


Regional Implementation Meeting on Access Rights and Sustainable Development in the Caribbean

Good practices on access to information in environmental matters

Presenter: Damian Cox, Director, Access to Information Unit, Office of the Prime Minister, Jamaica



Good Practices,
Challenges and lessons learned in
the Caribbean region on access to
environmental information,
Public participation and justice in
environmental matters



Why Access Rights Are Important?

“Right to information laws are necessary to “peel back the layers of bureaucratic red tape and political sleight of hand and get to the ‘hard facts’”. Armed with information, even the most marginalized of citizens can take action in their own interests”. - Commonwealth Human Rights Initiative (CHRI)





Right to Know! Power to Change!

Before



After



ATI Implementation Challenges

- ‘Culture of secrecy’;
- Cost of implementation;
- Creation, identification and management of information;
- Balancing access and other rights;
- Interpretation and application of exemptions; and
- Public awareness and interest
- Leadership.

Getting Started-Plan, Budget, Consult, Evaluate, Educate, Communicate & Train

- 1. Develop an Implementation Plan & Strategy for actualizing your Access to Information Regime.
- 2. Establish a coordinating and oversight body to review the implementation plan for access to information to secure successful implementation of access to information laws, regulations and policies.
- 3. Promote openness and information sharing generally in the Public Sector through proactive disclosure of information and seek to ensure appropriate cultural change.
- 4. Monitor progress towards implementation, identify challenges and suggest solutions to address the needs of specific agencies and types of agencies.
- 5. Identify appropriate ICT systems to support implementation of access rights.
- 6. Develop a strategy for comprehensive training and awareness of the public sector.

Getting Started-Plan, Budget, Consult, Evaluate, Educate, Communicate & Train

- 7. Consult and seek input from stakeholders including media, NGO's, public sector workers, private sector and members of the public on their access rights needs and viewpoints on access to information.
- 8. Develop comprehensive guidelines in relation to implementing the access legislation, regulations and policies
- 9. Review existing laws that prohibit or limit disclosure of public information.
- 10. Accept help from and engage with international stakeholders and partners on access rights!

Mandate of the Unit

The Mandate of the Unit can be segregated into three (3) core areas. They are:

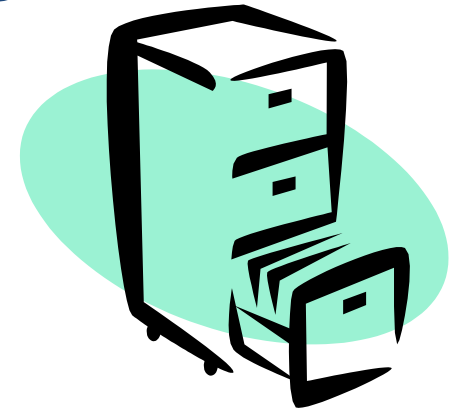
- **Monitoring and Compliance:
Implementation and Administration of the
Access to Information Act (2002)**
- **Secretariat Functions in support of the
Access to Information Appeals Tribunal**
- **Public Education & Communication**

Importance of Records & Information Management



Benefits of Records Management

- Accountability
- Meets legal requirements
- Saves time and money
- Improve services to clients
- Better decision-making
- Reduces risks to the organisation



Regional & Global Considerations

- New ATI Laws & Reforms to existing Laws
- Open Government Partnership
- Open Data and Data Journalism
- OAS Model Law & Guidelines
- Regional HIPCAR Project

Key Components of the Legislation

- No justification required for access;
- Scope of Act is clearly indicated;
- Limited and specific exemptions;
- Set time period for responses;
- Application of ATI should be transparent (e.g. processes and reasons for decisions);
- Right of appeal.

