SENATE

Friday, August 27, 1999

The Senate met at 10.30 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence has been granted to the following Senators: Sen. Brig. The Hon. J. Theodore from August 26 to August 30, 1999; Sen. S. John from August 23 to August 30, 1999; Sen. Rev. B. Gray-Burke from August 26 to September 05, 1999; also Sen. N. Mohammed, Sen. M. Jagmohan and Sen. Dr. E. Mc Kenzie from today's sitting.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators**,** I have received the following communications from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson

President.

TO: MR. DAVE COWIE

WHEREAS Senator Joseph Theodore is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DAVE COWIE, to be temporarily a member of the Senate, with effect from 27th August, 1999 and continuing during the absence from Trinidad and Tobago of the said Senator Joseph Theodore.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 24th day of August, 1999."

[MR. PRESIDENT]

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Selwyn John is incapable of performing his functions as a Senator by reason of illness:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 27th August, 1999 and continuing during the period of illness of the said Senator Selwyn John.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 24th day of August, 1999."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson

President.

TO: MRS. ELAINE TEEMUL

WHEREAS Senator Barbara Burke is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ELAINE TEEMUL, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Barbara Burke.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 26th day of August, 1999."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Dave Cowie, Vincent Cabrera and Elaine Teemul.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Nariva/Mayaro County Council for the period October 01, 1991 to December 31, 1991. *[The Minister of Public Administration (Sen. The Hon. Wade Mark)]*
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the San Juan/Laventille Regional Corporation for the year ended December 31, 1996. *(Hon. W. Mark).*

10.40 a.m.

NATIONAL SAFETY COUNCIL (INC'N) BILL
Select Committee Report
Presentation

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy Dowlat): Mr. President, I have the honour to present the report of the Special Select Committee appointed to consider and report on a Bill entitled, "An Act for the incorporation of the National Safety Council of Trinidad and Tobago and for matters incidental thereto.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Diana Mahabir-Wyatt:

Solomon Hochoy Highway
(Pedestrian Walkovers)

14. (a) Does the Minister of Works and Transport intend to build pedestrian walkovers for the Solomon Hochoy Highway which is being reconstructed?

If the answer is in the affirmative, could the Minister tell this honourable House how many such walkovers would be built?

(b) Could the hon. Minister tell the Senate how many pedestrian walkovers the Ministry of Works and Transport plans to build over the next two years in other parts of Trinidad and Tobago and how many are being constructed?

Road Building and Repair Programmes
(Safety of Children)

15. (a) Can the hon. Minister of Works and Transport tell this House in what way the interest and needs of children are taken into consideration in road building and repair programmes being undertaken by his Ministry?

(b) Are there any other measures planned specifically for the safety of children travelling in public transport?

Child Care Services Bill

16. Could the hon. Minister of Social Development inform the Senate whether he intends to introduce the Child Care Services Bill which was put out for public comments in 1990?

If the answer is in the affirmative, could the Minister state how soon the Bill will be introduced? [*Interruption*]

Sen. Prof. Spence: Mr. President, can we have these questions deferred to the next sitting?

Sen. The Hon. W. Mark: Mr. President, I support that because we were going to move to have questions Nos. 14, 15, and 16 deferred to the next sitting.

Questions, by leave, deferred.

ADJOURNMENT MOTION

(LEAVE)

Sen. Prof. John Spence: Mr. President, I rise to request leave to move the adjournment of the Senate on a matter of urgent public importance, that is, the unauthorized paving of part of the Queen's Park Savannah. In my opinion, the matter is definite since it refers to a specific activity, namely, the unauthorized entry into a public place and the paving of that public place.

Secondly, I believe it to be urgent because the action has not yet been completed and, therefore, may be stopped even at this stage, and some of the damage that is being done might be alleviated, and some expenditure being incurred, might be stopped.

Thirdly, I believe it to be a matter of public importance because it involves expenditure of public funds not yet approved by this Parliament. It seems to me

that the powers of Parliament are being usurped since the Chairman of the National Carnival Commission publicly announced that he was anticipating next year's budget in this expenditure. An expenditure of some $4 million certainly is a matter of particular public interest and importance, particularly as the process seems to have been without a proper tendering procedure.

Thank you, Mr. President.

Mr. President: Hon. Senators, Sen. Prof. Spence raised this matter with me this morning and we had a discussion about it. I indicated to him then, and maintain my position, that this question would be more appropriately raised under Standing Order 11(1). The application, therefore, is not entertained.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with Motion No. 3 and Bill No. 1 under "Private Business," before dealing with Government Business.

Agreed to.

NATIONAL SAFETY COUNCIL (INC'N) BILL

Select Committee Report [Adoption]

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy Dowlat): Mr. President, I beg to move the following Motion standing in my name:

> *Be it resolved* that the Senate adopt the report of the Special Select Committee of the Senate appointed to consider and report on a Bill entitled, "An Act for the incorporation of the National Safety Council of Trinidad and Tobago and for matters incidental thereto.

Mr. President, at a sitting of the Senate held on Tuesday, November 24, 1998, Sen. The Hon. Sadiq Baksh, Minister of Works and Transport presented a Petition on behalf of the National Safety Council of Trinidad and Tobago seeking leave of the Senate for the promoters to proceed with the introduction of a Private Bill for the incorporation of their organization.

Leave was granted and within the three-month stipulated period, the promoters lodged with the Clerk of the Senate the undermentioned documents, thereby fulfilling the requirements of Standing Order 76(5)(a), (b) and (c) of the Senate:

(i) two copies of their Bill

(ii) a duplicate certificate No. A 002912 dated March 19, 1997 from the Comptroller of Accounts that the sum of $1000 to cover the cost of advertising, printing and miscellaneous charges, had been paid to the Comptroller of Accounts; and

(iii) a bond duly executed and signed by Haniff Mohammed, President and Veronica Cambelle, Secretary, obliging them to pay on demand to the Clerk any excess of the deposited sum.

Notices were published in the *Trinidad and Tobago Gazette* and the *Trinidad Guardian* newspaper on December 3, 10, and 17, 1999, informing the public of the intended introduction of a Private Bill for the incorporation of the National Safety Council of Trinidad and Tobago. No objection to the Bill was received. As a consequence, a Bill entitled, "the National Safety Council of Trinidad and Tobago (Incorporation) Bill, 1998" was introduced and read the first time in the Senate on Tuesday, January 12, 1998.

At a sitting of the Senate held on Wednesday, January 20, 1999, the Bill referred to in paragraph 4, was read a second time and in accordance with the provisions of Standing Order 76(8) of the Senate, the hon. Ganace Ramdial, President, appointed a Special Select Committee comprising the following Senators: Ms. Carol Cuffy Dowlat, Chairman; Mrs. Agnes Williams, member; Ms. Cynthia Alfred, member; Sen. Prof. Julian Kenny, member.

The terms of reference of the Special Select Committee were: "to consider and report on a Private Bill entitled, 'An Act for the incorporation of the National Safety Council of Trinidad and Tobago and for matters incidental thereto'."

The committee held a total of two meetings as follows: Monday 22, March, 1999 and Tuesday 20, July, 1999.

At its first meeting, the committee examined the Bill clause by clause and as a result of concerns raised with respect to the use of the word "National" as part of the organization's name, the advice of the Solicitor General was sought. The committee also requested advice from the following ministries and organizations: the Ministry of Consumer Affairs; the Ministry of Labour and Co-operatives; the Ministry of Trade and Industry, the Bureau of Standards; the Ministry of Energy and Energy Industries; the Ministry of Works and Transport; the Ministry of Health; and the National Institute of Higher Education (Research, Science and Technology).

At the second meeting, the committee informed the promoters that none of the above organizations had any difficulty with the National Safety Council's incorporation. However, the Solicitor General had advised against the use of the word "National" by a private organization since it could lead to the undesirable implication that the body is, in fact, an arm of the state, or one with the official patronage of the state. The committee suggested to the promoters that the organization change its name to "The Safety Council of Trinidad and Tobago". After further discussion, this was agreed to.

The committee was satisfied that the requirements of Standing Order 76(2)(b)(i) and (ii) were met, and that prior to its introduction and first reading, sufficient notice was given to the public of the intended introduction in the Senate of the Bill referred to in paragraph 4 of the report.

The committee has made a thorough examination of the Preamble and clauses of the Bill and in light of the oral and written evidence, is satisfied that the facts and allegations presented in the Bill are true and correct. The committee has accepted the advice given to it by the Solicitor General and, therefore, recommends that the word "National" be deleted wherever it appears in the Senate Bill No. 23 of 1998.

The committee wishes to report that it has completed its deliberations and has found sufficient proof for the incorporation of this organization by an Act of Parliament. The Committee accordingly recommends that the Bill be accepted by the Senate, subject to the amendments listed in the appendix.

Mr. President, the amendments are as follows:

"First Column	Second Column Extent of Amendments
Long Title	Delete the word 'National' appearing in line one (1).
Preamble	A. Delete the word 'National' appearing in line two (2) of the first recital. B. Delete the word 'National' appearing in line one (1) of the second recital.
Short Title	Delete the word 'National' appearing in line one (1).
Clause 2	Delete the word 'National' appearing in line one (1) and insert the word 'the' before the word safety."

Mr. President, I beg to move.

Seconded by Sen. Agnes Williams.

