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# Good Governance and Bermuda's Public Access to Information Act

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**ABSTRACT** *This paper examines the context surrounding, and debates concerning, freedom of information-type legislation in the British Overseas Territory of Bermuda. It situates the law within a wider push by the British Government for good governance in the British Overseas Territories. It explores the expectation for more 'open and transparent' government held by international government organisations, the British Government, and the Bermudian electorate. It analyses the resultant political debates, which are framed by traditions of governance that encouraged secrecy and legacies of distrust between political parties formed soon after universal suffrage was introduced in the 1960s. It investigates the implementation of the Act in response to global, metropolitan and local pressures.*

**KEY WORDS:** freedom of information, Public Access to Information Act, British Overseas Territories, Bermuda, good governance, Progressive Labour Party, United Bermuda Party, One Bermuda Alliance, transparency

## Introduction

The legislative chamber of Bermuda's parliament unanimously enacted the island's version of the Freedom of Information (FOI) Act, entitled the Public Access to Information Act (PATI), in 2010. Discussion concerning the need for such an Act had begun in late 2003, with allusions towards openness and transparency even earlier—during the 1998 election. Yet the 2010 Act remained dormant until 2014 when it was finally brought into force and full implementation was set for 1 April 2015. Thus, for over a decade, Bermudian politicians periodically debated how best to implement PATI. Should it be a gradual process ensuring that all necessary policies and resources were in place before bringing the Act into force? Or should the emphasis be on getting the Act in place and working out the kinks as they arose? Did the gradual approach show a lack of political will, or was caution warranted?

Analysing the debates surrounding the implementation of PATI in Bermuda will shed light on how values concerning 'modern democracy', 'transparency' and governmental openness are being addressed in a particular geographic location. Located in the mid-Atlantic, Bermuda is a small jurisdiction of just over 60,000 people and is one of a handful of remaining British Overseas Territories (BOTs). With no natural resources it

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depends on international business and tourism for its survival. It lives with legacies of a history steeped in slavery, colonialism, ‘racial’ segregation and second-class citizenship which survived into the mid-20th century thanks to the maintenance of an oligarchy formed of a landed minority who were, in the main, descendants of English settlers—the first of whom arrived in the early 17th century.

### **The UK and the BOTs: ‘Transparency and Accountability’**

Since the mid-1980s a number of reviews of the relationship between the United Kingdom and the BOTs have been carried out. They resulted from a UK realisation of the changing nature of its relationship with the remaining Dependent Territories, which arose out of expectations in the territories, in the UK and internationally with regards to good governance. The first review was initiated in the wake of the arrest in Miami of key Turks and Caicos government officials on narcotics charges in 1985 and 1986. One of its key features was a cost–benefit analysis of UK policy towards the Dependent Territories. It was concluded that the policy was fine but that improvements needed to be made in the ‘quality of local administrative personnel’ (Clegg and Killingray, 2012, p. 12). A reassessment in 1991/92 found that good governance was under threat. One outcome was an increase in the powers of governors (Clegg and Killingray, 2012, p. 12), but good governance remained an issue. During the 1990s only Bermuda and the Cayman Islands were considered to have healthy enough levels of economic growth and good governance (Clegg and Killingray, 2012, p. 13).

This emphasis on good governance was not only outward looking, but also reflected changes being made within UK governance. The Labour Party had promised in every manifesto since 1974 that, if elected, it would introduce a FOI Act. In 1997, after 18 years, it became the UK Government, and the Queen’s Speech that May promised an FOI White Paper by July, and a bill by early 1998 (Hansard, 1997, column 6). The importance of FOI to good governance was described in the White Paper:

Unnecessary secrecy in government leads to arrogance in governance and defective decision-making. The perception of excessive secrecy has become a corrosive influence in the decline of public confidence in government moreover the climate of public opinion has changed. People expect greater openness and accountability from government than they used to. (United Kingdom Government, 1997, p. 1)

Thus, as part of sweeping Labour reforms, the Foreign Secretary, Robin Cook, initiated a ‘full review of Britain’s relationship with the dependent territories’ (Clegg and Killingray, 2012, p. 13). The resulting White Paper, *Partnership for Progress and Prosperity*, was published in March 1999. It emerged out of a particular political moment which, in addition to being shaped by Labour’s aim to bring about ‘modernisation and reform’, was affected by: the fallout from the 1995 eruption of the Soufrière Hills volcano in Montserrat and the UK Government’s response to it; the ‘examination of Britain’s contingent liabilities to the territories’; the transfer of Hong Kong to China in 1997; and ‘the growing significance of offshore financial centres’ (Clegg, 2009, p. 9; Clegg and Killingray, 2012, p. 13). This moment saw ‘a wide-ranging debate about

good governance and the political, constitutional and economic futures' of the BOTs (Clegg, 2009, p. 9).<sup>1</sup>

