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What is an “open society”? An open society recognizes that no one has a monopoly on the truth. Citizens can vigorously debate government policies and the future direction of their country. Freedom is maximized, but the weak and the poor are protected. Legal guarantees of freedom of association and freedom of speech are assured.

Such societies are not just the exclusive domain of mature democracies. They can be part of any state’s democratic development. An open society is not a function of culture or history – examples range from France to Sweden – but of a sincere commitment to government transparency and civil rights.

The concept of an open society first entered the modern political lexicon with the publication of one of the 20th century’s most influential books. Karl Popper’s 1945 landmark study *The Open Society and Its Enemies* prophesied the collapse of communism and exposed the flaws of socially engineered political systems. It argued for the widest possible freedoms, but also cautioned that “We must [also] construct social institutions, enforced by the power of the state, for the protection of the economically weak...”

But open societies can be traced still further back in history, to ancient Greece. Pericles, the legendary leader of Athens from 462 BC – 429 BC had a vision of society still relevant for the world today:

*Our political system does not compete with institutions which are elsewhere in force. We do not copy our neighbors, but try to be an example. Our administration favors the many instead of the few: this is why it is called a democracy. The laws afford equal justice to all alike in their private disputes, but we do not ignore the claims of excellence. When a citizen distinguishes himself, then he will be called to serve the state, in preference to others, not as a matter of privilege, but as a reward of merit; and poverty is no bar.*

*The freedom we enjoy extends also to ordinary life; we are not suspicious of one another, and we do not nag our neighbor if he chooses to go his own way. ... But this freedom does not make us lawless. We are taught to respect the magistrates and the laws, and never to forget that we must protect the*

*injured. And we are also taught to observe those unwritten laws whose sanction lies only in the universal feeling of what is right ...*

*Our city is thrown open to the world; we never expel a foreigner ... We are free to live exactly as we please, and yet, we are always ready to face any danger.... To admit one’s poverty is no disgrace with us; but we consider it disgraceful not to make an effort to avoid it ... We consider a man who takes no interest in the state not as harmless, but as useless; and although only a few may originate a policy, we are all able to judge it. We do not look upon discussion as a stumbling block in the way of political action, but as an indispensable preliminary to acting wisely...*

Today, the open society model faces fresh challenges. Corruption is one of the most insidious. In both the Balkans and the former Soviet Union, citizens and elected leaders have long struggled against what the World Bank describes as the “state capture” phenomenon. This occurs when organized crime groups and oligarchs infiltrate government affairs or corrupt public officials use their positions to finance lucrative businesses. The long-term effects of this phenomenon are devastating. But they can be avoided.

In recent years, numerous non-governmental organizations have undertaken campaigns to help countries realize the goal of good governance. One of the most prominent is the Open Society Institute, run by Hungarian-born philanthropist George Soros. Other noteworthy organizations concerned with the construction of an open society include Transparency International, Reporters Without Borders, Internews, and Article 19.

A recent World Bank report found that governments with greater transparency do, in fact, govern “better.”<sup>1</sup> The trick is how to make that desire a reality.

## BUILDING AN OPEN SOCIETY

A guaranteed access to information is the most critical element for building a successful open society. Freedom of speech and freedom of asso-

ciation also play a crucial role. Citizens should be able to discuss the issues of the day, to challenge the media and government, and, when they see fit, to take to the streets to register their protest in peaceful demonstrations. In turn, those in positions of public trust and authority are expected to listen to citizens' concerns. Voters should be consulted on proposed legislation. Except in extreme circumstances, legislatures should sit in public sessions, and their committee hearings should be open to all.

Underpinning these processes is a lively and independent media, ready, willing and able to hold those who hold positions of public trust to the standards of an open society. The government should accept the media's legitimacy to challenge its policy, and accept the public's support for such critiques. Politicians should make themselves readily accessible to the media. In such a society, the media accepts its responsibilities to filter information fairly and objectively so that news consumers are accurately informed.

The purpose of such information access is clear: to safeguard against corruption. Political leaders who find themselves under intensive, regular public scrutiny are more inclined to act honestly, ethically and in the public interest – and less inclined to sell out the public interest for their own.