Question put and agreed to.

Report adopted.

Question put and agreed to, That the Bill be now read the third time.

Bill accordingly read the third time and passed.

TRINIDAD AND TOBAGO ASSOCIATION OF PROFESSIONAL PSYCHOLOGISTS (INC'N) BILL

Question put and agreed to, That a Bill to provide for the incorporation of the Trinidad and Tobago Association of Professional Psychologists and for related matters, be read a second time.

Bill accordingly read a second time.

Bill referred to a special select committee of the Senate appointed by the President as follows: Sen. Nizam Baksh (Chairman), Sen. Agnes Williams (member), Sen. Joan Yuille-Williams (member), and Sen. Prof. Kenneth Ramchand (member).

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading" instead of Motions.

Agreed to.

10.55 a.m.

FREEDOM OF INFORMATION (NO. 2) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

> That a Bill to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto, be now read a second time.

Mr. President, the object of this Bill, as set out in clause 3, is to create a statutory and enforceable right for the access of information held by the state, subject to exceptions, and to create a duty on public authorities to make certain key information available to the public. The Bill, really, is one which would

create the legal framework to give the public the right to know about government and other state-held information.

Mr. President, information is the oxygen of democracy. If people are unaware and do not know what is happening in Government, in the state and in their society, then they would not be able to have meaningful participation in the affairs of society. If the actions of Government and the state and those who exercise governmental and public powers are hidden, the people cannot play a meaningful part in the affairs of society. That amounts to alienation and can also be described as discrimination against people.

Mr. President, access by the public to government-held information is not just a necessity for people, it is an essential part of good government. Bad government needs secrecy to survive; bad government allows inefficiency, wastefulness and corruption to thrive; access to government and official-held information allows people to scrutinize the actions of agovernment and is the basis for proper informed debate on those actions. Most governments, however, prefer to conduct their business in secret.

Mr. President, let us look at the philosophy of this Bill. When the Universal Declaration on Human Rights was agreed upon in Article 19, it talked about the right to the freedom of opinion and expression. It says that everyone has the right to freedom of opinion and expression and the right includes freedom to hold opinions without interference and to seek, receive and impart information and idea, through any media regardless of frontier.

It was envisaged that the right or the freedom of opinion and expression would include the right to seek, receive and impart information. In the 1940s, when this document was passed, it was envisaged that there would be machinery for states to provide freedom of information or the right to information so that the right to the freedom of expression and opinion could be given effect to. Mr. President, that has not happened in several countries.

In Article 19 of the International Covenant on Civil and Political Rights of 1966—because you would recall that the Universal Declaration on Human Rights was not a treaty, it was a declaration of what was expected to be the standards which countries would aspire to have and should have. In 1966 there was this Covenant which some countries have signed and some ratified, and under Article 19 of the Covenant it states the said matters as mentioned in Article 19 of the Universal Declaration on Human Rights, but it goes on to say that the exercise of the rights provided for this Article carries with it special duties and

responsibilities that may, therefore, be subject to certain restrictions, but these shall only be such, as are provided by law, and are necessary with respect to the rights or reputations of others for the protection of national security of public order, public health or of public morals.

So we see that internationally, both through the Universal Declaration on Human Rights and through the International Covenant on Civil and Political Rights, it was expected that on a domestic basis, the legal frameworks of countries would have laws to give effect to the right to information held by the state or by government. The reason for that, it was recognized that in order to have good, open and transparent government, the people must know what is happening. It has also been recognized that it cannot be an absolute right, in that there would have to be exceptions and they have developed certain internationally recognized principles as to how these exceptions should be.

The Commonwealth Law Ministers met in Barbados in 1980 and they recognized that countries of the Commonwealth should do something to create these domestic legal frameworks. The Government of Trinidad and Tobago was represented at that meeting and it was agreed that having regard to what was happening internationally, and the need to have open and transparent governance, that there should be legal framework to give people the right to information.

In 1980, at the Commonwealth Law Ministers meeting in Barbados, the law ministers agreed and emphasized that public participation in the democratic and governmental process was at its most meaningful, when citizens had adequate access to official information. Mr. President, thereafter, Commonwealth countries were supposed to go back and set up the necessary legal structures to ensure that people could access official information. That did not happen in several countries; it happened in some, and in 1991, the Harare Commonwealth Heads of Government declaration sought to enshrine what the fundamental political values of the Commonwealth should be. In that declaration the Commonwealth heads said that there must be the promotion of democracy, the rule of law, just and honest government and fundamental human rights, all being part and parcel of setting up institutions so that people would be able to have this, recognizing that government did not belong to individuals. Public office did not belong to Mr. "A" or Mr. "B"; public office belongs to the people and it must be administered in such a way for the benefit of the people. The information did not belong to individuals; it belongs to the people—obviously, subject to the balance between the public interest in disclosure and not disclosing.

11.05 a.m.

Mr. President, what happened thereafter is that some countries from the 1980s passed freedom of information legislation but many countries have not. This matter again came up at a Commonwealth level at the recently concluded Commonwealth Law Ministers' Conference in Trinidad and Tobago. In the communiqué which came out of that Conference, it has been stated that the Commonwealth Law Ministers agreed that countries should take steps to enact freedom of information legislation.

Mr. President, I would like to quote from Annex 1 to the Communiqué of the Commonwealth Law Ministers' meeting in Port of Spain, Trinidad, between May 3 to 7, 1999 which contains the Commonwealth Freedom of Information Principles. The Ministers formulated and adopted the following principles which should be contained in freedom of information legislation:

"1. Member countries should be encouraged to regard freedom of information as a legal and enforceable right."

That is what we have done in this Bill, Mr. President.

"2. There should be a presumption in favour of disclosure and Governments should promote a culture of openness."

That is what we have done in this Bill. As a matter of fact, Mr. President, I would show that, in effect, the only exceptions are recognized exceptions that have been followed in several other countries.

"3. The right of access to information may be subject to limited exemptions but these should be narrowly drawn."

That is what we have done in this Bill.

"4. Governments should maintain and preserve records."

We have amended the Bill in the other place to give effect to this.

"5. In principle, decisions to refuse access to records and information should be subject to independent review."

I would show, Mr. President, not only independent review by the Ombudsman but also review by the courts. I should also mention that this is not only a Commonwealth Governments' move, it is a move by organizations which are involved in exposing misuse and abuse of powers of government and also in

promoting steps to have good governance. There are several organizations, internationally, regionally and nationally asking for freedom of information legislation, but one organization which has been in the forefront is Transparency International.

Transparency International did a Working Paper entitled, "Access to Information in Developing Countries". That Working Paper is very helpful because it shows—if I may I shall read from chapter 1 under the heading, "What is Access to Information":

> "Access to information may be defined as the ability of the citizen to obtain information in the possession of the state."

It then goes on:

> "It is now widely recognized that openness and accessibility of people to information about the government's functioning is a vital component of democracy."

If democracy is to flourish, citizens must be adequately informed about the operations and policies of their government. Transparency International recognizes that freedom of information legislation is an important tool in its fight against corruption in public office.

Mr. President, it is very instructive to see in this Working Paper, which comprises several parts—and for the record it is chapter 3 under "Elements of Access to Information"—even from the civil society, the non-governmental organizations, the principles which, it is recognized, should be contained in this kind of legislation. I am doing this in order to show that the legislation which we have before us today represents a Bill in which we have taken into account all these matters and have put them together in order to conform with the Commonwealth standards and also with the non-governmental institution standards.

If I may I shall read, Mr. President, because I think this is very important to put it on the record, under the heading, "General Principles of Access to Information":

> "All legislation relating to access to information incorporates the tension between conferring a right of access to state information while at the same time exempting certain records on the basis of state interests. There is a clear acknowledgement in law that there must be limits on access. So, even where the right of access has the appearance of an absolute right, there is always a

> countervailing claim for legitimate restrictions on that right. Well-drafted access to information legislation allows for these limitations and describes them explicitly and specifically. Limitations may include a power to deny a request for information that would normally be disclosed; or a refusal of a request on the grounds that the information is exempt from disclosure under the law.
>
> Ensuring access to information requires that government bodies publish guidelines to apprise the public of details concerning the applicable rules. These guidelines outline what information is held; to whom requests should be addressed and in what form; time limits during which a response must be given to the person requesting the information…"

We have not put that in guidelines, Mr. President, we have put that in the Bill itself.

> "and, in the case of a refusal to accede to a request, how to appeal against a refusal. The motivation of the person making the request should be irrelevant and he or she should not be asked why the request is being made. All appropriate assistance should be given to persons making requests, as for example in the case of someone with a disability."

We have catered for that also in our Bill.

> "Access…"

to information:

> "may sometimes be refused for a purely administrative reason: the request may be too broad and would yield an unwieldy volume of information; or the gathering and reproduction of such information would disrupt normal operations. In such instances the responsible government official may be expected to assist the requester in submitting a more manageable query. Another reason for a refusal may be that the requested information is, or is about to be, published."

So one sees the difficulties in balancing it but there must be machinery to assist persons in those areas of difficulty, for which we have catered in the Bill, Mr. President.