The White Paper made recommendations intended to bring the BOTs into line with 'the standards of the UK Government and international community' (Clegg and Gold, 2011, pp. 117–118). One key component for good governance was for BOT governments to become 'more open, transparent and accountable' (Foreign and Commonwealth Office (FCO), 1999, p. 13; Clegg and Killingray, 2012, p. 22). The White Paper thus outlined a way for the UK and the BOTs to relate to each other in a world where a certain standard of governance was demanded (Clegg, 2009, p. 12). There was a need to comply with demands of the UK and global communities, but demands also came from within Bermuda. Requests for increased governmental transparency challenged the way in which government business had been conducted for centuries.

The Labour Government continued to show their commitment to good governance and security in the Overseas Territories by declaring them to be a 'strategic international priority' in December 2003 (Clegg and Killingray, 2012, p. 13). Additionally, a 2007–8 report included a direct reference to FOI legislation:

We recommend that the FCO should strongly encourage all Overseas Territories which have not yet done so to introduce freedom of information legislation. We also recommend that the FCO should review with Overseas Territories what steps they might take to improve their public accounting and auditing capability. (House of Commons Foreign Affairs Committee, 2008, p. 8)

The most recent White Paper concerning the BOTs was released in 2012. Entitled *The Overseas Territories: Security, Success and Sustainability*, it does not address FOI directly. However, questions of good governance and transparency are dealt with. It states that the UK Government is responsible for ensuring good governance in the Overseas Territories. The focus on finance reflected changes which had occurred since the financial crisis of 2008. Referring to the 'global economic climate', it was noted that the government was 'working closely with Territories to provide technical assistance on the sustainability and good governance of public finances, as well as wider economic policy where requested' (FCO, 2012, p. 59). Shifting focus from UK Government responsibilities to those of territorial governments, the paper acknowledged work being done to show that 'public resources [were] being used effectively and efficiently', but added that public consultations had revealed concerns regarding transparency (FCO, 2012, p. 60). The paper then highlights the 'common interests' of both the UK and territory governments to comply 'with international standards of tax co-operation'. This is a particularly important element of why good governance in the Territories is so vital; 'their international reputation rests considerably on their compliance with such standards' (FCO, 2012, p. 60).

### **The Sunshine of Public Scrutiny**

Metropolitan discussions concerning good governance were reflected in Bermudian political debates. These were not only influenced by external demands, but also affected

by the island's own political and social realities. The very form of a small island society such as Bermuda, which has been shaped by colonialism, slavery and racial segregation, remains salient to present political debates—for those who feel that this past remains relevant, those who believe it is important but wish to put it behind them, and those who dismiss it outright as being irrelevant to the present. Also of importance in an island without natural resources is the need to remain attractive to international businesses and tourists. Thus, both external and internal pressures were demanding that the way in which government was conducted change drastically.

In such a context, the relevance of the Progressive Labour Party (PLP) being elected to government cannot be underestimated. After 30 years of being portrayed as incapable of ruling, they achieved government in 1998. They promised widespread governmental reform. However, their coming to power cannot be overestimated either as it did not revolutionise the way politics was conducted. Although important constitutional changes were made, the PLP could not escape the fact that they operated within a system shaped by a past of colonial domination and a present of metropolitan and international monitoring. They also had to face the demands of governing for all rather than primarily defending the interests of their supporters. Furthermore, their own party platforms expressed a desire for progress within the existing system, for reform rather than revolution, for structural adjustments rather than a wholesale rebuild.