In an effort to hold its public servants to such standards, the United Kingdom introduced a broad code of behavior in 1994 for those in public life. Developed under the stewardship of Lord Nolan, *the Seven Principles of Public Life*<sup>2</sup> can be applied universally, regardless of differences in politics, history or culture:

**Selflessness** – *Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*

**Integrity** – *Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*

**Objectivity** – *In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merits.*

**Accountability** – *Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

**Openness** – *Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.*

**Honesty** – *Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.*

**Leadership** – *Holders of public office should promote and support these principles by leadership and example.*

**Codes of conduct** – *for ministers, legislators, civil and foreign service officers, the judiciary, and local government*<sup>3</sup> – *can help countries put these principles to work. – Similarly, citizens' charters, compel government agencies to provide certain levels of service to citizens and to solicit complaints if these levels are not met.*

Public appointments should be made openly and based on merit<sup>4</sup>. Public bodies, too, and their boards must observe high standards of propriety involving impartiality, integrity and objectivity in relation to their stewardship of public funds. They will maximize value for money by ensuring that services are delivered in the most efficient and economical way on budget and with an independent validation of their performance, wherever practicable. They should be accountable to the legislature, and to the public at large for their activities, their financial management and the extent to which objectives have been met.

Government contracting should occur through an open tendering process so that citizens have full information about a government's commercial ties.

This helps curtail cronyism and political patronage financed at the public's expense. A financial watchdog should testify publicly to the legislature about the government's performance in these areas and its report should be published promptly. An aggrieved citizen should have access to an ombudsman, whose reports would also be made public and who would work to guarantee that any corrective action is timely.

Increasingly, to enhance national security in the face of rising terrorism, the argument is being made throughout the democratic world that such freedom of speech and assembly and right to public information should be restricted. Though the reality of the threat cannot be denied, in effect, this argument achieves what terrorists aim: the destruction of a civil society. A balance needs to be struck.

Corruption, like terrorism, thrives on a lack of reliable information. As the 1987 Nobel Peace Laureate Oscar Arias Sanchez has observed:

*We must not despair of arresting the cancer of corruption. As much as we speak of the globalisation of corruption, we must also welcome the global tidal wave of public demands for good government. Today, national leaders are beginning to accept that corruption must be discussed on the domestic and international stages.*

*But our most important weapon in the war against corruption will be the growing number of democracies and, consequently, free presses around the world. Without the freedom to ask questions, or to effect change, people are not empowered – they are, instead, caught in a system of superficial democracy. One of the most important freedoms in a democracy is the freedom of the press. When the voice of one man or woman is suppressed, all voices are in danger of being silenced. When even the smallest part of truth is hidden, a great lie may be born.<sup>5</sup>*

## ACCESS TO INFORMATION

The greater the information made publicly available and the more certain its accuracy, the greater the chances for a transparent and truly accountable

government. Without such access, confidence in public institutions is placed in jeopardy.

However, even when a society recognizes the importance of freedom of information, without a legally-enforceable right to information, citizens are often left at the mercy of public officials and politicians who may be reluctant to part with certain information. To correct this practice, the Council of Europe has come down firmly in favor of a formal guarantee:

*Member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.<sup>6</sup>*

*A sound freedom of information act may, therefore, be seen as providing the foundation for a sustainable democracy.*

## ACCESS TO INFORMATION LEGISLATION

Article 19 of the Universal Declaration of Human Rights provides a starting point for this process, but its applications are limited<sup>7</sup>. The article is clearly aimed at curtailing government censorship, rather than promoting government transparency.<sup>8</sup> Thus, the task of the reformer is to elaborate on Article 19.

One can start with the assumption that all information belongs to the public. Unless there are compelling reasons why it should be withheld, information is held in trust by the government to be used in the public interest.<sup>9</sup>

The approach adopted in such countries as Brazil and New Zealand has been to create a legal requirement that all official information be made available to anyone who seeks it unless there is adequate cause to withhold it.<sup>10</sup> If the starting point is that information belongs to the state and is to be used in the interests of the government, then any resulting rights will be of little value in advancing a democratic environment or informed debate. Section 5 of the 1982 New Zealand Official Information Act provides that:

**5. Principle of availability** – *The question whether any official information is to be made available... shall be determined, except where this Act otherwise expressly requires, in accordance with the ... principle that the information shall be made available unless there is good reason for withholding it.*<sup>11</sup>

There is no reason why, in any open and democratic society, state revenues should be kept secret from citizens. Nor, in a democratic society, why extra-budgetary funds should be maintained outside the government's formal accounting arrangements. In the interests of transparency and accountability, the whole of the state's revenues should be accounted for in its official budget. The budget should be audited by an independent financial watchdog and the findings made public. There is also a growing global consensus that recognizes the right of citizens to know what their governments receive as payments for the exploitation of natural resources. In this regard, transactions with multinational corporations ought not to be kept secret.