> "Uncertainty may arise when a request is refused because an official has decided that the information sought is exempt from disclosure. There are a

> number of relatively standard categories of exemption, although countries differ in their approach to these. The exemption categories common to most access laws cover information relating to national security, national economic interests, maintenance of diplomatic relations, confidential government discussions, personal privacy, commercial confidentiality, and law enforcement."

I stress that, Mr. President, in order to show that exemptions are recognized not only by government principles but also by non-governmental institutions. I say this because one of the criticisms of freedom of information legislation is that the exemptions are too great but it is recognized that there must be exemptions and these are the recognized exemptions. It goes on dealing with the exemptions.

So, Mr. President, let us go to this Bill. The first country to introduce freedom of information legislation was Sweden and that was in the year 1776. In 1966 the United States government enacted a Freedom of Information Act and several Canadian provinces have done that. New Zealand did it; Australia has done it; in the Caricom, Belize has done it; South Africa, under the new administration, has done it and the United Kingdom is in the process of doing it. So that it is something with which countries have grappled and passed, but there are other countries which are now grappling with it and trying to have their freedom of information legislation.

Mr. President, in Trinidad and Tobago there have been attempts to get freedom of information legislation. In 1991 and in 1994 there were attempts by the then Opposition to introduce freedom of information legislation. On October 1, 1993 in the House of Representatives, the Opposition—through the Opposition Chief Whip at the time—tried to introduce a private Freedom of Information Bill. That was not supported by the then government. On August 26, 1994 debate on Private Member's motion to have the government enact a Freedom of Information Bill started, however the Parliamentary session was prorogued and the motion lapsed. This is the first time I think that we have a Bill in which there is a passage of the Bill in one House of the Parliament and the Senate is being given the distinct honour of being part and parcel of enacting freedom of information legislation in Trinidad and Tobago.

Mr. President, this Bill has a history in that in May of 1996, a few months after this administration took office, the Government published a draft Freedom of Information Bill and held consultations throughout the country to get the views of the public. The public response was overwhelming. They were in support of the

principle but there were many criticisms about some of the machinery contained in the Bill for getting the information.

In that Bill there was a proposal to have an information council in which a person who wants the information would apply to an information council and if the council refuses the information it will then go to an information tribunal. The criticism of those measures was that there was too much paper and bureaucracy involved and there should be a direct application for the information. This Bill has taken that criticism on board, the Bill was redrafted and we have, in effect, put in this Bill an application to the particular authority for that information.

Another major criticism of that Bill was that it should be expressly stated that if the information has been refused there should be a right for the aggrieved person to go to the court for it to be reviewed, which we have done in this Bill. We have actually expressly stated a right to apply for judicial review.

Another major criticism of that Bill was that there should be some provision which creates an obligation on public authorities to make information available, even without people having to apply for information. We have taken that on board and, as I go through the Bill, I would show that there is a statutory obligation for public authorities to make information available even without application. What we have also done in this Bill is say that, although information may be exempt, the public authority has discretion to make that information available—I think it is clause 39. I hope I could find it right away. It is, in fact, clause 35 that says:

> "…a public authority shall give access to an exempt document where there is reasonable evidence that significant—
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> (a) abuse of authority or neglect in the performance of official duty;
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> (b) injustice to an individual;
>
> (c) danger to the health or safety of an individual of the public; or
>
> (d) unauthorised use of public funds,
>
> has or is likely to have occurred and if in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so."

11.20 a.m.

So in other words, even though a document's information may be exempt, the public authority, if these matters are considered, has the discretion to release that information even though it is an exempt information. What it also does, is the

courts can adjudicate if, for some reason, the public authority decides not to give the information, but there is, in effect, injustice to the individual or abuse of authority.

Mr. President, another measure which was put into the Bill in the other place was that before one goes to court, there is machinery that one can utilize the office of the Ombudsman in order to see whether the refusal can be investigated and the Ombudsman can express an opinion, and then the public authority can consider it. The application to the Ombudsman would not prevent anybody from going to court and, even if there were a matter before the Ombudsman, the person would still be able to pursue his matter before the court. What we have tried to put in the Bill are measures so that a public authority would not use the exemption clauses to believe that they can hide information, which should be released.

Sen. Prof. Spence: Mr. President, the Minister made a point about the exemptions. Is it the case that Cabinet could itself decide that some decisions of Cabinet could be made public? Because frequently one gets documents which have Cabinet minutes attached to them, like a committee being set up or something like that. So could Cabinet itself decide, in light of this Bill, to do that?

The second thing is: Does this now mean that the courts could not, in their adjudication, order information to be released except insofar as it is allowed in this Bill?

Hon. R. L. Maharaj: Mr. President, under the Bill, one of the recognized exceptions is the Cabinet deliberations. Under this Bill, even though a matter is an exempt matter, the Cabinet will have the power to release it. Assuming the Cabinet does not release it, but it is felt that the Cabinet is not releasing it in the interest of the public because there was an abuse of authority; or there is likely to be an abuse of authority; or the facts show that there is a clear abuse of authority or neglect in the performance of official duty; injustice to an individual; danger to the health or safety of an individual; unauthorized use of public funds; the court can be asked to order the documents to be released on that basis. But that does not take away the power of the court in respect of judicial review in respect of other matters.

What this does is that in normal circumstances without this the court would not have the power because, under judicial review, the court can only judicially review a matter if: (1), the authority acts without jurisdiction; or (2), the statutory authority acts in contravention of a specific law; or (3), failure to act in

accordance with natural justice; or (4), its decision is unreasonable and disproportionate, but that head is very difficult to get the court to intervene. What this has done is given the courts more power; it has given it more teeth in order to determine whether Cabinet or any public authority is withholding information, which should not be withheld. This is a measure, which is in some of the Freedom of Information Bills in other countries.

Sen. Montano: I thank the hon. Attorney General for giving way. I have two questions with regard to what you were just speaking about. The first one is: how specific must the request for information be? What I am saying is this: an individual may be aware of a decision that was made, let us say, at Cabinet level, but the decision might involve several documents. The individual might not know of any specific document, but he might be aware of the decision and the correspondence relating to the decision, so my question is: how specific must the request be, or can the request be fairly broad to encompass all the documents relating to the decision?

Secondly, when the matter goes to the High Court, in the event that the citizen loses his appeal at that level, who pays for the cost of the litigation?

Hon. R. L. Maharaj: Mr. President, in the first answer, I think if the hon. Senator waits, I will answer it. But may I quickly say, if he looks at the form that is attached to the Bill, he will see the kind of information one has to give. But the Bill expressly states that the authority has a duty to assist in trying to identify what information the person wants.

In respect of the costs, that is a matter which has been established from time immemorial in Trinidad and Tobago, the PNM and NAR administrations. The court is given the power and discretion to award costs, and no law has been passed to change that. The Government is quite prepared, if there is a feeling by the Senate or the Opposition to change that law, they can make representation and the Government would be happy to consider it and get the views of the population in respect of it.

May I mention that in respect of these matters, the recent Legal Aid Bill has, in effect, increased the moneys for lawyers, so that this Legal Aid situation has improved.

Mr. President, what is the overview of this Bill? Firstly, as I said, it gives to every individual the statutory right to know about and to have access to the information. So this right is not only the right to get the information and to inspect the documents, but the right to get copies. There is no charge for getting the

information; there will only be a charge for the copies. We have deliberately done that so people would not be prevented from getting information because they would have to pay high costs for getting the information.

It is a broad-based right, it applies to official records and information held by all bodies specified in clause 4 of the Bill. It creates a right for the public authorities to publish information. It will require public authorities to publish information regarding the functions performed by those public authorities; the information that is available to the public; the documents which are made available for inspection; statements about the possession of certain documents and reports which may become available on a periodic basis. So it is to provide information on a continuous basis.

Mr. President, this is the kind of information that the public is most likely to be interested in on a continuous basis, and it is therefore desirable that the public be made aware that such information exists and that access can be easily had, and as authorities will only be required to publish an index of reports which are created after the commencement of the Act, the publication requirements should not be too costly.

Also, in keeping with the recommendations of the public in clause 39, the Bill would enable the person to apply to the High Court for judicial review.

Another important objective of the proposed law is to enable members to know what information is held about them by government and they will have a right to access those records and to have the information corrected if the information is incomplete, incorrect, out of date or misleading, and that is in clause 36.

Part III of the Bill specifies the mode of access and the duty of the public authority to assist the applicant in obtaining information. The Bill will also provide for the minister to report to Parliament every year on the operation of the Act, so that the Parliament and the country will be informed of the number of applications made by the public requesting information, whether the information was given or refused, and the number of decisions resulting in judicial review and other factors.

The Bill, as I said, is striking a balance between the interest to get information and the interest of the state. On the one hand, it will give the right to access to information, but on the other hand, there will be limited exceptions for the purpose of preventing any prejudicial effect to the public interest.

Part IV of the Bill specifies the types of documents which will be exempt from public access such as Cabinet documents and documents relating to defence and security matters or any document containing information, the disclosure of which will be likely to prejudice the defence of Trinidad and Tobago or any of the lawful activities of the security or intelligence services. This is a common feature of all freedom of information legislation and, therefore, it is a necessity in legislations like these. What we have done is followed the internationally recognized principle and the exemptions are specifically and expressly stated.

The Bill recognizes that after it is passed there will be certain things to be done in order to create the necessary legal and administrative infrastructure for the Bill to be given effect, so it will come into effect on a date to be fixed by the President, and proclamation.