Offences & Penalties





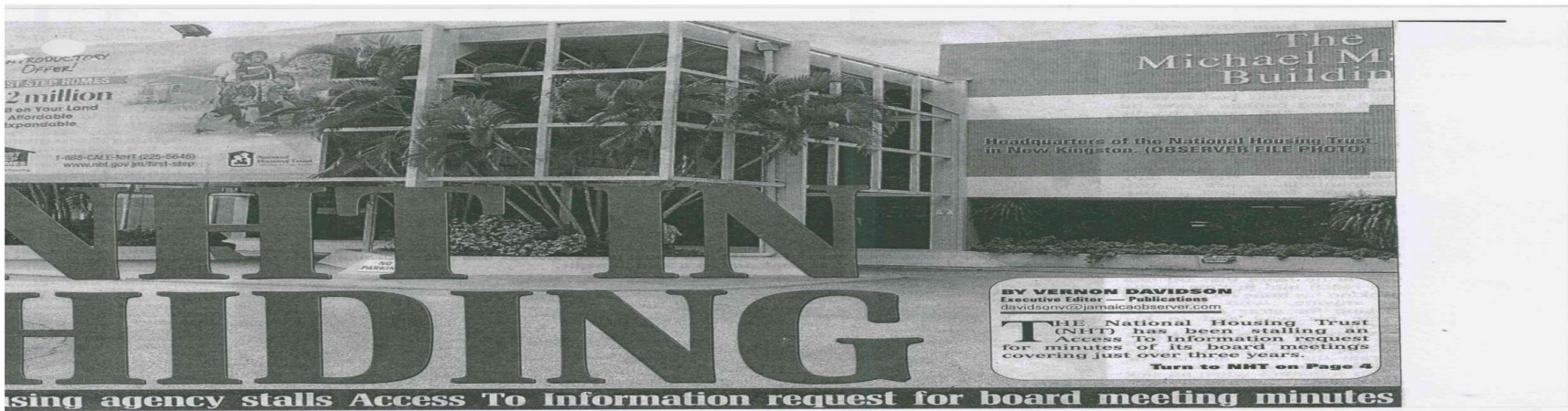
Enforcement Models and Mechanisms: Jamaica

Access to Information Appeal Tribunal





Observer Article: NHT In Hiding Vernon Davidson



NEWS 4

NHT working to meet Access to Information request — Douglas

NATIONAL Housing Trust (NHT) Chairman Easton Douglas yesterday assured the Jamaica Observer that the agency was not stalling an Access to Information request for minutes of its board meetings covering just over three years.

"We are working assiduously to meet your request," Douglas told the Observer.

The NHT chairman was responding to this week's Sunday Observer lead story, which reported that the Trust is yet to meet the newspaper's request for minutes of its board meetings for the period January 2012 to November 10, 2014.

The request was sent on November 24, 2014 at the height of the Outamoni controversy that rocked the agency, and which resulted in the resignation of a number of board members.

Douglas pointed out that the minutes are "very detailed" and that a large volume of copying is required to meet the request.

He also said that some information in the minutes cannot be publicised as they relate to matters now before the courts, and as such are *sub judice*.

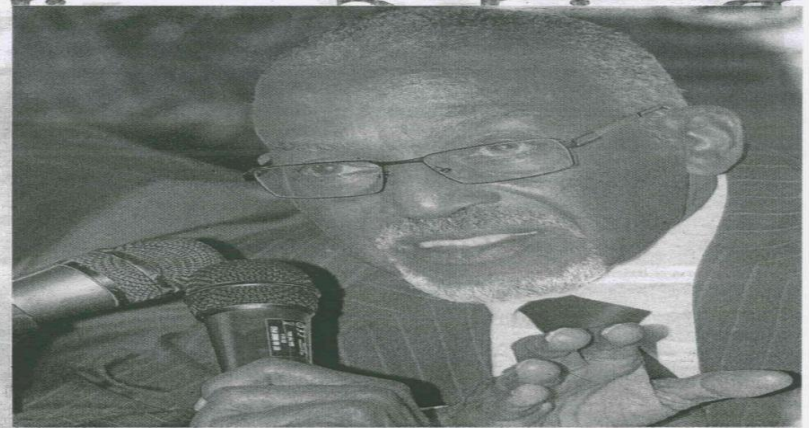
The Access to Information Act does provide for some documents to be exempt from disclosure, including those relating to law enforcement that could by disclosure, endanger any person's life or safety; prejudice the conduct of an investigation; or prejudice the trial of any person or the impartial adjudication of a particular case.

Also exempt is information that could "constitute an actionable breach of confidence", or "infringe of the privileges of Parliament".

Observer Article: NHT In Hiding Vernon Davidson



WATSON... sources said she opposed the purchase (OBSERVER FILE PHOTOS)



DOUGLAS ... maintains that NHT acted legally in Outameni affair

Minutes dealing with Outameni decisions still outstanding

NHT from Page 1

The request was sent on November 24, 2014 to Deloris Sicard, records and information supervisor at the NHT's Information Resource Centre, by the Jamaica Observer at the height of the Outameni controversy that rocked the agency and which resulted in the resignation of a number of board members.

The request was for copies of the minutes for the period January 2012 to November 10, 2014.