#### **SOME EXAMPLES FROM CENTRAL AND EASTERN EUROPE**

Among other countries in the OSCE region, Latvia uses a constitution that specifically provides for access to information. It states:

**Article 100.** *Everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.*

**Article 104.** *Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply.*

**Article 115.** *The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.*

Similarly, Latvia's 1998 Law on Freedom of Information guarantees public access to all information in "any technically feasible form" not specifically restricted by law. Bodies must respond to requests for information within 15 days. Information can only be limited by law; if the information is for an institution's internal use; if it is a trade secret unrelated to public procurements or information about the private life of an individual; or if it concerns evaluation and certification procedures.

Appeals can be made internally to a higher government body or directly to a court. For example, in 1999 the Latvian Constitutional Court ruled that a regulation issued by the Cabinet of Ministers restricting access to budget information was void because it violated the Freedom of Information Act's requirements.

Similar conditions prevail in Bulgaria, where Article 41 of the 1991 Bulgarian Constitution states:

**(1)** *Everyone shall be entitled to seek, receive and impart information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.*

**(2)** *Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or other secret prescribed by law and does not affect the rights of others.*

In 1996, Bulgaria's Constitutional Court ruled that, though the constitution gives any person the right to information, additional legislation was needed to determine the conditions under which this prerogative would be restricted. After a number of lower courts had rejected requests by citizens and non-governmental organizations (NGOs) to obtain information, the Access to Public Information Act was enacted in 2000. It allows for any person or legal entity to demand access to any information held by state institutions.

The Personal Data Protection Act, which came into force in January 2002, gives individuals the right to access and correct information held about them by both public and private organizations. A Data



Protection Commission was created in 2002 to oversee the implementation of this act. In 2002, a bill on the National Archives was introduced. At present, Bulgarians have no right of appeal if access to these records is denied.

As did other countries in the region, Bulgaria passed a Law for the Protection of Classified Information in April 2002 as part of its attempt to join the North Atlantic Treaty Organization (NATO). The bill created a Commission on Classified Information appointed by the prime minister, and four levels of security for classified information. The law provides a very broad scope of classification. Anyone who is empowered to sign a document, may also classify it. There are no overriding public interest tests that can reverse the decision to classify a document. A short citizen's handbook has been published online that explains how the Bulgarian legislation works.<sup>12</sup>

Under a separate law, the Administration Act, the Bulgarian Council of Ministers is required to publish a register of administrative structures and "all normative, individual and common administrative acts." A copy of the register is required to exist on the Internet.

A third example of information access laws in the OSCE region is Moldova, where Article 34 of the Constitution provides that:

*(1) Having access to any information of public interest is everybody's right and may not be curtailed.*

*(2) According to their established level of competence, public authorities shall ensure that citizens are correctly informed both on public affairs and matters of personal interest.*

*(3) The right of access to information may not prejudice either the measures taken to protect citizens or national security.*

*(4) The State and private media are obliged to ensure that correct information reaches the public.*

In addition, Article 37 provides for a right to environmental, health and consumer information:

*(2) The State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, living and working conditions, and the quality of food products and household appliances.*

Under the Law on Access to Information, which came into force in August 2000, citizens and residents of Moldova can demand information from state institutions, publicly financed organizations and individuals and legal entities that provide public services and have access to official information. Institutions must respond within 15 working days.

Restrictions can be imposed to protect the following kinds of information: state secrets related to military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities if publication would endanger state security; business information submitted to public institutions under terms of confidentiality; personal data whose disclosure may be considered a violation of individual privacy; information related to the investigative activity of corresponding bodies; and information that represents the final or intermediate results of scientific and technical research. Information providers must prove that the restriction is authorized by law and that the damage caused by publication would outweigh the public interest in disclosing the information.

