

The access to Freedom of Information in the functioning of public and semi government institutions

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That there is no or very little access to freedom of information in the functioning of public and semi government institutions is literally stating the obvious.

Sri Lanka and her citizens have long been systematically gagged by hundreds of public servants or bureaucrats who simply do not appear to have any understanding of how important it is to freely discharge government information. That such access would give a Herculean boost to the country's economy is another aspect that has long escaped the notice of many a public servant and even government.

Lack of accountability has serious implications for the use of resources in ministries and departments. Without accountability, many important initiatives by the government will have little effect. That there is no constant public scrutiny of government information - thus providing an effective check and balance of governance is today Sri Lanka's greatest hindrance to good governance within a democratic framework.

Most government and semi government institutions in Sri Lanka seriously lack the ability to dispense information leave alone granting any special access. Either through ignorance, in some instances sheer arrogance, information from any of these institutions at the best of times has to be accessed via sources who literally function 'undercover.' In fact, both government and semi government institutions are rarely forthcoming with any information unless it is in their interest.

The citizens of this country have absolutely no access to information from government ministries or departments. A visit to any one of these institutions bears nightmare proportions for any single citizen seeking public information. Wrapped as they are in a web of deceit and inefficiency, most government servants have taken it upon themselves

to hide information believing in their little minds that they are actually doing the government or the state service a favour by withholding information.

The quid pro quo of this situation is that when they fall out of favour with the government of the day, these small-minded men and women then "leak" information to selected journalists, once more believing they are acting righteously or upholding the principle of protecting public interest.

During my constant battle to gather information for public consumption I consistently battle these human barriers, gnashing my teeth as I try valiantly to clarify and ascertain factual information gleaned from a "source" within a ministry, government or semi government institution. To get documentary evidence is another story altogether - one that includes secrecy and complete protection of the "source."

Many a time, a document thus accessed I have thought to be ludicrous and even funny in some instances as the level of secrecy involved was in no way necessary.

I have rarely had the pleasure of encountering a single public servant who understands the importance of disseminating information or that every citizen in this country has a right to access all government policy decisions, legislation and bills.

In fact in researching this paper I tried to access the Government of Sri Lanka's official website which stated it carried documentation of many of the Government's policy initiatives ... organizations, as well as access to and contact Information. It was not even possible to access the site as an error message kept coming up stating..... "the site was not found - make sure the address was correct."

Another advertised logo for "Sri Lanka - Parliament".. "Acts & Bills of Sri Lanka, Government Gazettes, Parliamentary ... The Library has access to INTERNET with an ... Contact Information: Send mail to gosl@presidentsl.org ...

www.priu.gov.lk/Parliament/Indexpa.html - also came up with the same error message.

This pathetic situation has led to the next step down in the ladder of social degradation as poor accountability has led to the build up of arrears. For instance cash-strapped departments continue to consume public utilities, including water, electricity and telecommunications, while refusing to pay for accumulated bills. This aspect needless to say, is only the tip of a humungous problem as far as corruption is concerned. The cancer grows as a lack of information in this department only serves to promulgate the two vices that strangle government - namely, bribery and corruption.

Without exaggeration I can say that I have been bombarded on many occasions by total strangers who beseech me to gather some bit of inconsequential (to me) information from a government or semi government institution as they have tried repeatedly and failed. Being a journalist they believe I have that much more access to these departments and can thus help. This is the disgraceful and shameful plight state departments have reduced this country's citizens to.

My access too is very limited.... And in more cases than one, I have used sheer will power and even resorted to an acid tongue to insist I be given the information I require. "Knowing" the minister concerned would doubtless help. An often resorted to practice within government and semi government institutions, which I personally detest, complying with. Nevertheless, I realize that this disgusting "procedure" is a common enough practice and freely abused by the ministers themselves.

Briefly, I would like to use as an example, US law by which access to information in government and semi government institutions is governed.

The First Amendment in the U.S. Constitution prohibits generally any government effort to limit freedom of expression and information. In addition to this constitutional principle of non-intervention, the 1976 Copyright Act, explicitly forbids copyrights for any government work.

As such, federal government is prevented from defending the economic and legal interests of a copyright holder. The result is that all government information is part of the public domain.

The US Freedom of Information Act, (FOIA) provides as a general principle that any person may request any document which the government has in its possession. Only a limited number of exceptions to this principle are allowed, in order to protect legitimate government and private interests.

The situation in Sri Lanka is of course of a very different kind. It is based on a different concept of access to and use of government information and it is characterized by important national differences. This is mainly due to different answers that are given to two, key questions; namely whether : 1) citizens enjoy a right of access to public information, and 2) can the government hold a copyright over information?

As to the first question, access to government information constitutes a human right, to be exercised at the lowest possible price.