The ways in which external and internal pressures influenced debates could be seen in the lead-up to the 1998 election. Both the PLP and the existing United Bermuda Party (UBP) government stressed the need for well-managed government, but with different emphases reflecting their historical roles. As the government for more than 30 years, the UBP emphasised the party's experience and leadership skills to show that they were best placed to take the country forward in a time of global economic uncertainty. Thus, when speaking of governance, they focused on their ability to manage, promising 'a well-managed government that provides services efficiently and effectively' (UBP, 1998, p. 34). The need for good planning and leadership was essential in ensuring that 'Bermudians have a voice—and a choice—about their future' (UBP, 1998, p. 7). Anticipating the forthcoming UK White Paper on BOTs, the platform: reflected on the pressure being placed on Bermuda from the Organisation for Economic Co-operation and Development, European Union and British Government concerning how it conducted business; specific reference was made to keeping the Bermudian people informed; and a commitment to 'conducting a referendum' if necessary was stated (UBP, 1998, p. 12). The agency of Bermudian constituents in this scenario is focused on their ability to vote in the general election and referendums. No mention is made of ongoing governmental accountability to the voter, nor is transparency addressed.

Conversely, as the opposition for over 30 years, the PLP emphasised the need for change. Despite the fact that Bermuda was thought by external observers to have sufficient levels of good governance, the PLP felt that much more needed to be done. In their 1998 manifesto, 'A New Bermuda', the PLP included a 'set of policies, objectives and ideals' aimed at leading to 'accountability and transparency in all areas of Governance' (PLP, 1998, p. 1). Party leader Jennifer Smith promised that under a PLP government Bermuda would be a place 'where government operates in the sunshine of public scrutiny' (PLP, 1998, p. 5). Yet, in a section entitled 'The Millennium Platform,

some highlights', no mention is made of how this would be achieved. Rather, the focus was on amending the Parliamentary Election Act, and on three of the seven reforms that had been called for in the 1993 manifesto 'A Plan for the 90s'.<sup>2</sup>

On achieving government, the PLP reiterated pre-election promises in their first Throne Speech, promising to involve the Bermudian people in decision-making. Openness in government was thus linked with creating a more democratic process in which Bermudians would be consulted throughout the governance process. The government stated that 'an inclusive framework' would be created which would in turn bring about 'the New Bermuda' (Throne Speech, 1998, p. 1). This process would produce 'justice and equity, transparency and accountability, in the conduct of public business and private transactions' (Throne Speech, 1998, p. 13). The promises are intertwined as the PLP wanted to emphasise that their government was inclusive of all Bermudians and that all should be able to hold government accountable.

In the 2003 party platform, Premier Jennifer Smith announced that with the election of the PLP, 'Bermuda had at last graduated to government of the people, by the people, and for the people' (PLP, 2003, p. 4). This suggested that the party had fulfilled its promise to create a government inclusive of all Bermudians. Smith reiterated her promise that PLP would 'continue to build a country ... where government continues to operate in the sunshine of public scrutiny' (PLP, 2003, pp. 5–6). The party would 'continue to rely on our heart-to-heart communication with the Bermudian electorate' (PLP, 2003, p. 6).

To show what government was doing to achieve these aims, Smith pointed to the Central Policy Unit, created in 1999 to foster communication between ministries. She outlined further changes in a section concerning good governance, and promised the appointment of an ombudsman to act as 'the public's advocate' in relation to interactions with government. Also promised was a reduction in the size of Cabinet and the creation of full-time posts for Cabinet members (PLP, 2003, p. 36). These commitments reflected and expanded upon promises made in the previous election, but did not include FOI legislation.

The UBP's platform reflected the party's role as opposition, outlining the need for 'a fresh start' and echoing the call for change previously made by the PLP. The UBP suggested that election of the PLP had not led to the changes Bermudians desired but had been followed by 'five years of broken promises [and] unprecedented scandals' (UBP, 2003, p. 2). They promised to 'restore people's faith in the ability of government to operate with integrity, fairness and openness in the interests of all Bermudians' (UBP, 2003, p. 2). They promised to 'guarantee ... that people can freely access public information, that public servants can speak out without fear of reprisal and that a fair system of open tendering is required in all government departments' (UBP, 2003, p. 4).

Accusations of empty promises were echoed by the press. In response to the 2003 Throne Speech the Editor of the local daily, *The Royal Gazette*, alleged that the PLP's 1998 commitment to operate in the 'sunshine of public scrutiny' had become a classic example of 'Orwell's "newspeak" when public statements are actually the opposite of what they seem to mean' (Zuill, 2003). These criticisms came before the official announcement of PATI legislation and, as will be seen, would continue over the next decade.