Sicard responded on December 24, 2014, saying that the NHT was "requesting an extension".

On December 30, the Observer replied to Sicard, agreeing to the extension which, under the Act, is 30 days.

On February 2, 2015, the Observer wrote to Sicard, reminding her of the Access To Information request.

She responded the following day, saying that she was out of office for

a couple of days, adding, "I will contact you tomorrow to provide you with an update. My apology for the delay."

However, having not heard from Sicard, the Observer again wrote to her on February 5, reminding her that the newspaper was still awaiting a response.

She responded on February 6, saying: "We still have not completed our review of the documents requested due to the scope of the response. Kindly accept our apology for the delay. We assure you we are working assiduously to complete your information request."

On that day, the Observer acknowledged receipt of Sicard's letter and asked her for an "expected timeline" within which the newspaper could expect the information.

Sicard is yet to respond to that request, and on February 16 the Observer sent her another e-mail asking her to reply to the request

for the timeline.

Under the Access to Information Act, a public authority to which an application is made is required to respond to the application "as soon as practicable but not later than 30 days after the date of receipt of the application".

However, the Act gives the authority the flexibility to extend the 30 days "for a further period not exceeding 30 days" in any case where there is reasonable cause for such extension.

The NHT was plunged into a maelstrom of controversy late last year when news emerged that it had bought the loss-making tourist attraction, Outameni Experience in Trelawny for \$180 million.

At the height of the controversy, three board members resigned, reducing the directorate to eight from a required 17. Their resignations followed those of four directors in April in protest against the decision to fire former Managing Director Cecile Watson

who, NHT sources said, had opposed the Outameni purchase.

Private sector, civil society and church groups, as well as the Opposition Jamaica Labour Party had called for the entire board to resign, arguing that the purchase represented an inappropriate use of NHT funds.

However, Chairman Easton Douglas insisted that the board had acted legally, morally and in the best interest of the NHT, its contributors, and the people of Jamaica.

Douglas also said that the board had carried out its duties consistently with the NHT Act and in keeping with its fiduciary responsibilities.

Eventually, the Government appointed four new members to the board, saying that it took the decision to strengthen the directorate.

The Government also promised to appoint additional members and said that the current directors would continue to serve until the life of the board expires on April 2, 2015.

Gleaner Article : Cops Tyrone Thompson

Tyrone Thompson • Staff Reporter



THE GOVERNMENT might have to shell out millions of dollars to settle claims for wrongful arrest, false imprisonment and wrongful death filed against the police force.

Information garnered by The Sunday Gleaner through the Access to Information Act shows that there are currently 73 cases pending against the State because of alleged abuse of power by members of the force.

These include 71 cases of wrongful arrest and false imprisonment and two cases of wrongful death. Included is the March 2012 fatal shooting of 16-year-old Vanessa Kirkland in Norman Lane, Kingston 13.

Three cops have been charged in connection with Vanessa's killing, but the family has filed a civil suit against the State.

Attorney-at-law Bert Samuels, who is representing Vanessa's family, told The Sunday Gleaner that he is also representing several persons who have filed civil claims against the State for wrongful arrest.

According to Samuels, the judgment from the courts in these cases could cost taxpayers as much as \$10 million each.

"We have represented persons who have been detained for four, five months, who have been awarded \$3 million to \$4 million for false imprisonment.

"For malicious prosecution, we have received, on average, \$500,000, and then there is another claim called exemplary or aggravated damages. That's where the conduct of the

police is so bad that the court places additional damages to punish the police," said Samuels.

"There are also constitutional claims that are made against the State. You must also bear in mind that legal costs are also borne by the State and this can be over \$1 million as well, so it is quite conceivable that awards for a single case could total more than \$10 million," added Samuels.

He argued that the majority of claims of false imprisonment were filed in the courts because members of the security forces failed to do adequate investigation before detaining and depriving Jamaicans of their freedom.

"There is a culture in the police force of detaining

PLEASE SEE COPS, A3




Attorney-at-law Bert Samuels

Matondo Mukulu, acting public defender.

University of Technology, Jamaica
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ADVERTISEMENT | THE SUNDAY GLEANER, AUGUST 31, 2014

Matondo Mukulu, August 31, 2014

COPS
CONTINUED FROM A1

and then investigating, and sometimes that investigation leads to nothing. There was no reason to detain in the first place, so they essentially put the cart before the horse," charged Samuels.

He argued that some cases of false imprisonment stemmed from a general misunderstanding of the reasons for detention by the police.

