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Freedom of Information Bill, 2015 - Recommendations Nassau, Bahamas

The following recommendations are made by Citizens for a Better Bahamas (CBB), a non-partisan civil society organization.

1. The definition of “public authority” in section 2 should also include legislative, administrative and non-statutory bodies. For example, the BEST Commission would not be covered by the current definition. The FOI Bill should also cover private organizations that operate with substantial public funds and performing public functions and services. If this is accepted, section 3(2)(c) should be deleted. This recommendation is based on section 3(d)(ii) of the Antigua and Barbuda FOI Act, 2004, which defines a public authority as a body “owned, controlled or substantially financed by the Government from public funds”.
2. Section 3(1)(a) - Any further exemption to records should be made by the Information Commissioner and not the Minister.
3. Section 3(4) and 3(5)(c) - Any further exceptions to public authorities should be made by the Information Commissioner and not the Minister.
4. Section 4 - There should be obligations on the Government to enforce and uphold the objects stated.
5. Section 6(3) - ‘Thirty years’ should be reduced to fifteen years.
6. Section 7(4) - The extension period should be reduced to 10 days. Reasonable cause for such extension should be limited to force majeure events.
7. Section 7(5) - This section should state the actual legal reasons and not simply “reasons”.
8. Section 8(2) - The transfer period should be no later than 5 days.
9. Section 11(1)(c) - This section is too vague and it needs to be narrowed or removed.
10. Section 13(2) - Costs should only apply to reproduction and not preparing.
11. Section 15 - Public interest considerations should be included in the Act itself.

12. Section 21(1)(a) - Opinions, advice or recommendation for Cabinet or a Committee of Cabinet should be fully disclosed.
13. Section 22(1)(c) - Legal advice given by or on behalf of the Attorney General should be subject to the public interest test.
14. Section 25 - If the person is a public servant and the request is made in respect to Government business, a balance should be struck between privacy and disclosure in the public interest.
15. Section 30(3) - The Information Commissioner should be appointed through measures independent of the Government, such as the Judicial Services Committee or a Parliament Select Committee with representation from the Opposition. Additionally, civil society should be included in the decision-making process either through membership on the Select Committee or the publication of a short-list of candidates and public feedback on the candidates.
16. Section 31(a) – “Misbehaviour” should be changed to negligence and misconduct.
17. Section 34 - There should be a separate and dedicated budget line item for the Freedom of Information Unit.
18. Section 35 should be deleted.
19. Section 47 - In order for the whistle-blower section to be effective, there should be a section inserted stating that the FOI Act supersedes the Official Secrets Act.
20. The following section should be added: “The Ministry responsible for the Freedom of Information Act shall be responsible for developing and promoting public educational programs on utilizing and applying the Freedom of Information Act”.