### Transparency as a Cornerstone of Modern Democracy

This is the context within which the introduction of FOI legislation in Bermuda sits. A demand for greater transparency and accountability of government, reflecting such demands in the United Kingdom and international bodies such as the United Nations, was based on a belief that this was the way in which modern democracies functioned. Being viewed as a modern democracy was necessary for being considered a trusted member of the international community, and also meant being trusted by the business partners on whom a large percentage of the island's economy depended.

In a statement released in May 2004, Premier Alex Scott reiterated his commitment to FOI. He placed the island's need for such law within a wider global context, quoting former Justice of the Supreme Court of Canada Gerald La Forest, who connected the implementation of access to information legislation with the facilitation of democracy. La Forest suggested the relationship was twofold, with access to information providing the public with enough knowledge to make informed decisions and making politicians and civil servants accountable to the people they served. The framing of FOI legislation with wider aims of good governance also echoed language used by the British Labour Government in their 1999 White Paper *Partnership for Progress and Prosperity*.

In a 2005 Green Paper concerning FOI, connections were also made between the need to institute local PATI legislation and existing global standards for FOI set by the United Nations, the European Union, and the Caribbean Community (CARICOM). The need to remain current was seen in a reference made to both the number of countries where FOI existed ('over 50') and also the quality—that FOI was 'a regular feature of democratic governments' (Bermuda Government, 2005, p. 2.). It was noted that such legislation brought the island 'in line with best practice around the world', with laws which were 'based on international standards' (Bermuda Government, 2005, p. 5).

Premier Alex Scott explained, during a debate on the Good Governance Bill on 22 July 2011, that his call for PATI legislation was part of a wider remit of legislation and policy aimed at improving governance that he wished to institute:

When we engaged in the Public Access to Information, when we engaged in sustainable development and when we, as Premier, introduced the notion of an Ombudsman, and yes, though events overtook us, even the setting up of the Commission for Independence—there was a common thread running through all of that. It was an attempt at institutionalising change, providing a legislative foundation and point of reference that—if we did it right—others could follow on and build good governance for these Islands that I hold extremely, extremely dear. (Bermuda House of Assembly, 2011, p. 2,470)

The ways in which these aims intertwined can be seen in the implementation of the island's sustainable development policy. The resulting report, 'charting our own course', was completed in part as a response to a UN call for such a plan to be in place by 2005 (Sustainable Development Department, n.d.). This plan had five 'themes', last of which was 'Transforming Governance and the Public Sector'. This included the need to 'enact Public Access to Information' (Sustainable Development Unit, 2008, p. 141). The need for PATI was thus embedded in a need to bring change to governance and, more broadly, the way in which Bermuda would sustain itself going forward.

Alex Scott was ousted the next year and replaced by Ewart Brown. The new premier's first Throne Speech focused on social policies for extending prosperity to more Bermudians, but said nothing about PATI. This indicated a change in emphasis, but is not to say that the issue of PATI was not raised during his premiership. In fact, as will be seen, the question of government transparency would become highlighted.

Premier Cox, who followed Ewart Brown, promised to provide government transparency by introducing 'new protections for whistle-blowers in the public and private sector; public Government ICT contracts online; and improv[ing] our training, AML (Anti-Money Laundering) procedures and international best practice systems and controls' (Cox, *n.d.*, p. 2). Like Scott, she placed PATI within a wider remit: part of a plan to increase accountability that included public meetings on the budget, good governance, public treasury legislation, and proposals put forward in the Mincy report concerning 'young black males' (Strangeways, 2011).

### Political Debates Concerning PATI

The PATI was debated by the House of Assembly in 2005, 2006, 2010 and 2014. There was no disagreement over whether or not FOI was needed. Rather, a number of issues were discussed concerning the execution of the Act. A main concern expressed by the opposition was the length of time it would take for the Act to come into force. Connected to this were questions of resources, methods and economy. Who would drive it? What would it cost, both financially and in terms of official time?

One of the most contentious issues was the timescale. In July 2004 Alex Scott suggested that a bill might be tabled during the next session. This did not occur. Rather, a discussion paper was made available to the public in the summer of 2005. A timeline for implementation, with reasons, was outlined in the paper:

The Government hopes that PATI legislation can be introduced in the House of Assembly within the next 12 to 18 months, but once the legislation is passed, time will be required to implement an effective public access to information regime. After the Government has formalised its proposals in a bill, it will be better equipped to calculate when it can provide public access to information legislation to the public. Ultimately, the Government hopes to achieve implementation within 3 to 5 years of the PATI legislation being passed. (Bermuda Government, 2005, p. 36)

This would place the introduction of the legislation between mid-2006 and early 2007, with implementation following in 2009 at the earliest and 2011 at the latest. The opposition claimed that the long timeframes and delays showed a lack of political will (Walters, 2005), and suggested that other laws, specifically one to protect civil servant whistle-blowers, were needed to truly guarantee a transparent government.