In Moldova, appeals against refusals, delays, fees and damages can be made to the supervisor of the department that holds the information or its superior body. Denied requests can be appealed directly to the courts. They can also be appealed to the ombudsman. The Administrative Code and Criminal Codes were amended in 2001 to allow for fines and penalties for violation of the Access to Information Act.

The Federation of Bosnia-Herzegovina provides a fourth example. The Freedom of Information Act was adopted in October 2000 in Bosnia-Herzegovina and in Republika Srpska in May 2001. The law went into effect in February 2002.

The Act was initiated by the Office of the High Representative for Bosnia-Herzegovina, the chief civilian peace implementation agency in the coun-

try, which had directed that a freedom of information bill be developed. A high-level group of international and national experts prepared a draft bill in June 2000, based on some of the best practices from around the world.

The Act applies to information in any form held by any public authority including legal entities carrying out public functions. It also provides for a broad right of access for any person or legal entity, both in and outside of Bosnia. The request must be in writing. The government agency must respond in 15 days.

Information can be withheld if it would cause “substantial harm” to defense and security interests, the protection of public safety, crime prevention and crime detection. Non-disclosure is also mandated to protect the deliberative process of a public authority, corporate secrets and personal privacy. A public interest test is applied to any exemption.

An ombudsman hears appeals. Those who have been denied information can also appeal internally and challenge decisions in court. The Federation’s ombudsman has issued two opinions on the implementation of the Freedom of Information Act. The first, issued before the Act came into force, called for ministries to disseminate guides, compile a register and to designate information officers. In a second decision, the ombudsman recommended not releasing intelligence files related to candidates in an upcoming election.

Based on experiences across the OSCE region, as well as elsewhere, it is all too apparent that reforms take time to be implemented and for fresh approaches to become embedded in bureaucratic cultures. Several countries have found that a lack of public education about civic rights, coupled with unreliable records management systems and an unwillingness by some public officials to change their ways have meant that not as much use has been made of the legislation as its promoters had intended. This is, perhaps, only to be expected. On the positive side, a number of governments and NGOs are making efforts to educate the public and public officials alike as to the requirements of the new openness. New laws need to be promoted energetically if they are to have the desired effects.<sup>13</sup>

## LIMITS

As we have seen from the regional examples, any freedom of information law will come accompanied by certain restrictions. A major challenge is what the criteria should be for those limits. Inevitably, exceptions will include state security, law enforcement, personal data on other individuals and commercially sensitive information.

The global non-governmental organization Article 19 has developed a sample freedom of information law for use in crafting such legislation.<sup>14</sup> This example bill includes the following restraints:

- ▶ *Unreasonable disclosure of personal information*
- ▶ *Information that cannot be used in court proceedings as evidence etc.*
- ▶ *Commercial or confidential information involving a breach of confidence, trade secrets, or whose disclosure would be likely to seriously prejudice the commercial or financial interests of a third party*
- ▶ *Confidential information obtained from another state or from an international organization that cannot be disclosed without seriously prejudicing relations with that state or organization*
- ▶ *The release of information that would be likely to endanger the life, health or safety of any individual*
- ▶ *Law enforcement records which would be likely to cause serious prejudice to law enforcement activities if made public*
- ▶ *Information that would likely jeopardize national security or defense*
- ▶ *Economic information which could undermine the government’s ability to manage the economy or which would be likely to cause serious prejudice to the legitimate commercial or financial interests of a public body*

- ▶ *Information the release of which would be likely to cause serious prejudice to the effective formulation or development of government policy.*<sup>15</sup>

In 2002, the Council of Europe reinforced this approach, stating that “member states may limit the right of access to official documents.” However, the Council states that any limitation should be set down precisely in law; be necessary in a democratic society; and be in proportion to the value of the information under protection.