"There are other times when the police make an arrest in a matter that was of a civil nature only, and no criminal offence took place. For example, I owe you some money, you go to the police, and the police arrest me, when it was a civil commercial arrangement between you and me and there was no criminal offence committed."

With the State paying a heavy price for these police abuses, Samuels is frustrated that there seems to be no action from the Police High Command against cops involved in cases of abuse.

"First, it's the taxpayers who pay, not the police," said Samuels.

"In our experience, we have seen police who have created these civil liabilities on the taxpayers ... promoted by the time we get judgment, so there is no repercussion. I guess the State is saying that people being wrongfully arrested and deprived of their freedom is a natural consequence of policing."

FLAGRANT ABUSE

Meanwhile, acting Public Defender Matondo Mukulu accepts that sometimes mistakes may be made in the process of a police investigation; however, he is wary of the flagrant abuse Jamaicans suffer at the hands of the cops.

"There will always be those instances where errors are made by any police service. Those we can tolerate, and constant training will help to reduce such instances. However, what should



Deputy Commissioner of Police Delworth Heath

never be tolerated ... is the flagrant breach of a person's right to liberty," declared Mukulu.

He told The Sunday Gleaner that the number of cases of wrongful arrest currently before his office for investigation is of tremendous concern.

According to Mukulu, the cost of these abuses is unbearable to the taxpayers, and worse, it appears the Police High Command is unwilling to sanction the cops involved.

"The costs to the State is unbearable, not only in times of a tight economic squeeze, but at any time, as these are resources that could be better spent on delivering better-quality public services to enhance the citizenship experience in our country."

"The solution, at this stage, we are suggesting, is to encourage senior officers to be more robust in the application of disciplinary sanctions, where there is clear evidence that there has been a breach by the relevant JCF (Jamaica Constabulary Force) member.

"practical course is to demote those who have violated human rights. This has the effect of hurting both pride and bank account," added Mukulu.

However, Deputy Commissioner of Police Delworth Heath, who is in charge of the Inspectorate Branch of the JCF, has dismissed the claim that the High Command takes no action against cops who have been found to breach the rights of Jamaicans.

"In the last two and a half years, the record will show the number of officers who have been dismissed or have had their enlistment shortened due to complaints against them," Heath said, as he argued that the High Command has been vigilant in addressing proven cases of police abuse.

"Once the court makes a ruling, the notes of evidence are reviewed and the relevant officers are either referred to internal disciplinary avenues such as the Orderly Room for minor offences or to the Court of Inquiry, where they could face a range of fines or could be ultimately dismissed," said Heath.



FILE
A group of young men detained in a makeshift detention centre in Spanish Town, St Catherine.

Cont'd - Sunday Gleaner, August 31, 2014

Gleaner Article: Ministry of Finance Denies Access to Information

Daraine Luton

The Gleaner THURSDAY, APRIL 17, 2014 • www.jamaica-gleaner.com • f gleanerjamaica • t jamaicagleaner • NEWS

TUNE IN: **106.5** **POWER**
Where all views can contend

5:00 a.m.: Independent Talk
9:00 a.m.: Real Business
10:00 a.m.: Justice
9:00 p.m.: Dear Pastor

Ministry of Finance denies access to study

Daraine Luton
Senior Staff Reporter

THE MINISTRY of Finance has refused to release a study which focused on the imposition of GCT on petroleum, saying the document was created "purely to provide information to the minister and by extension the Cabinet".

In the last fiscal policy paper tabled in Parliament last December, as well as in a supplementary memorandum of economic and financial policies presented to the International Monetary Fund (IMF), the Government said a study would have been conducted by March 2014, on the scope for imposing GCT on petroleum products. The documents said the conclusions of the study would guide possible implementation in financial year 2014-2015.

An Access to Information request for the study, entitled "note on fuel taxation in Jamaica and the potential impact of applying GCT on petroleum products", was denied under Section 19 of the Access to Information Act (ATI).

"It contains opinions, advice and recommendations prepared for the deliberations of the Cabinet which is still ongoing," the March 20 response to *The Gleaner's* request stated.

Section 19 of the Act states that an official document is exempt from disclosure if it contains information revealing Government's deliberation; or opinions, advice or recommendations prepared for; or is a record of consultations or deliberations arising in the course of proceedings of the Cabinet or of a committee.

EXEMPTED DOCUMENT

Notwithstanding the provision, the law says a public authority shall grant access to a document referred to as exempted document, if it is satisfied, having regard to all the circumstances, that the disclosure thereof would, on balance, be in the public interest.