A comparison was made with the speed with which the Cayman Islands had instituted FOI-type legislation. The Freedom of Information Unit in the Caymans was opened in September 2007, during the first 'Sunshine Week' held there, which included observance of the International Right to Know Day. The following month the Caymanian Government published, for public comment, an FOI implementation plan aiming

to have the law in place by July 2009. The Caymanian Government kept to their schedule, with legislation coming into effect in September 2009 (FOI Unit, 2009). Caymanian efficiency stands in contrast to the protracted process occurring in Bermuda. Member of Parliament John Barritt noted that the Caymans were Bermuda's 'competition out there in the real world' as those in the business sector were concerned about 'governmental infrastructure, how modern and progressive you are' (Bermuda House of Assembly, 2010, p. 1,013).

Discussions about slow progress were not confined to Parliament. A month after the December 2007 general election, won by the PLP, *The Royal Gazette* launched a campaign entitled 'A Right To Know: Giving People Power'. The campaign sought: to pressure the government to commit to PATI legislation in the upcoming Throne Speech; to 'agree to open up to the public all quangos, boards and other publicly-funded bodies'; and to persuade them that the only exception to providing information to taxpayers about government business was that of national security. The head of the PATI team, Kimberley McKeown, informed the newspaper that the delay was due not to a lack of political will, but rather to bureaucracy and thoroughness. She noted:

This is a civil service issue in terms of finding the resources. It's a bureaucracy and things take time. One thing that we were cognisant of from the very beginning was trying to do something well and do something right so that it would work and work well. There was a decision to try to be as thorough as possible. I know jurisdictions that have basically copied other legislation. We didn't do that at all. (Strangeways, 2008a)

Then, in March 2008, the newspaper launched Bermuda's first observance of Sunshine Week, building on a United States initiative, started in 2002, to educate the public about the importance of open government (Sunshine Week, n.d.). The influence of the US initiative was also seen in the newspaper's decision to interview the US Consul General about the US FOI Act, which had been instituted over 40 years earlier (Smith, 2008b).

The decision of the PLP, under Brown's leadership, to end its advertising contract with *The Royal Gazette* came during the same month as Sunshine Week. The decision was read by the newspaper, and international freedom of the press observers, as an attack on its 'Right to Know' campaign (Inter American Press Association, 2008; World Association of Newspapers and World Editors' Forum (WAN and WEF), 2008). The government dismissed such allegations, stating that the decision was made for financial reasons. Furthermore, the premier suggested that to 'punish' the paper for the campaign did not make sense as they both wanted the same thing—greater openness and transparency in government. Yet at the same time Minister of Home Affairs David Burch accused the paper of printing 'fiction' (WAN and WEF, 2008; Strangeways, 2008b). This reflected an extended antagonism between the PLP and the newspaper linked to the opinion of many PLP members and supporters that the paper was 'the UBP's long-standing Establishment backbone' and held the PLP in 'contempt' (Philip, 2000).

Criticism of the delay in drafting legislation continued from the opposition, the media and bloggers. Additionally, the government began to set and miss deadlines. A specific date of June or July 2008 (different online versions give different dates) was proposed in the Sustainable Development Policy. Finally, the bill was released in 2009 and the

Act passed in 2010. This was five years after Scott's initial discussion paper stating that the bill would be read within 12–18 months.

Premier Brown promised that 'the public will be able to exercise their statutory right to access information within the next two to three years' (Bermuda House of Assembly, 2010, p. 1,012). During the second reading of the bill, John Barritt suggested that this was too vague. Yet this time span was in line with what former Premier Scott had suggested was needed to ensure that government would be prepared to facilitate PATI requests.

The preparedness of various government departments was again mentioned. One department highlighted was that of the Archives. Member of Parliament Shawn Crockwell suggested that one of the issues with pinning down a definitive date for bringing the law into effect might be 'the readiness of the Archive' (Bermuda House of Assembly, 2010, p. 1,016). He explained that during the consultation, the Ombudsman had expressed concerns that the Archives was not equipped to deal with requests (Bermuda House of Assembly, 2010, p. 1,016). Doctor Brown confirmed that there were 'issues and challenges' with the Archives which the government was 'working to straighten ... before we can commit' (Bermuda House of Assembly, 2010, pp. 1,016–1,017).