The Council of Europe recognizes that limits can be placed on public information within the following areas:

- ▶ *national security, defense and international relations*
- ▶ *public safety*
- ▶ *the prevention, investigation and prosecution of criminal activities*
- ▶ *privacy and other legitimate private interests*
- ▶ *public or private commercial and other economic interests*
- ▶ *the equality of parties concerning court proceedings*
- ▶ *the environment*
- ▶ *inspection, control and supervision by public authorities*
- ▶ *state economic, monetary and exchange rate policies*
- ▶ *the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.*<sup>16</sup>

At the same time, however, caution should be exercised in implementing such restrictions. For example, it is easy for the state security card to be overplayed. The concepts of state security and the security of the political elite can quickly merge where

there is the chance of political embarrassment. It is also the case that an Official Secrets Act can follow hard on the heels of a progressive Access to Information Act, effectively reclaiming most or all of the rights previously recognized.<sup>17</sup> Singapore prosecuted *The Business Times* for publishing an official prediction of the country’s likely economic growth – material freely available in other industrialized countries – and then curtailed the circulation of the international weekly *The Economist*, when it criticized the move.<sup>18</sup>

At first glance, personal privacy would seem to be a relatively easy issue to resolve. Few would argue against rights to the confidentiality of medical records, but there can be exceptions; for example, if a person suffers from a highly contagious, life-threatening communicable disease. Yet the values societies place on personal privacy vary and are often shaped by their differing histories. The fact that in Sweden a citizen can see his or her neighbor’s income tax return may not convince other countries that such openness is desirable.

Public figures often claim the right to not have their private lives exposed in the mass media. Courts around the world have tended to support the argument that public figures necessarily will have their lives subject to greater scrutiny by individuals and the media.<sup>19</sup> This means that in a growing number of countries public figures are having to put up with greater scrutiny of their private lives than might be permitted in the case of ordinary citizens. Politicians, in particular, have to act more aggressively in suing for defamation of character and, consequently, should be accorded far less protection in this area, too.

Pleas that desired information is too commercially sensitive to release are also common. Yet as a matter of principle, citizens have the democratic right to know about the details of commercial arrangements entered into between their government and its suppliers, all the more so in cases of privatization of public assets. Whereas confidentiality may characterize lawful transactions within the private sector, it can be indefensible when public money is at stake.<sup>20</sup> It is too easy for officials to strike deals with the private sector and then claim that the transactions are privileged and exempt from public scrutiny.



Perhaps the most problematic area of all is the extent to which citizens should have access to advice given to ministers and leaders by government advisors. Those who support limiting access to such information argue that policy recommendations from civil servants to their ministers need to be delivered frankly and fearlessly. Exposing such exchanges to public view, they say, would undermine an essential atmosphere of confidence and, ultimately, effective decision-making. Based on this reasoning, internal official documents are often exempted from freedom of information requirements. Though this argument may appear attractive, countries which have made such information available tend to have encountered few, if any, problems as a result, and also have scored consistently well in international corruption surveys.<sup>21</sup>

### IN CASES OF DISPUTE

Once a legal right to information with an appropriate breadth of scope has been established, how should competing interests be resolved in case of dispute? How easy should it be for political, as opposed to public, interests to prevail when a citizen – or journalist – makes a request for information?

In some countries, ministers enjoy a discretionary power to decline requests for information. Clearly, no minister should have this authority unless it can be reviewed on appeal, since the privilege can be effortlessly abused. Guidance notes should comprehensively identify when access may be blocked. Information should never be withheld if its release might be inconvenient or embarrassing to the minister or the department. Nor should ministers be able to block access with the argument that information does not concern the applicant or that it could be “misunderstood” by the applicant or by the media.<sup>22</sup>

Some countries allow for a right of appeal to an independent information commissioner, an ombudsman or an appeals body. Recommendations for disclosure are either accepted by the minister in question or taken on appeal to the judiciary. Elsewhere, appeal bodies can do no more than recommend that the minister reverse an earlier decision to deny a request, with no right of appeal to a court should

the minister fail to do so. Systems of governance may vary, but there is always a wholly unacceptable conflict of interest whenever and wherever an official acts as the judge in his or her own cause.

### INFORMATION CAMPAIGNS AND RECORDS MANAGEMENT

Should people always have to ask for the information to which they are entitled? One view is that public authorities should not simply wait until they are asked for information. They should develop policies that take essential information to the people before they ask for it. Such positive actions can be much more cost-effective, and of greater practical utility, than is the case when departments wait passively for the submission of inquiries.<sup>23</sup> It means, too, that the information can be processed into simple and meaningful messages which are much more helpful to citizens than reams of documents simply dumped onto a website. The preparation of meaningful messages should never be allowed to provide an opportunity for the manipulation and projection of half-truths.

