation and success of the Act.