The Ombudsman, Arlene Brock, outlined some of these issues in her Fourth Annual Report published in January 2010. She recommended that the Archives Advisory Committee 'should review, consult with the Archives and advise the Minister on appropriate preparation for PATI' (Brock, 2009, p. 24). She noted that 'general policies and procedures of the Records Centre [were] likely to require some adjustments to respond to the introduction of PATI ...' (Brock, 2009, p. 25). Additionally, she suggested that a trained archivist from abroad, with expertise in FOI, should be hired temporarily to 'supervise the strategy to prepare for PATI legislation' (Brock, 2009, p. 25). The Ombudsman thus highlighted both policy and employee changes needed for the Archives to become PATI-ready. That autumn, the Archives Director, Karla Hayward, was seconded to the PATI team. Brock noted that this took 'good advantage of her knowledge of records management and archival science'. She further commented on the role of Archives in the wider implementation of PATI, noting that 'proper records management will be at the very core of PATI's success and archival input is key to ensuring that this is done correctly' (Brock, 2009, p. 22).

With reference to the concern that some governmental departments were ill-prepared to deal with the requests the law would engender, MP Walter Roban noted that it would take both time and money to get 'some of the infrastructure in place' (Bermuda House of Assembly, 2010, p. 1,016). Thus, linked to the question of timescale is that of delivery. What needs to be in place for the Act to come about? Who will drive it? What will it cost financially and in official time?

After PATI was approved, an implementation taskforce was created led by Permanent Secretary Wayne Carey, who visited the Cayman Islands to learn from their experience of implementation. However, Premier Cox noted that 'One of the lessons learned from their experiences highlighted for us early on that this would be a lengthy implementation process' (Strangeways, 2011). She did not expand upon this point, but it suggests that the Caymans had a more advanced records management system in place, especially as she noted: 'the taskforce also undertook a comprehensive review of the record management systems already in place in Government to determine what was required to be in place before the enactment date' (Strangeways, 2011).

During the summer of 2011, Cox promised that PATI would be operational by the end of 2012. She reiterated points expressed by Brown when she said that ‘the timing, as stated in the debate in the House at that time, was to allow for the necessary preparation and a proper rollout’ (Strangeways, 2011). She further stated that:

This Act represents a seismic shift in the way that public authorities disseminate information. In order for this legislation to achieve its goal, much preparation is required to ensure that public authorities meet the requirements and stringent deadlines set out in this Act. (Strangeways, 2011)

Thus, once again the burden of preparation was the explanation given for delay.

The PLP lost the 2012 election and the onus fell on the new One Bermuda Alliance (OBA) government to enact the law.<sup>3</sup> The first Throne Speech under the new government was given in February 2013. Unsurprisingly, some of the main issues the party promised to address were the reduction of crime and the public debt, and ‘getting the island back to work’. The importance of good governance was also addressed, with the Governor stating that laws and policies mentioned would be underpinned by ‘adherence to the principles of good governance, transparency, accountability, fairness and justice for all’ (Bermuda Government, 2013).

The issue of PATI was raised a few weeks later in the House of Assembly. Premier Craig Cannonier outlined progress, noting that ‘PATI regulations [were] in the process of being drafted and there are a few amendments required to existing provisions in order to provide protection against liability for statutory boards. Recruitment of PATI staff will commence in the new fiscal year’ (Bermuda House of Assembly, 2013, p. 428). No date for the implementation of the Act was given; the premier stated this would happen ‘after the amendments and regulations have been approved by the Legislature’ (Bermuda House of Assembly, 2013, p. 428).

In March 2013 the OBA set up the Spending and Government Efficiency (SAGE) Commission to review governmental organisation and processes. It was tasked with ‘evaluat[ing] and analys[ing] [the] operations of Government in line with international best practice to determine the best means of structuring Government, streamlining Government processes, improving delivery of services, and introducing cost saving measures and greater transparency’ (Sage Commission Act, 2013). The commission’s final report was ready by that autumn. Among recommendations for the creation of greater governmental efficiency was the proposal to ‘reinstate a fully functioning Central Policy Unit (CPU)’ to provide oversight and management throughout government (Sage Commission, 2013, p. 66). The PATI was mentioned, but only to note that responsibility for the legislation should be transferred to the Ministry of Justice.