With regard to the second question, within the Council of Europe early agreement existed on what should be meant by access to government information: "By a general right of access to public sector information we refer to a legislated legal principle that starts from the assumption that there is a basic right of access to any information held by public sector entities, that such a right needs not to be based on a specific legal or legitimate interest, that exemptions to such a right are only legitimate when there are overriding public or private interests to be protected, that such a right has to be effectively applied by administrations in particular with regard to the response time to such requests and the costs involved for such a request, and that, finally the refusal of access can be challenged in court."

Although a consensus may exist about the general principle, the implementation of its practice is not free of problems. Thus, within Europe different national rules exist, and

there has been a major discussion about a general principle of access to documents from EU institutions.

Acceptance of such a principle has been the subject of dispute for several years, and only in May 2001 a regulation which provided general access to documents from the European Parliament, Council and Commission was agreed upon.

The Charter of Fundamental Rights of the EU also recognizes the right of any citizen, natural or legal person residing or having its registered office in a Member State to have right of access to European Parliament, Council and Commission documents.

I wish to reiterate in the strongest possible terms that I firmly believe every citizen in Sri Lanka has the undeniable right to have access to information from any government institution. That this right is denied constantly and abused by almost all government and semi government institutions in this country is an issue for public debate and even legal redress.

Having said that, it is pertinent to point out that journalists today, more than ever have the power to swing public opinion and are cast in the role of messengers. The increasing dilemma for reporters appears to be how to ethically balance government information. On the one hand reporting today has never been so technically sophisticated and more easily dispensed. On the other, we face the dilemma of dispensing that information without layering it under propaganda, vested interests, self-censorship or even fear.

In the rare instances of being granted or gaining access to information within government, reporters are sometimes faced with the question of drawing the line between being a professional and a human being. It is on these occasions that such information is sometimes 'layered' and not completely transparent.

The flip side of this coin or against this backdrop of course would be the exploitation of government information. Notwithstanding a general consensus on access, the same cannot be said as to the commercial use or exploitation of government information.

One reason is due to differences that exist concerning copyright for government benefit. Intellectual property protection is as central to commercialization as public access law. If a public entity can hold a copyright in public information, it has the legal means to exclude the private sector or to establish and maintain exclusive arrangements with preferred private sector providers.

In most countries copyright protection for governments is allowed, but only under specific circumstances and if explicitly stated by law. In some countries, due to the level of copyright protection, possibilities for commercialization remain rather limited. The legal framework in other countries, on the contrary, enhances possibilities for commercial exploitation.

Such a division implies that, in those countries which have both access to public sector information laws and laws concerning the dissemination of public sector information (including commercial dissemination), both are regarded as conceptually different activities. The former constituting a human right, to be exercised at the lowest possible price and the latter constituting an activity based mainly on the principles of competition and intellectual property right law reflected in the price of such dissemination.

Thus, access to and the commercial exploitation of public sector information is approached from different legal points of view. Access is perceived as being part of the public sphere of democratic control and transparency, and as such, dealing with the vertical relation between government and citizen. However, the use of public sector information touches, upon the private trade law aspects between economic actors, and their relation is perceived to be of a more horizontal kind.

The European Commission is convinced that an economic necessity exists for regulating commercialization of government information, and therefore bases itself on the situation in the U.S. Although commercial exploitation of public sector information owns an important economic potential, the European market remains characterized by legislative vagueness and lack of consistency. Since this results in uncertainty about the conditions according to which such information may be used, undertakings may refrain from intra-community trade in public sector information.

Perusing the Internet I found that in the United States, the domestic federal information policy is based on the premise that government information is a valuable national resource, and that the economic benefits to society are maximized when government information is available in a timely and equitable manner to all.

So, generally, in the US there appears to be no restriction on the commercial use of government information, since this is inherent in the right of access to information.

In 1996 the Electronic Freedom of Information Act was adopted, which consisted mainly of an amendment to the FOIA, which guaranteed the right of access to government information in the light of technological evolution, by stipulating, for example, that governmental documents in the future had to be made available in electronic format.

Conclusion

One might conclude that in the US, at least at the federal level, a broad right of access to government information exists, copyright protection for governments being prohibited, where charges principally have to be limited to costs made for dissemination, and no limitation on re-use is allowed. The use of government information within Europe, including the institutions of the EU, is traditionally a controversial matter. The main reason for the difference is that both continents have fundamentally distinct viewpoints about access to and use of government information. While for one there is no distinction between them, the other conceives them as conceptually different activities.

It can only bode well for the Sri Lankan government if it were first deal with the above mentioned issues, including a guarantee for an effective basic right of access to government information for all citizens.

This will include the problematic question of whether governments may benefit from copyright protection. Only when a fundamental right of access to government information has effectively been provided, might one consider the right of commercialization. When arguing the latter, one should also determine what the appropriate role for governments or public agencies is.

Unfortunately to this day, the panacea of all ills as far the citizens of Sri Lanka are concerned, are state run institutions. Shamefully, for government, the people of this country rarely matter. In fact they are the most easily dispensable commodity - thrust asunder by the state and its institutions who care nought for the fundamental rights and independence of a democracy as they remain bogged in a state of bureaucratic bungling that is yet to see the light at the end of the tunnel.