Such a strategy can be particularly advantageous to governments with limited resources. By making information available in offices and other public places, the calls on staff time to respond to individual queries can be greatly reduced – and citizens can learn of their rights without even being aware of their entitlement to know.<sup>24</sup>

When we campaign for greater access to information we must at the same time campaign for improved records management. There seems little point in having access to information that is chaotic and unreliable. Systematic, complete and dependable record-keeping is a must. Reliable public sector records management systems are essential. Similarly, without paper trails, there is little or no accountability, and corruption can flourish in the vacuum.

Increasingly, the role of the chief archivist is coming into focus. Long overlooked, this official is increasingly seen as holding a key to accountability. The archivist's records can provide the paper trails crucial for exposing mismanagement and corruption. Unfortunately, their posts are generally junior,

and their work under-resourced. The post of chief archivist should be granted constitutional protection – perhaps placed on a par with a Supreme Court judge or the head of an independent financial watchdog body.

But as governments open up, reformers must be prepared to take the world as it is old records may be so chaotic as to render rights of access highly time-consuming, if not wholly fruitless. Indeed, in Mexico, where a freedom of information law was enacted in April 2002, a report stated that “public records, transcripts, and notes from important meetings have been purposefully kept from public view, leaving almost no official record of how key decisions have been made. In many cases, official records have been destroyed or taken home by officials when they left office.”<sup>25</sup>

In such cases, transitional arrangements are essential if citizens’ faith in their newly won rights is not to be lost. Rather than allow poor records management systems to be used as a reason to block reform, it may be better to start afresh. Rights of access should not be retroactive in areas where the existing information system cannot deliver documents reliably.

Whatever the course adopted, a clear duty must be imposed that the information provided be complete, coherent and comprehensible. Invariably, the cost factor is raised as an argument against reform. Should those asking for information be required to meet the costs of preparing the replies? If so, should there be limits? Obviously, high fees deter requests and so undermine the whole purpose of the exercise. Fortunately, governments are learning that the benefits of openness can outweigh any related costs. Furthermore, wherever legislation has been passed, only nominal processing fees tend to be required.

## INFORMATION AND THE PRIVATE SECTOR

The private sector, too, has its own needs for access to complete and reliable publicly information; in particular, that related to public procurement rules and exercises, which some countries are starting to make available through the Internet.<sup>26</sup>

Even though information held by the private sector itself is governed by considerations distinct from those applicable in the public arena, certain categories of information must be made available to consumers, suppliers and employees. Examples range from accurately labelled food to business accounts, from professional audit and financial services to personnel files.

The public rightly expects greater accountability whenever private entities carry out public functions or when a traditional state function is privatized. Private agencies cannot be permitted to obscure their public accountability. On the contrary, citizens are entitled to know much more about public-private undertakings than about activities that are entirely confined to the private sector. After all, such state-funded activities involve taxpayers’ money.

Citizens, pension funds and insurance companies are also entitled to expect honest financial information from publicly listed corporations. Private sector auditors should discharge their duties independently of audited corporations and with a view to the public interest – not one crafted to meet the narrow ends of senior managers with performance bonuses. The financial reports they produce are vital to the welfare of citizens. These professionals perform a public function by providing information that gives a true picture of the financial health of audited companies.<sup>27</sup>

To their credit, leading corporations are starting to accept the legitimacy of public concern and in some cases are responding by promoting access to information policies.<sup>28</sup> Indeed, accountability by the private sector to the public at large lies at the very heart of the growing corporate social responsibility movement.

## A CULTURE CHANGE

Even if the benefits of openness are understood, citizens with the right of access to information can appear threatening to officials accustomed to regarding their files as confidential and safe from the eyes of an inquisitive public.

A culture change is needed – from the most junior government staff up to the responsible minister. Through training and the leadership examples of those at the top officials must come to understand that the introduction of access to information policies can demonstrably increase the quality of

administration. Such policies foster a public sector ethic of service to the public, enhance job satisfaction, and raise the esteem in which public servants are held by the communities they serve, and in which they live.