Furthermore, it has been decided, in the Bill, to limit the scope of the legislation to documents created by the state or which came into the state's possession not earlier than 10 years prior to the coming into force of the Act. However, in the interest of justice, the Minister is given the power, subject to negative resolution of Parliament, to make the legislation applicable to documents created by the Government or coming into its possession at an earlier date.

Mr. President, the object of the Bill is stated in clause 3(1) and, as I said, it is to give members of the public access to officially held information. With regard to the scope of the legislation, the duty and obligations under the Bill are to be imposed upon public authorities. A public authority is defined in clause 4 of the Bill. I would not read it, I think Senators would read it. What I have instructed the Chief Parliamentary Counsel's office to do—I hope Members of Parliament will get it, because the Bill has been amended in the other place and it is sometimes difficult to follow the Bill—is to try to put everything into one and they should be able to circulate it in a short while, so it will be easier for Senators to read. I thought that had been done, Mr. President.

Clause 5 of the Bill deals with exemptions. It reads:

"5. (1) This Act does not apply to—

(a) the President;

(b) a commission of inquiry issued by the President; or

(c) such public authority or function of a public authority as the President may, by Order subject to negative resolution of Parliament, determine."

The rest of the clause also states that for the purposes of this Act, in relation to the registry or other office of the court, and the staff of such a registry in their capacity as members of that staff which relate to administration, shall be regarded as part of a public authority. It also says that in the exercise of judicial functions, there can be no information.

Mr. President, the essential public interest that mandates it be protected must mean that in legislation like this, the legislation must contain ways to protect those interests. It is necessary to balance the public interest in the availability to grant information against the other essential public interest. This balance is achieved by the creation of specific exceptions and exemptions of information, which are prevented from being disclosed by reference to the likely consequences of disclosure and certain categories of documents. Certain documents will, therefore, be exempted from disclosure under the legislation, on the grounds that the public interest warrants the information not to be disclosed.

11.35 a.m.

Mr. President, these exemptions are provided for in Part IV of the Bill and they refer to Cabinet documents, documents containing information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago or to prejudice the lawful activities of the security or intelligence services.

Clause 26: International relations documents *et cetera.*

Internal working documents clause 27 (2); the exemption however, does not extend to guidelines for making decisions and enforcing laws or schemes, factual information, statistical surveys, valuator reports, environmental impact statement, consumer test reports, feasibility studies and similar categories of information listed.

Clause 28: Law enforcement documents are protected.

Clause 29: Documents protected by legal professional privilege. Documents, the disclosure of which would be reasonably likely to have substantial adverse effect on the economy of Trinidad and Tobago *et cetera*.

Clause 33: Documents containing information which is prohibited by written law from being disclosed.

Mr. President, on this basis there are certain existing laws which it would not be in the interest of the public to have those information disclosed. I talk

particularly, of parts of the Official Secrets Act, which apply to having a secret official code word, sketch plan, *et cetera* in respect of intelligence; the Standards Act of 1997, which deals with the formula and the process of practice, in relation to goods, *et cetera;* the Statistics Act and Income Tax Act. There are certain exceptions, and that is why clause 34 states:

> "A document is an exempt document if there is in force a written law applying specifically to information…"

So that one sees the attempt to balance the public interest by permitting disclosure, but also ensuring that the public interest is protected and bearing in mind, this public interest is not one which the politician would be able to say, that he or she keeps in his bosom. If that is done, the courts are given the power to even review those matters as I mentioned earlier.

Mr. President, I have dealt with clause 35 which deals with the power to disclose exempt information.

Publication of certain documents and information. As I mentioned in 1996, the public consultation required that we expressly state in the Bill, the requirement of a public authority to publish certain information. Clause 7 of the Bill would require a public authority to publish certain statements in the *Gazette* and a daily newspaper circulating in Trinidad and Tobago. Such a statement must set out the particulars of the public authority organization, functions, decision-making powers and the particulars of any arrangement for public consultation in the formulation of policy by the public authority.

Public authorities would also be required to publish a statement of the categories of documents maintained in their possession; a statement of the procedure to be followed by a person making a request for access to a document; a statement listing all boards, committees and other bodies constituted by two or more persons that are part of, or that has been established for the purpose of advising the public authority and which meetings are open to the public or the minutes of meetings which are available for public inspection and a statement of any library or reading room, maintained by the public authority that is available for public use, the address, and opening hours of such a library or reading room.

Mr. President, quite irrespective of a person applying for information, under clause 7 of the Bill, there is a requirement that the public authority must publish these matters, so that people would know how to get it and if they want the information they would know what to read.

It goes further, under clause 8 of the Bill, public authorities would be required to cause copies of certain documents to be made available for inspection and purchase by members of the public. The relevant documents include documents provided by public authorities for the use or guidance of the public authority or its officers, in making decisions or recommendations or in providing advice to persons outside the public authority, with respect to rights, privileges, obligations or penalties such as manuals, rules or procedure, statement of policies, guidelines and practices or precedents.

Mr. President, under this clause, the public authority would have to give to the public what are the manuals, rules and regulations which govern them under which they operate, so the public would understand what is happening about their affairs. They also included documents provided by the public authority for the use or guidance of the public authority or its officers in enforcing written laws or schemes administered by the public authority where a member of the public might be directly affected by that enforcement and where those documents contain information on the procedures to be employed or the objectives to be pursued in the enforcement of the written laws or schemes.

This is an attempt to satisfy the public clamour in the discussions we had with the public, so that the public would get what they want. May I say that there is precedent for this in some of the other pieces of legislation, so it is not that Trinidad and Tobago is going on a new course.

Under clause 9, public authorities would be required to publish in the *Gazette* and a daily newspaper, an index of certain reports which have been created since the commencement of the Act and are in their possession. The index would also be updated on an annual basis which will include:

(a) Reports of bodies established within the public authority;

(b) Reports of bodies established outside of the public authority, for the purpose of advising or making recommendations to the public authority;

(c) Reports of inter-departmental committees;

(d) Scientific reports;

(e) Reports prepared by hired consultants;

(f) Feasibility reports;

(g) Reports on the performance and the efficiency of a public authority;

(h) Reports containing plans or proposals for the reorganization or functions of a public authority;

(i) The establishment of a new policy programme or project to be administered by the public authority, or the alteration of an existing policy programme or project administered by the public authority, whether or not the plans or proposals are subject to approval by an officer of the public authority, another public authority or a minister of Cabinet;

(j) Statements prepared within a public authority and containing instructions for the drafting of legislation;

(k) Reports of a test carried out within the public authority on a project for the purpose of purchasing equipment;

(l) Environmental impact statements prepared within a public authority and valuation reports prepared for a public authority by a valuator whether or not the valuator is an officer of the public authority.

Mr. President, the accumulated effect of clauses 7, 8 and 9 show that there is this obligation which must be carried out so that the state, through the public authority, would make information available even without application.

Clause 10 would enable a person to serve upon a public authority a notice, stating that in his opinion, a statement published under clauses 8 and 9 does not specify a document that is required to be specified. The public authority would then have 21 days within which to make a decision on the matter. Where that decision is adverse to the person's claim, the public authority would state the findings on which its decision is based and inform the person of his right to apply for a judicial review.

Mr. President, Part III of the Bill further the objectives set out in clause 3(1) (b) by granting members of the public this legal and enforceable right to obtain with stated exception, access to official documents and for providing a procedure to be allowed for enforcing that right.

By clause 12, however, the procedure set out in Part II for obtaining the access to information would not apply to information which is open to public access or available for purchase or public inspection or to documents which are stored for preservation or safe custody.

Mr. President, in order to facilitate the making of request for information, a request form has been provided for in the schedule. The form would identify the

official document or provide sufficient information to enable an employee of the public authority, who is familiar with the relevant document to identify the document with reasonable effort. There would be no fee for making a request but a fee may be prescribed for making copies of official documents requested. It would be the duty of public authorities to assist persons making request for information, instead of refusing to comply with the request on the ground that the request does not sufficiently identify the document requested.

11.45 a.m.

A public authority would have 30 days within which to notify a person of the approval or refusal of his request. Where the request is approved, the information must be released expeditiously upon the payment of any fee for the making of copies.

Where a document contains exempt information and it is practicable for the public authority to provide a copy of the document without the exempt information, and the applicant indicates interest in such a copy, the public authority would be required to give the applicant access to such a copy.

Mr. President, public authorities may refuse access to information on the grounds that the information is exempt under Part IV; the request for the document was made by the same person on a previous occasion and the refusal of the request was confirmed by the High Court and there are no reasonable grounds for making the request again; that the work involved in processing the request would substantially and unreasonably divert the resources in the public authority from its other operations, but the clause provides ways and means in which the person can get the information with the assistance of the authority. Further request for information may be deferred if the document requested has been prepared for presentation to Parliament, or for release to the media and the document is yet to be so presented for release.

Mr. President, the Bill expressly protects—in relation to the government-held media station—the right of journalists employed not to disclose the source of information. In other words, since this Bill is to get information from the state, there is an established constitutional principle, an existing law that journalists, subject to certain exceptions in law, cannot be forced to disclose the source of information. And since there would be journalists employed with the state in the state corporation, the Bill expressly states that they would not be required to disclose the source of information.