How these two things were related was made clearer in March 2014 when Cannonier noted that the CPU was working on the next steps for implementing PATI; he promised that the Act would become operational by the end of the year (Bermuda House of Assembly, 3 March 2014 p. 876). The opposition PLP questioned the OBA’s commitment to implementing the law. Senator Diallo Rabain suggested that the Act had taken a back seat not only within the OBA, which he said had reduced the number of staff dedicated to PATI implementation, but also with those within the media who had

instigated the ‘Right to Know’ campaign (Rabain, 2014). Now it was the PLP saying that the government’s talk about PATI was empty.

Within two months, Cannonier had resigned from office following allegations of a breach of the code of conduct governing ministers (*Bermuda Sun*, 2014; Johnson, 2014; Bernews, 2014).

Soon after taking over as premier, Michael Dunkley informed the Bermudian people that PATI regulations would be tabled during the present session of the House of Assembly. He went further, giving dates for the appointment of a commissioner, ‘the fall’, and for full implementation of the Act: April 2015. In the wake of scandal within his own party he promised that the Act would ‘enabl[e] people, finally, to shine new light on the work of government—asking questions, getting answers, bringing new levels of transparency and accountability to the public sector’ (Bermuda House of Assembly, 4 July 2014, p. 2,578).

The Public Access to Information Amendment Bill was tabled on 4 July 2014 and read a second time and committed on 18 July—a year and a half after the OBA had been elected to government. However, the appointment of the information commissioner took longer than promised. It was not until the end of February 2015 that Gitanjali Gutiérrez was appointed as the first information commissioner—just over a month before the Act became fully operational.

## Conclusion

When they achieved government, the PLP implemented many of the reforms to governance that had been promised, focusing on the constitutional reforms that had long been on their platform. However, there was no direct focus on FOI legislation at that point. Yet Ewart Brown would later state that it was through the work of Jennifer Smith during her premiership that ‘Bermuda’s modern Constitution was brought to life’ and that it was because of this work that PATI was possible, calling PATI ‘the daughter of Bermuda’s constitutional reform’ (Bermuda House of Assembly, 2010, p. 1,011). Conversely, the UBP and later the OBA would suggest that the PLP’s call for a more open and transparent government was all talk and no action, noting the length of time it took them to get the law in place and the fact that it remained dormant throughout the remainder of their government. The PLP would also accuse the OBA of lacking political will.

In comparison to the speed with which the Caymans was able to bring its legislation about, it would appear that a question of political will may have been at play. However, it is also possible that Bermuda’s lack of preparedness for the Act played a role, along with differing ideas of how to deal with such legislation. In her eighth annual report, released in June 2013, Ombudsman Arlene Brock referred to the different ways in which people approached the delay in the introduction of PATI; she noted that some felt the process was taking too long while others were worried that governmental records management was still inadequate and that as a result requests would not be met promptly. She suggested that ‘perhaps a phased approach—of course not as long as in the UK—would be a way to move things forward’ (Brock, 2013, p. 33). Beyond this are wider considerations concerning the way that the Bermuda Government functions. As John Barritt aptly noted:

We know our system of governance could use an overhaul. We are not alone. Only recently the Speaker of Parliament in Barbados marked their 375th anniversary by declaring that it was time for change. He expressed his reservations about a system which ‘appeared to pit Government and Opposition inexorably against each other in aggressive, contentious and oft times seemingly unnecessary confrontation’. Sounds familiar does it not? (Barritt, 2014)

It remains to be seen how resilient such legislation will be in the face of ingrained traditions and legacies of secrecy which are not only reinforced by past practice, but also respond to the demands of modern business and the ingrained antagonisms of party politics.

## Notes

1. Clegg does not include Bermuda in his analysis but his comments on the Caribbean Overseas Territories of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands are in large part applicable to Bermuda.
2. Establishing single-seat electoral constituencies of equal eligible voter populations; reducing the number of seats in the house of assembly; and democratising the municipalities through the introduction of universal adult suffrage in Corporation elections.
3. The OBA was formed in 2011 when most of the remaining members of the UBP joined with the Bermuda Democratic Alliance (BDA) [a party which was formed in 2009 primarily by ‘break away UBP members’].

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