#### ENDNOTES

- 1 The World Bank – Governance Policy Research Working Papers: <http://econ.worldbank.org/resource.php?topic=13&type=5> See also Governance Indicators: <http://www.worldbank.org/wbi/governance/govdata2002/>
- 2 UK Public Standards: [http://www.public-standards.gov.uk/about%20us/seven\\_principles.htm](http://www.public-standards.gov.uk/about%20us/seven_principles.htm)
- 3 The United Kingdom has a commissioner who oversees the openness and propriety of public appointments (see <http://www.ocpa.gov.uk/index2.htm>). A further recent example of openness at the level of local government is the United Kingdom's project, Modern Local Government in Touch with the People. ([http://www.odpm.gov.uk/stellent/groups/odpm\\_localgov/documents/page/odpm\\_locgov\\_605468.hcsp](http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605468.hcsp)). Under a new ethical framework councils are expected to embrace the new culture of openness and ready accountability for which a new Model Code of Conduct for Councillors is promoted. The code requires that elected Councillors of local authorities in England behave according to the highest standards of personal conduct in the performance of their duties.
- 4 For an example, see the Estonian Public Service Act (<http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN007216.pdf>).
- 5 Transparency International Source Book 2000: <http://www.transparency.org/sourcebook/00-foreword.html>
- 6 Rec. (2002)2 of the Council of Europe Committee of Ministers to member states on access to official documents: [http://cm.coe.int/stat/E/Public/2002/adopted\\_texts/recommendations/2002r2.htm](http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm). For a review of the position in Commonwealth countries, see Open Sesame: *Looking for the Right to Information in the Commonwealth*, a report prepared by a group of NGOs under the title of the Commonwealth Human Rights Initiative (2003): [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2003/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/default.htm).
- 7 Article 19 proposes a model freedom of information law: See: <http://www.article19.by/publications/freedominfo/> The US Freedom of Information Act is the most open example of this type of legislation. See: [http://www.epic.org/open\\_gov/foia/us\\_foia\\_act.html](http://www.epic.org/open_gov/foia/us_foia_act.html); Australia's 1982 Commonwealth Freedom of Information Act 1982 at [http://www.comb.gov.au/publications-information/freedom\\_information.htm](http://www.comb.gov.au/publications-information/freedom_information.htm); and The Irish Freedom of Information Act (1997) at [http://www.finance.gov.ie/view\\_doc.asp?DocID=837](http://www.finance.gov.ie/view_doc.asp?DocID=837); For an analysis of Japan's first legislation on this topic, see <http://www.freedominfo.org/analysis/japan1/>.
- 8 See Anne Marie Goetz and Rob Jenkins, "Hybrid Forms of Accountability" Citizen engagement in institutions of public-sector oversight in India", *Public Management Review* Vol. 3 Issue 3 2001 pp 363-383. Also Rob Jenkins and Anne Marie Goetz, "Accounts and Accountability: theoretical implications of the right-to-information movement in India", *Third World Quarterly*, Vol. 20, No. 3, pp 603-622.
- 9 The Swedish government recently launched "Open Sweden", as part of its program "A Government in the Service of Democracy," intended to help ensure that the basic principles of democracy, the rule of law and efficiency are in force in the national government, and among the 150 Swedish public administrative bodies. The need for greater openness is of equal central importance to Sweden's 21 county councils and 289 municipalities. As a result, Open Sweden is a joint effort involving representatives from the national, county council and municipal levels.
- 10 Brazilian Constitution, Article 5, Item 33. Such is also the case in New Zealand's 1982 Official Information Act. The act reversed the principle of secrecy set out in the 1951 Official Secrets Act, which it repealed.
- 11 1982 New Zealand Official Information Act See: [http://www.legislation.govt.nz/browse\\_vw.asp?content-set=pal\\_statutes](http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes).
- 12 Access to Information Programme (<http://www.aip-bg.org/library/laws/apia.htm>). See also the handbook How to Get Access to Information: Citizen's Guide (<http://www.aip-bg.org/handy.htm>).
- 13 The assistance of David Banisar of Privacy International in these matters is gratefully acknowledged. See also the websites for Privacy International (<http://www.privacyinternational.org/>) and for Article 19 (<http://www.article19.org/>).
- 14 Article 19 proposes a model freedom of information law: See: <http://www.article19.by/publications/freedominfo/>
- 15 Sections 25 to 32.
- 16 Rec.(2002)2 of the Council of Europe Committee of Ministers to member states on access to official documents: [http://cm.coe.int/stat/E/Public/2002/adopted\\_texts/recommendations/2002r2.htm](http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm).
- 17 Zimbabwe combined the two approaches into one act, giving an apparently liberal title to a highly repressive set of provisions. In a June 17, 2002 article in Britain's Daily

Telegraph, license fees set under the act are described as "absolutely outrageous" and likely to induce several international news agencies to close their Zimbabwe operations. Others, such as the BBC, have already been forced out.