Mr. President, clause 40 of the Bill provides, as I said, for the legislation to be reviewed from time to time by having reports in the Parliament. If one looks at the Bill and one sees the amendments which were done in the other place and in particular, clause 38(a), the review by the Ombudsman, and there are some other amendments which specifically state in clause 42(1) an obligation for the public authority to maintain and preserve records. This is very important, because it has been found in some countries that as long as there is the talk of freedom of information, when the Bill has been passed, it is difficult to get information and therefore, there is a statutory requirement for information not to be destroyed.

Mr. President, if we look at Part III of the Bill, which is an important part—all the parts are important, but that deals with the right of access to information. Clause 11(1) says notwithstanding any law to the contrary:

> "Subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document."

In clause 12 it says:

> "A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to—
>
> (a) a document which contains information that is open to public access…"

So it would not apply to those cases.

Clause 13 deals with the form which is very important. Recognizing that the form—there would be many persons who are not lawyers wanting to get information so the schedule states the name of the public authority, the name of the applicant, the address of the applicant, the telephone number, if any, of the applicant, the document number, description, and form of access so that the person would be able to make this application.

We have tried to make it as simple as possible and clause 14 says:

> "(1) A public authority shall take reasonable steps to assist any person who—
>
> (a) wishes to make a request…or
>
> (b) has made a request….
>
> and to make a request in a manner which complies with that section.
>
> (2) Where a request in writing is made to a public authority for access to an official document, the public authority shall not refuse to comply

with the request on the ground that the request does not comply with section 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that does comply with that section."

It creates in the Bill a duty to assist.

"15. A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made."

In clause 16, "the public authority shall forthwith give the applicant access to the document."

We have expressly stated that no fees shall be charged by the public authority for making the request for the documents, and where it is to be given in printed form a charge is to be made, but in effect under clause 18 arrangements can be made for the access in whatever form it is possible.

Mr. President, the Bill deals with the situation, as far as is practicable, to try to make this process as simple as possible. May I say that this kind of legislation is not sometimes the kind that one can just take as a model and put it there. We tried to do that and saw that it could not work that way and this legislation has come about as a result of much consultation, comparison, and also trying to fit our proposed legal framework to give effect to this legislation to suit the particular situation in Trinidad and Tobago. What I want to state however, is that the principles contained in this legislation follow the established principles both at the Commonwealth and at the non-governmental level.

Mr. President, in closing, may I say that I have here just a few quotations which I feel I should put on the record. There is a book: *Public Access to Government-Held Information* by Norman Marsh, Q.C. He had something to say and he quoted Woodrow Wilson and Jeremy Bentham and under "Secrecy as an evil *per se"* he said:

"Jeremy Bentham said that, 'secrecy, being an instrument of conspiracy, ought never to be a system of regular government,"

Then he quoted Woodrow Wilson who echoed those words before he became President of the United States. He said:

"Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it is a fair presumption that secrecy means impropriety."

Mr. President, at page 3 it says:

> "The withholding of information, and, what is equally important, the power to release information at an opportune moment, are very powerful weapons in the hands of the politician in office, and his staying in office may indeed depend on the maintenance of that power."

That is why the United National Congress in Opposition had taken the position that this kind of legislation is very important to promote openness and transparency in governance. It is a kind of measure which would empower people in their rights against government and other state institutions. It is a matter which transcends political or party political consideration. It is a matter for people, and based on the fact that it is a matter for people, I beg to move that this Bill be read a second time.

Question proposed.

Sen. Joan Yuille-Williams: Mr. President, before I begin my contribution in my response to this Bill, I wish to say through you, to the Minister in charge of the Parliament, that it would be nice if we could have a little more information on what we are doing here and it follows logic naturally. Although we are here and have concurred with what he wants to do, clearly we were in the dark and it took us by surprise. I think the communication could be a little better.

The gracious servant whom he had call us on Sunday and during the week, I think he knew why he used her to do it—to make the contact—we can do no less than adhere to his request to be here and that really strongly goes on this whole matter on which we are talking, freedom of information.

Before I go on, I want to ask a few questions on this because I listened to the hon. Attorney General this morning as he made his presentation, and I remembered when the UNC was in Opposition there had been several calls for a Freedom of Information Bill and I really wanted to ask and I think you may find it very strange: Does the Government really want this Freedom of Information Bill? And probably you would say why ask such a strange question, but does the Government really want the Bill? Or is it that it has no other choice, after calling for it so long in Opposition than to go through with it now that they are in Government? What I am saying is yes, we are going to have on the record books Freedom of Information legislation, but on the other hand, it is far from being free. What you think you wanted to do at that time must have certainly changed because as we go through this piece of legislation—and I am glad I heard the

Attorney General say it—I think that people have now renamed this the "Official Secrets Act" because most of the things that are here now are going to be very much secret. Regardless of all that the Attorney General said this morning, I say that clearly although this Bill gives the right to access information, the way the whole thing is structured as we go through it, the most difficult thing we are going to be able to get here is information.

12.00 noon

I think that is what the Government really wants to achieve, that we just do not get the information. Some of us will say that is a strange thing but as we go through, you will see what are some of the barriers which have been put into this Bill for communication purposes. I also hope that we just did not get into this because other countries have done it.

I have been in this Parliament and I have heard people say different countries have done different things and Trinidad and Tobago has not done them. That is no reason why we need to do anything, because somebody else has done it. In fact, sometimes if we look at other people's legislation and try to model ours, some of those bills had been passed by simple majority and I am sure that the oppositions in those countries would have done all that was possible to change certain things within the bills, but they could not. Therefore, going to use them as models would not be the appropriate thing to do.

The Attorney General himself said something about putting the legal, administrative and human resource infrastructure in place is going to be extremely costly; it will take a very long time to do, all the designated officers and the amount of training. In this country, we are still missing files in the ministry; we cannot find files. We have not been able to do the computerization. Records are all over the place and if we are going into anything like this, these things must be available. We have a long way to go before we can even put the infrastructure in place to have this.

All through this Bill, what we are saying is "as soon as practicable" after the Bill has been proclaimed; there are no time limits; everything is "as soon as practicable" after the day and this could take any period of time, years probably. Who knows? The record of this Government in terms of putting things in place will certainly tell us because I have sat here and for the few months I have been

here, we have passed so much legislation; we have worked so hard; but the implementation is impossible. We have done things concerning minors; we have done things on mediation; we have done all sorts of things here.

As some people would say, they go out and boast about how much legislation comes to the Parliament, how many bills may have been passed, and when we look at the whole thing, we have not been able to put the infrastructure in. We need to have some training done; we need to get a lot of things done. I do not know if people do not understand, but this is huge, as we would say in other words. It calls for a lot to be done before it is put into place and, therefore, I am a bit weary that again, you have taken our time to come out here today to try to put this legislation in place and it will be another one of those that we will have to shelve.

The Attorney General started very nicely talking about information being the oxygen of democracy.

Sen. Daly: Hot pitch!

Sen. J. Yuille-Williams: I am saying that carbon dioxide is what he should refer to; he should not say information is the oxygen at all; I thought carbon dioxide democracy as practised by the UNC, this is what it is. It is not oxygen at all in this place because, as we go through this, we are not going to get any information at all. Therefore, there is no democracy.

In fact, I listened to the radio yesterday and caller after caller talked about Trinidad being in a state of anarchy and everybody here will understand why. Things are happening; nobody knows who is doing it, when it should be done, why it should be done; nobody cares what happens; no cost; no legislation; you just do anything; that is Trinidad and Tobago at this time. So, when he talks about democracy and oxygen; I put those two things together and I felt we should just look at it. [*Interruption*]

I am talking about the manner in which things have been done and I am quite clear about what I am saying. I do not think any right-thinking person could just say, "Yes, we agree to how things are being done." This is really anarchy. If we continue like this, the entire country will go down and that is what I am talking about.

The Attorney General went on to say that information belongs to the people and there will have to be this balance between what is disclosed and what is not disclosed, and that is the sting in the tail of this piece of legislation—what is

disclosed. Because, although it talks about giving access to documents or information, in the beginning here when we go through the Bill, I say that the non-disclosure is ever so great. He talked about it being wide-ranging, but I am saying: Yes, it is wide-ranging and yes, many things are being said, but we have to study the Bill very carefully and we will understand why so many people were opposing it.

In fact, when we talk about legislation, opposition parties usually—if you go through history—like to call for freedom of information bills and when they get into government, there is something very different. The Labour party has been calling for it in Britain and they are in Government now trying to pass it, and even within the ranks of the Labour party in Government, they cannot go through with it. The Opposition party, the Conservative, has turned it down and it now has to be sent back to the committee stage.

I would have liked to hear that because we like to model against certain countries. Bills of this kind give trouble in many countries and, therefore, we have to ask ourselves why? What is the haste? Why do we need this at this time? I am not a lawyer but I understand that in common law there is some right to go to the court, and I am also saying that now it might be even more difficult within the courts because I understand that now it is legalised, the courts can easily give their judgements according to the Bill before us.