Reverend Paul Gardner, chairman of the Jamaica Civil Society Coalition, yesterday said he saw no justifiable reason for the Government to be holding the document so close to its chest.

"If the Government commissions a study, which is at taxpayer's expense, I don't see why that study is not a public document," he said.

"I would believe that once you commission such a study, and it is completed, and you have used it, there is no reason you haven't made it public," Gardner said.

He has urged finance minister Dr Peter Phillips to table the document in the House of Representatives today when he opens the 2014-2015 Budget Debate.

Gleaner Article: Portia's Travels

THE SUNDAY GLEANER, FEBRUARY 16, 2014 | FEATURE

PORTIA'S TRAVELS

SIMPSON MILLER JOINS OTHER PMS IN SPENDING MILLIONS ON OVERSEAS TRIPS

CUBANA

25 trips.
18 countries,
2 years =
\$15.15m

LIVING LARGE?
\$21m in travel over four years

OTHER FREQUENT FLYERS

'Air Bruce' flies high

PM racks up almost \$13m first eight months in office

50% Lighter

VIEW?
SEE US WEAN FROM YOU

JULY 13, 2008

*Note: \$21.16 million represents the approximate cost of travel for the Prime Minister under Air Force rules.
** Total travel spending for Cabinet Ministers \$17,820 million
*** Not shown for cost of the office of the Prime Minister
**** Security travel costs to come

23rd Inter-Seasonal Meeting of the Caribbean Community (CARICOM), Antigua, Suriname, March 5-9, 2012: **J\$6,131.50**

8th Summit of the Americas, Cartagena de Indes, Colombia, April 14-15, 2012: **J\$6,170.70**

Meeting with ALCOA, a major investor in the St Barts and Alumina Sector, YME 100 Most notable Persons Award in New York and the 116th in Relays, Philadelphia, USA, April 23-29, 2012 **J\$2,162.00**

16th Summit, Rio de Janeiro, Brazil, June 24, 2012: **J\$4,788.30**

13rd Regular Meeting of the Conference of Heads of State/Government of the Caribbean Community (CICOM), St. Lucia, July 4-8, 2012: **J\$6,067.60**

Opening Ceremony for the 30th Olympic Summer Games, London, UK, July 24-28, 2012: **J\$5,179.00 (inclusive)**

America Independence Ball hosted by the Jamaica Independence Celebration Foundation, New York, USA, August 17-19, 2012: **J\$324,000.00**

Visit and Tobago's 50th Anniversary Independence Celebrations, Port of Spain, Trinidad, 50th Anniversary, New York, USA, September 23-26, 2012: **J\$182,000.25**

7th Session of the United Nations General Assembly, New York, USA, September 23-26, 2012: **J\$277.50**

Official Visit to Canada (Ottawa and Toronto), October 21-26, 2012: **J\$2,455,486.00**

Official funeral of former President Hugo Chavez, Caracas, Venezuela, March 6, 2013, SAME-DAY RETURN: **J\$239,503.30**

Reagrupation of President Nicholas Maduro, Caracas, Venezuela, April 9, 2013, SAME-DAY RETURN: **J\$10,000.00**

April 23-26, 2013, SAME-DAY RETURN, 5th visit of Heads of State and Government of the Organisation of Caribbean States (OCS), Port of Spain, TR: **J\$0.00**

Special Anniversary Summit – 50th Anniversary of Organization of African Unity/African Union, Addis Ababa, Ethiopia, May 26-28, 2013: **J\$93,092.42**

Historical Meeting with H.E. Xi Jinping, President of People's Republic of China, Port of Spain, Trinidad and Tobago, June 2, 2013, SAME-DAY RETURN: **J\$1,480,000.00**

16th 8th Summit of Heads of State and Government of PetroCaribe, Georgetown, Guyana, June 29, 2013, SAME-DAY RETURN: **J\$1,299,994.00**

17th 34th Regular Meeting of the Conference of Heads of Government of the Caribbean Community (CARICOM), Port of Spain, Trinidad and Tobago, July 2-7, 2013: **J\$1,000,000.00**

18th Official Visit to the People's Republic of China, China, August 17-27, 2013: **J\$7,281,113.10**

19th 68th Session of the United Nations General Assembly, New York, USA, 29-29, September 2013: **J\$1,004,004.75**

20th International Women's Forum World Leadership Conference, Vancouver, Canada, October 17-19, 2013: **J\$2,000,711.50**