- 18 The Singapore *Business Times* editor was prosecuted with others under the country's Official Secrets Act for publishing so-called flash GDP estimates – early calculations of the most recent economic growth – before they were officially released. When the London-based *Economist* commented mockingly on the prosecutions it set in train a confrontation with the Singaporean government that led to *The Economist's* circulation in Singapore being curtailed. See: "Newspapers: a ban is not a ban unless restricted" by Francis T. Seow (former Solicitor General of Singapore), presented at an April 1998 conference on "The Limits of Control: Media and Technology in China, Hong Kong and Singapore" at University of California at Berkeley's Graduate School of Journalism. ([www.sfdonline.org/Link%20Pages/Link%20Folders/Press%20Freedom/seow.html](http://www.sfdonline.org/Link%20Pages/Link%20Folders/Press%20Freedom/seow.html)).
- 19 "Hollow victory reflected in paltry damages", *The Times* of London (UK), 29 March 2002: "*The Mirror* was entitled to show that [supermodel Naomi Campbell] was lying about not being a drug addict and receiving treatment. But the newspaper went too far in publishing sensitive personal data"... "Progress is far from universal, as Zimbabwe's laws forbidding criticism of its president make plain.
- 20 "Public Fraud Initiative," *The Guardian* (UK), 18 June 2002: "False accounting exposes private cash for public services as a theft from the taxpayer ..."
- 21 The Scandinavian countries and New Zealand invariably head international corruption surveys as among the countries least tainted by corruption.
- 22 New Zealand State Services Commission, 1995.
- 23 Such a requirement is now imposed on local authorities in Britain. See the website of the Standards Board for England at [www.standardsboard.co.uk/guidance/guidance\\_index.htm](http://www.standardsboard.co.uk/guidance/guidance_index.htm).
- 24 For example, in Indonesia, the World Bank has encouraged the erection of billboards on development sites carrying details of the particular project underway. The local community can then follow the process and monitor the undertaking. See Jenkins and Goetz. See also Anne Marie Goetz and Rob Jenkins, "Hybrid Forms of Accountability" Citizen engagement in institutions of public-sector oversight in India", *Public Management Review* Vol. 3 Issue 3 2001 pp 363-383. Also Rob Jenkins and Anne Marie Goetz, "Accounts and Accountability: theoretical implications of the right-to-information movement in India", *Third World Quarterly*, Vol. 20, No. 3, pp 603-622.
- 25 *The Washington Post* (USA), 1 May 2002.
- 26 A good example is the OPEN system of the South Korean city of Seoul; [www.transparency.org/building\\_coalitions/public/local\\_government/projects\\_topic/procurement.html](http://www.transparency.org/building_coalitions/public/local_government/projects_topic/procurement.html). See also Columbia's Government Portal [http://www1.worldbank.org/publicsector/egov/colombiaportal\\_cs.htm](http://www1.worldbank.org/publicsector/egov/colombiaportal_cs.htm) where the President has directed that all government agencies create a web site and post particular information there and conduct business on-line.
- 27 'The Ethical dimension – especially the question of the duties owed to people other than their clients – does not seem to have arisen...' Peter Martin in 'Accountants' Moral Duty', *Financial Times* (UK) 17 January 2002. See also *Financial Times* (UK), 5 March 2002.
- 28 One such initiative is by NIREX ([www.nirex.co.uk/publicn/guide.htm](http://www.nirex.co.uk/publicn/guide.htm)), a corporation 'working to develop safe and environmentally responsible solutions for the management of radioactive waste'. Its web-based "transparency policy" commits the corporation to "a policy of openness"; it also has a policy of responding to individual requests and provides for a right of appeal to an independent review panel.