So, I am saying that we are talking about secrecy and official documents and as we go through this, the right to access information is going to be very, very limited. If you look at the same clause 3 which the Attorney General spoke about on several occasions, it talked about:

> "The object of this Act is to extend as far as possible the right of members of the public…"

That is something enshrined; we have that right; this is a basic right which we all have, to access information. But it says "public authorities" and we are to go back to look at the meaning of the phrase "public authorities". Clause 3 continues:

> "…to access information in the possession of public authorities by—
>
> (a) making available to the public information about the operations of public authorities and, in particular, ensuring that rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those rules and practices;"

I am asking myself: What are the rules? What are the regulations? When do they come forward? Where do we get them? All of that takes time.

It continues:

"(b) creating a general right of access to information in documentary form in the possession of public authorities only by exceptions and exemptions…"

That is where it is going to be, "only by exceptions and exemptions". As we go through this, we will see the number of exceptions and exemptions and many other reasons. Some documents are called exempt in this, I think in Part IV, but there are so many other ways by which information becomes exempt in this Bill that I do not know why we had a Part IV at all. Because, we are going to see how many times.

For example, I heard the talking and I think my colleague did ask about cost, and even if it is not exempt, cost is going to be one of the ways that is going to prevent a number of people from accessing information. It is not stated like that, but it is implied and as you go through, you will see how cost is going to be one of the factors that is going to be a deterrent of persons trying to access information.

Also, you understand there are several ways in which you can access the information. It talked about, if you go through, some are video, some are all sorts of ways that you will be asked to have that information collected. Therefore, we are going to look at costs and time. Further down, we noted and somebody asked the question when we looked at public authority, and I have been asked to ask this particular question under "public entity":

"(j) a body corporate or unincorporated entity—

(i) in relation to any function which it exercises on behalf of the State;"

The question is asked about privately owned companies, companies which use public funds. The question was asked: Where does that fit into the whole question of public authorities? Could you ask questions about the National Insurance Property Development Company and get information? That kind of thing, privately owned, but talking about companies which use public funds, TSTT and that kind of company which controls and spends public funds. Where do they come in? Or, do they come in at all under public authorities? Could we, therefore, apply to those companies to get information? The National Carnival Commission might be one just now; we might want to ask questions. Privately owned—TSTT, NIPDEC and some of those others.

So, we are talking about the privately owned bodies which spend public funds, could we get information according to this Bill, or should that be included under "public authorities" and, therefore, subject these companies to the requirements of this Bill? This is something that we need to hear the Attorney General speak about.

Then, when we go to Part II, it talked about in clause 7(1)(a)(ii):

> "a statement of the categories of documents that are maintained in the possession of the public authority;"

I think this had been raised; I heard the Attorney General also speaking about the categories of documents.

Again, if you want to get access to information and you want people to know that there are no secrets, if everything is in categories, I am wondering about the individual documents staying there rather than the categories. As some would say, whether there is need to have a register of all the documents included under it, whether there are broad categories, some of us would not even know what are some of the documents there, if you only group them according to categories.

We are saying, why not a register in each authority where you are saying these are all the documents listed there rather than the categories. I am saying, therefore, these might not be exempt as you are saying but because of how this is put together, we could still deny some people the opportunity of even knowing what is there.

Also, what about the exempt documents? Will those exempt documents show up in these categories that all these documents are exempt? Or, are they exempt and they will not be known, so people would not know that they even exist and only if you wanted to apply for one, then you will hear it? Would it be put in such a way in the register that those documents which are exempt and those which are not exempt all be made public, so when you come to the registry you will know that these are all the documents which are there? It is important because this is how, I am saying, you could deny access to information by not letting people even know that this information is there.

Therefore, you can hide the information in these categories and we need to look at that because people must know what exists. We are free; we are transparent; let the people know what exists; do not just put categories; let the people know which documents are exempt. I say the public must know what documents you hold. It will say to some people that does not make sense and I am saying it is absolutely necessary.

One of the things that one notices here and I am going to look at the right of access to information if we go back to that in Part III. I understand there were amendments and we were not privy to them and I heard the Minister speaking about the inclusion of the Ombudsman, because one of the things that I wanted to look at was the fact that you are going to apply for the information; you might be turned down and the next recourse you had was to the courts. We wanted to suggest that the Ombudsman could have been used and I think in the United Kingdom, there is an Information Commissioner being used there, so that people could have used that avenue.

12.15 p.m.

Suggestions of independent tribunals could be used because we are moving straight from the public authority to the courts. These have been used in different places: independent tribunal, ombudsman, and the information commissioner. Our only recourse at this point, is the High Court and that could be very costly, as all of us here know. Therefore that in itself is a deterrent to persons trying to get information.

We talked about the designated officer of the public authority. I did not see much said about the designated officer and I suppose there will be several designated officers. When we were talking in terms of the cost—many of the clauses here are legal and if we are talking about these designated officers—I am wondering whether there are special officers that you will be getting from outside or whether they will be given special training, whatever it is. We only saw things to enable the designated officer of the public authority or an employee of the public authority. Remember these are important people in this Bill, because these are the people who are making decisions. Therefore, the people who are making decisions must have some kind of special qualifications and must be given some kind of special training because they are the people telling you: "yea" or "nay" within the public authority. Therefore, one would want to know something more about these designated officers: people who are familiar with relevant documents and identify these documents. As I said, we need to say more about these designated officers that you are having within each of these authorities.

We talked about time and we talked about the refusal of applicants. I think you said that there was some kind of amendment. I quote:

"A public authority shall take reasonable steps…"

vague as ever—

> "…to enable an applicant to be notified of the approval or refusal of his request as soon as practicable…"

Again I am hearing "as soon as practicable", that could mean any length of time.

> "…but in any case not later than thirty days after the day on which the request is duly made."

That is only the approval. So they can take thirty days to just tell me that my request has been approved. But how long before I get the information? No time limit is put on anything, therefore in at least thirty days I can say "yes your request has been approved" and you may sit there—according to what I am reading here and what my information tells me—for a year. How long could it be before the information that I have requested comes to me? I think that it is important to look at these very open statements that we have here, because if we are really saying that we have a right to get information, I need the information for a particular time to do something, and there is no guarantee on how long it would take me to get the information, then I am also saying, again this is a deterrent and it does not allow for free flow of information.

In fact, I can say I could almost give it up because the reason I wanted the information—that whole thing—could have passed by. The information was not made available. Why was it delayed? I would not know. Nobody would tell me why it was delayed. All I know is that it is approved and I will get it and reasonable steps would be taken to see that I get it. I think we need to put some time limits, hopefully, on some of these things that we have in this Bill.

It is said that no fee would be charged for making that. But the way this is put up—I quote:

> "No fee shall be charged …for the making of a request…"

If a request is not granted one can seek judicial review, one can go to the court. But there are so many reasons why it will not be granted and therefore at the end of it, to get the information, one would find that it is very costly. It is stated that there will not be a charge when a request is made, but the request is not guaranteed. I am not talking about clause 18(4), I am talking about outside clause 18(4): that request is not guaranteed, therefore to get it I would still have to pay. The Bill states I should go to the High Court. A number of people would not be able to take opportunity of this.

This clause: "Fees for access to documents", which is nicely written and put into this Bill, to me, does not say very much because it is going to be extremely difficult. Also, if we look at clause 18(4) which states:

"If the form of access requested by the applicant—

(a) would interfere unreasonably with the operations of the public authority;

(b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or

(c) would involve an infringement of copyright subsisting in a person other than the State,"

Here is what we are saying in clause 18; I am saying that this makes many things exempt. Here is another attempt to withhold the information from the public.

If the form of access would interfere unreasonably with the operations of the public authority you could be refused. If it interferes unreasonably with the operations of the public authority—you are telling me that I can get information, but if my request interferes with how the authority operates then you are refusing my request. You are telling me that this is made for the free flowing of information. It is not! Anybody can tell you the manner in which you have asked for the information is going to interfere with how we operate here therefore I cannot grant it to you. If the form of access:

"would be detrimental to the preservation of the document or having regard to the physical nature of the document…"

that , would be inappropriate. If the form of access:

"would involve an infringement of copyright subsisting in a person other than the State,"

then it would be inappropriate. I am saying yes, clause 18(4) is exempt but there are many other exemptions sleeked in different parts of this Bill. As one person said: "You are pretending to give it with one hand and you are taking it all back with the other." You have to read between the lines in this document, because it is put in such a way that is extremely difficult. Some of these clauses are very subjective and it is the designated officer, or whoever it is, who is making the decision, and if you do not like it, go to the High Court. You cannot afford to pay so there is no information available.

Clause 19 states:

> "A public authority which receives a request may defer the provision of access to the document concerned if the document has been prepared—
>
> (a) for presentation to Parliament;
>
> (b) for release to the media; or
>
> (c) solely for inclusion, in the same or in an amended form..."

How do we know the truth? I could go and ask for it and I could be told all or any one of these things because you do not want to release the information. Therefore any number of reasons could be given why the person would not get the information. This is a section called "Deferment of access" that should have gone in exempt as well, because all this tells you that you will not get the information because we need it for presentation to Parliament or will need it for release to the media or release for a whole number of things. That is why we are saying that this could be called the "Secrecy Act" because I am not seeing any place where you can do something that the public authority or the designated person could not come up with an excuse to say: "You cannot get the information."

Look at clause 21:

"Requests may be refused in certain cases."

Again this is the most dangerous thing, this should not be in this Bill at all!

> "(1) A public authority dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations."