21st CONCACAF Sport Summit, Cayman Islands, October 21-22, 2013: **J\$0.00**

22nd Working Visit to Japan, November 4-8, 2013: **J\$7,210,781.31**

23rd Annual European Development Days, European Union (EU) Global Forum for Women in Parliaments, Brussels, Belgium and 54th Board of Trustees Meeting, United Nations Institute for Training and Research (UNITAR), Geneva, Switzerland, 29-29 November 2013: **J\$3,776,917.30**

24th State Memorial Service for former President of South Africa Nelson Mandela, Johannesburg, South Africa, December 8-12, 2013:

25th 2nd Summit of the PetroCaribe, Caracas, Venezuela, December 17, 2013, SAME-DAY RETURN: **J\$0.00**

Public Education & Communication



LIST OF RESPONSIBLE OFFICERS IN MINISTRIES AND SOME AGENCIES

MINISTRY/AGENCY	PRINCIPAL OFFICER	RESPONSIBLE OFFICER
Office of the Prime Minister	Miss Onika Miller	Ms. [unclear]
	Ambassador Douglas	

SENSITISATION SESSION

AUGUST 29 / 30,



Western Regional
Health Authority

Handwritten initials





ATI
THE ACCESS TO INFORMATION ACT 2002

Participate

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Kingston 10, Jamaica West Indies
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ACCESS TO INFORMATION ACT 2002

The banner features a laptop, a globe, and a group of people. A small logo for the Access to Information Act is also present.



LEGAL AD

NOTICES

A bulletin board with several notices pinned to it. The board is divided into sections labeled 'LEGAL AD' and 'NOTICES'.

A man in a light blue shirt and grey trousers is talking to a woman in a black dress. They are standing near the information table.

A woman in a light-colored blazer is looking at a smartphone. She is standing behind the information table.

A woman in a white shirt and black pants is looking at the information table. She has a black bag slung over her shoulder.

A woman in a black dress is standing in the background, looking towards the information table.

A woman in a grey top and black pants is standing in the background, looking towards the information table.



- “Because liberty cannot flourish in the darkness, our rights and freedoms are protected by the daylight of public scrutiny as much as by the decisions of Parliament or independent judges”.

**Gordon Brown, former Prime Minister,
United Kingdom 25th October, 2007-
‘Speech on Liberty’ at Westminster
University.**

Right to Know! Power to Change!

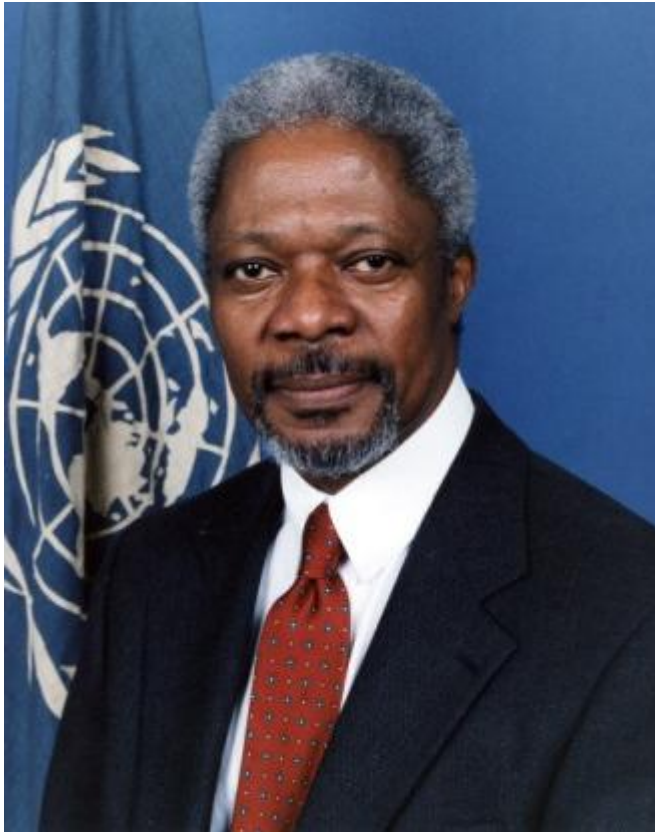
Before



After



“Knowledge is power.
Information is liberating.”



- Kofi Annan, Former
Secretary-General of
the United Nations

Access to Information Unit



Access to Information Unit Information and Telecommunications Division Office of the Prime Minister

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