Very subjective. It is going to cost too much and therefore you will refuse it. Then you could say anything would cost too much. That is dangerous, that clause should not be in this Bill at all! What would not cost too much with this Government? Anything could cost too much when you do not want to give information. That is what I am saying: when you do not want to give information everything could cost too much. As far as I am seeing, when I am going through this Bill, everything that you want, you could find a reason why you do not want to share the information. This is serious [*Interruption*] You read yours. This is

very serious. Because it is going to cost substantially too much and it is unreasonable to divert the resources of the public authority—we are talking about diverting resources in this Bill, did you ever hear that?—from its other operations.

Freedom of information is not a priority with this Government because it states here:

> "…if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations."

That is the least that comes at the very bottom of the ladder of giving access to information. Which ministry of whose minister is going to tell you that everything else that I do is more important than you getting information, especially when they do not want to give the information?

12.25 p.m.

They do not want to give the information, so now they say that it would cost too much and they do not have the money to divert the resources to give the information, so people cannot get it.

That is what I am saying, the Government should go through this Bill. I have just jumped through certain places, but there is no place in this Bill that says anything about freedom of information. The exempt documents are one section alone, but every other place I can put exempt. I have some "Xs" all around, which mean I call all those exempt, so the whole Bill becomes one of exemption. That is why people are saying they cannot support it, because there is no way you can get information if the Government does not want you to get it.

Why should the lack of resources be a form of denial? Everything else they feel they want to do, they do it when they want to, and giving information is the last thing that this Government wants to do. All over the country I am hearing people clamouring for information. Since I have come here that is all I hear. If you listen all around people want information on rice, flour, sugar, oil, gas, pitch. They want information on everything. [*Laughter*]

The Government is now saying that it can find reasons why it cannot give information, because it has other priorities. The cost is going to be too much to give the information. They prepared it for Parliament, the media or something else, so they cannot give the information. Look at clause 21(2) that states:

> "Subject to subsection (3) but without limiting the matters to which a public authority may have regard in deciding whether to refuse under subsection (1)

to grant access to the documents to which the request relates, the public authority is to have regard to the resources that would have to be used—

(a) in identifying, locating, or collating the documents within the filing system of the public authority;"

You cannot get it! This is under requests that may be refused in certain cases. [*Interruption*] You had your day. Identifying, locating or collating the documents, "if yuh doh have the resources to do that, yuh cyar get it".

(b) in deciding whether to grant or refuse…" there are certain things in clause 21(2) of the Bill:

"(i) in examining documents; or

(ii) in consulting with any person or body in relation to the request; or

(c) in making a copy, or an edited copy of the documents; or

(d) in notifying any interim or final decision on the request."

I am saying that the resources here form another reason for denial of the information, and it is stated here, because the whole aim of this Bill is not to give information, so they are going to look for every single opportunity not to. Somebody took the time to do it. I do not mind what people say, but that is what we are reading. I am saying that the lack of resources is another form of denial. Anybody who wishes could read the whole Bill.

Mr. President, if you read clause 21 clearly where it says that a request may be refused in certain cases, you will see the number of cases in which the request will be refused. I am saying that any request I make could be covered by one of these cases they have put in the Bill.

Let us look at clause 22. I would not want to go through all of clause 21 because it would take us a long time to do so. It states that the decision is to be made by the authorized person. That is what I was also saying, this designated person has the power to make the decision. Therefore, as I said, it is very subjective, although within the Bill we are given a number of reasons on which the authorized person could base the decision. As I said before, I do not see any one person applying for information who you do not want to give the information, could get it. They have a way in this Bill to stop every single person from getting information. It is stated here, and you do not have to go very far for it, not in the exempt sections alone, but in the others.

In clause 22(1) it states:

"A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the Responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the Responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer."

What are we talking about now? A minister can control every single piece of information that comes out of his or her ministry. Any information that a minister wants to come out of the ministry can come through this designated person. Therefore, if you have information inside your ministry that you do not want to come out, such as information about a friend or anybody, and I try to get it, I will not be able to, because this law states that the decision in respect of the request could be made on behalf of all these people by the designated officer.

This is not very specific because when there are all these categories and you are afraid to go into the register to tell me exactly what information you have in there, I do not even know what I could get. Even though I ask for something and the minister does not want it to come out, it will not. We see that happening all the time, therefore, this Bill is not going to help. If the Government thinks this is going to help, it is not. Probably they really do not want it to help. Probably the reason for giving it is so that they do not give the information.

But the Government has honoured what it said it was going to do when it was in Opposition, to bring the Freedom of Information Bill in a simple way, and it has brought it. Therefore, it is going to be on our tables, and they will boast to their colleagues that they have passed the Freedom of Information Bill. People do not understand that you cannot get the information even though we have the Freedom of Information Bill. What is the point going through with a Bill where you still cannot get the information? Does the other side think that we will say yes to this?

Sometimes we make a compromise on certain things when we feel it is in the national interest. Mr. President, sometimes we sit here and there are certain parts of some Bills that we really feel we do not want to vote for, but because overall we do not want to keep back things—it was better we did not because they have not implemented any of those things, so we could have said no—we go along with them. There are certain Bills with which we go along in the national interest,

but with this Bill there is no way that we are going along with any part of it in any national interest. This Bill has no national interest. It is really a farce, a cover, and a tool that will allow the Government to keep all its documents secret; therefore, we are not going to vote for any Bill which will allow it to do that. They are keeping them secret already, do they think that we will want to legislate to do it? We are not going to do that! So let them keep being secretive with what they have. I am sure the others, as they sit there, know that what I am saying is true, but what else can they do?

Let us look at exempt documents, I feel that we need not put in that section. Who decides which documents are exempt? I want to talk about two things on Cabinet documents. I was in the last administration and Sen. The Hon. Mark was also in the last administration. He sat right there as the Leader. He was the person who brought the most Cabinet documents to the Parliament! [*Laughter*] Anything that we wanted to discuss, Sen. Mark would always stand up there, because he said that he needed the information to go along with what he was doing. He used to say, "It was flushed down." [*Laughter*] I remember that, and I know that Sen. Mark also remembers. Every discussion we had, I remember Sen. Mark would always show us. He said he needed that information, because it was public information and it must be brought out.

Now I am seeing that Cabinet documents are under "exempt documents"! Minister Mark could get a Cabinet document within a week; by the time we were debating a Bill or a Motion, he had it. I am not saying that anything is wrong with that, but he brought it. Therefore, to sit in Government now and say that in a Freedom of Information Bill Cabinet documents are exempt; it does not seem to be true to form of a colleague who really revelled and survived on Cabinet documents. And he did it so well! I do not know what would happen if he is in the Opposition and this is passed, how he would survive, because he survived on Cabinet documents. That is how he made his play. [*Interruption*] He used to read extensively, and took great pride in reading the Cabinet documents. He will never forget those good days that he had.

We allowed him to read it because he said that was information. What he did was used that information to talk about what he had sat there for. That information carried things that he needed. Now it is put here as exempt, why did they do that? Mr. President, do you know what could also happen? If there is information that I do not want to give out, or something I do not want people to know about, I could hide it in a Cabinet document. I know it disturbs people, but this is the reality. [*Interruption*] Minister Mark is in a government which would

do that. If he does not want you to get the information, he will get that into a Cabinet note, as the case may be, and that would be the end of it. You could ask for that information for as long as you want, it becomes exempt because it went before the Cabinet.

Mr. President, let us be fair, these are things which can happen in reality. A person could hide something in a document. When a government wants information to remain private for some period of time, all it has to do, according to this clause, is to convert it to a Cabinet Note, which could easily be done, and it is hidden. [*Interruption*] We never had this Bill before; it is Minister Mark who used to bring all the Cabinet documents. I am telling you the possibilities. All I am trying to tell the hon. Minister now is how we could not get information; there are always ways to do things so that we cannot get information.

I looked through this Bill and started to laugh. It is child's play—[*Crosstalk*]—all the documents: the back-up and the draft documents, all of them are now exempt. Then they tell us that the public has a right to know. Some of those back-up documents are some of the things that inform the Government's policy, we cannot even see them. Therefore, what is it that they are giving us, just the end product? How are we to know the facts? If even we ask for something, we are just given the end product. We do not know what are the things that went before which would inform certain decisions, because those also become part of it. Read the Bill, Mr. Senator! This is the truth. I have read it and I am seeing this.

All the preparatory material now becomes exempt. "A document prepared for the purpose of briefing a Minister in relation to issues to be considered by Cabinet" is now exempt, draft or anything else; everything is now exempt. So what are we looking for? What information are we trying to find then? If we look at 24(4) it states:

> "For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request would, if it existed be one of a kind referred to in subsection (1), establishes that, if such a document exists, it is an exempt document."

The Secretary to Cabinet is the one who gives the authority, in this case, to the Cabinet document. But why go handling it at all when you know this thing is not free? I am more tied up than anything else.

12.40 p.m.

Mr. President, I want to find out something about clause 25 which says;

> "A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago."

From the time I hear about, "likely to prejudice"—I start to think, but I do not want to say anything about it. I would like the Attorney General to tell me where do police records fall within clause 25(1). Clause 25(3) says:

> "For the purposes of this Act, a certificate signed by the Minister certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1) or (2), established that if such a document exists, it is an exempt document."

And as I said before, the Ministers have the power to decide—subject to your correction, Mr. Attorney General, if I am wrong—documents that they do not wish to come forward; documents which they feel should be exempt. I am saying again, what will we get then if you could say all these documents are exempt? One of the things, when we talked about the various categories, we felt that the individual documents should be tested on their own merit rather than you put all those categories in for us.

Mr. President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. D. Montano]*

Question put and agreed to.

Mr. President: Before the hon. Senator continues, I think we can break for lunch and resume at 1.45 p.m.

12.43 p.m.: *Sitting suspended.*

1.45 p.m.: *Sitting resumed*.

Sen. J. Yuille-Williams: Mr. President, while I make my closing remarks, I would just like to move to clause 26 which says:

> "A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure—"

We are asking: Who would determine the public interest? When one looks at subclause (a) which reads:

> (a) "would prejudice relations between the Government of the Republic of Trinidad and Tobago and the government of any other State;"

Mr. President, sometimes the public interest can override the foreign relations. Sometimes if you think of what was happening in the Gulf and we try to conduct our relationship with Venezuela, for example, we are asking if there is no time at all when the public interest becomes paramount, as we deal with our foreign relations. Therefore, I am looking at the international relations document at clause 26. I am wondering whether what is stated there is correct. That is why it is so important as to who determines what is contrary to the public interest.

With respect to clause 27, I am particularly interested with the "Internal working documents". I think when we talked about the Cabinet Notes we also referred to those papers which we used in the preparation of the Notes and now we are saying here that the "Internal working documents" are also exempt. Sometimes those documents, which inform the decision, are so important to us when we wish to make our decision on information which we receive. Sometimes it is at the very point, the beginning of the process which is important. That is when the society can most influence what is being done, and in some places you may want to say that any corrupt practices could easily influence this early stage.

We are saying, therefore, that we feel that some of those documents should be made available and they should not be considered as exempt documents. In fact, I think, every one should be taken on its own merit and I would like the Attorney General to tell me where he includes minutes of boards on anything at all, in this whole business of Internal working documents.

1.50 p.m.

Very important to us is clause 35 which says:

"…a public authority shall give access to an exempt document where there is reasonable evidence that significant—

(a) abuse of authority or neglect in the performance of official duty;

(b) injustice to an individual;

(c) danger to the health or safety of an individual or of the public; or

(d) unauthorised use of public funds."

Since we already said that the Minister has the authority, I am wondering in this case whether or not a Minister would wish to give access to such documents which will reveal unauthorized use of public funds. We say that these are exempt but sometimes they are important to us and it is left for the public authority to decide whether such documents should be made available. I say again, it is a difficulty for us.

It is a subjective thing because if one knows that there was unauthorized use of public funds and one wishes not to disclose that, it is quite simple to say, "We will not give that to that authority," especially since these are all in categories and not individual items on a register. Again I say, information could easily be withheld in these cases. I do not want to go on to what is actually happening now as we look at (d) but I wonder, if this had happened when this Bill had been implemented, whether or not we would have been able to get information on the unauthorized use of public funds. We say, therefore, there are so many exemptions in this Bill that it needs to be opened up.

National security privacy, yes, we say exempt but I think it is much too close, there are too many exemptions and where there are not exemptions there are too many exceptions. In the miscellaneous area, a very important area, there is "Correction of personal information". In clause 36(1) we read:

> "Where a document…contains personal information of an individual and that individual alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that individual, correct the information."

I want to know, who says when the information is accurate or inaccurate. They are leaving that to the public authority. It leads one to wonder whether this clause does not give the authority the ability to expunge certain things from the records, because it is again subjective.

Who decides what is accurate or inaccurate? Therefore, this is allowing us to remove certain areas from a record for whatever reason we may wish. I wish to say no more on that, but to me that is very serious and we need to be told who makes the decision. You see, this public authority has so much power that now one can apply and the public authority, again very subjective, could decide that is inaccurate information: "Okay, I agree with you and therefore we can expunge it and therefore we are going to look to see certain things there which people do not like". They can always get that expunged if they can build up that relationship with the public authority.

However, to me, 37 should be deleted, "Broadcasting materials":

> "Notwithstanding any other provision of this Act, where a request is made for access to a document held by the International Communications Network, that company shall not be required to give access under this Act to—

(a) any part of the document which consists of information obtained in the course of making any programme or broadcast or discloses the source of any such information; or

(b) any recording of…"

any information.

Why ICN only? The public has a right to information and the right to all the media should be protected. The media have a right to protect their sources. Why especially ICN?

Mr. Maharaj: Can I explain? Thanks to the hon. Senator for giving way, Mr. President. The Bill is only against state-held information and entities that are owned by the state because the private sector cannot be compelled to give information. That would need a constitutional amendment and it has great repercussion for private property.

Sen. J. Yuille-Williams: Okay. I am still asking why the company should not be required to give access? I am just asking the question. Is it an opportunity to legalize the propaganda of the ICN? I am just asking why. I still want to ask why. Remember when the Government called for the tapes? Do you remember that? None of us heard that kind of thing. Why are we not getting access to the information from the state-held media? Remember they then said, "We are looking at your life"? We must be very careful. This is a state-owned media and you are saying yes and I say I do not understand why the information is being withheld.

Any part of the document which consists of information obtained in the course of making the programme, I said yes, we have a right to information. You may wish to protect your sources but that still should not deny us the right to information. If you look at clause 38 we see that:

"Where access to a document has been given in accordance with the requirements of this Act or in good faith in the belief that it was required to be given in accordance with this Act—

(a) no action for defamation…"

et cetera, right down to "access."

Therefore, I think we need to delete this entire clause because we have no recourse now to slander or anything at all and I think it is libellous. I am not a

lawyer but I would like to have the lawyers look at this one, the protection against defamation:

> "(b) no action for defamation or breach of confidence may be brought, in respect of any publication involved in the giving of access by the public authority, against—
>
> (i) any person who was the author of the document…"

And so forth.

Mr. President, again as we look at clause 39 we see that, for the removal of doubt, the person aggrieved may apply to the High Court. We have once again come back to the High Court. The Attorney General has said that they have looked at the Ombudsman and I still say that—well at the moment I do not think the Ombudsman can take anything more because the Ombudsman is overburdened. So putting the Ombudsman there to look at a request of any aggrieved person who could not go directly to the High Court is just trying to console or to compensate for something because definitely we know it will take years before the Ombudsman can get to that. Probably, as I said, I saw where in the UK they use a Minister or a Commissioner of Information—I do not know if it is the same thing. In some cases they had special tribunals set aside to go into this.

I think we need to look at some of those things because having just the Ombudsman before there is recourse to the court, I do not think it will work. The Ombudsman, as I said, in his own right is already so overburdened with the amount of work that he has and the court is going to be extremely expensive. It is going to take a long time. Just saying that one has judicial review to the court for the things for which we are asking is not going to make any sense.

Mr. President, I would wish to recap the whole thing to look at what I have said, that we are out here to monitor what the state is doing. We need information. We cannot monitor without information. We need to have access to information. This Freedom of Information Bill was supposed to give us access to the information and, as I can clearly see, the Bill does not give us access to that information. The number of clauses which are exempt, the number of clauses which are exceptions, the subjectivity in the public authority deciding on so many things, with the authorization of the Minister, and whatever the Government does not wish us to have in terms of information; the way this Bill is structured, we will not be able to have that information.

Although we are told that in so many other countries in the world there is a Freedom of Information Bill, and I know you would want to convince us that this is the way we need to go, we will say quite clearly that the document you have provided here this afternoon is not a document we could use or one about which we feel comfortable. As we said before, this is more one for secrecy. Everything could be hidden by this. This is no comfort to the ordinary person who needs to get information. As I said, some judges will now have their decisions based on what the Act will say.

We also say that the infrastructure needed to put this in place would take us some time. I do not think we have the infrastructure nor will we be able to get it in a short time. I know some people feel we need to give it a try but I think that this should be done in the same way as what happened with the legislation in the UK. In the UK, people were working on this for many years and now it has reached to the Parliament they have sent it back to the committees. In Trinidad and Tobago, I do not see why we need to force this out when we are not comfortable with what is stated in this Bill.

Therefore, Mr. President, I would wish to conclude by saying again that getting the information from the Government is not going to be easy. This document, to me, is a tool that the Government has brought to keep documents secret. I know and I have read where it has been said that the PNM does not wish to have information freedom for all kinds of reasons. It has already been said that many countries all over the world have Freedom of Information Acts. Say what you wish, we do not see any freedom of information coming through this legislation.

Therefore, even though we agree with the right of the citizen to access information—and it is a basic right which is inherited in the Constitution—unfortunately, based on how this document is structured, based on the clauses and the items that have been put in, based on the wide-ranging exemptions and exceptions and the power of the authority and the Minister, we find it extremely difficult to support this Freedom of Information Bill. Thank you very much. [*Desk thumping*]

Sen. Dr. Eric St. Cyr: Mr. President, I am broadly in support of this Bill as I think it is a move that indicates the opening up even further of the democratic system that we practise and this is all to the good. So, broadly and generally I am in support and I think the Government should be congratulated for taking us to this step. I want to debate one particular point. However, before I go there, I am proposing a few amendments that, if anything, would seek to make access to

information more certain, in other words, tightening the Bill in a few areas. I have circulated the amendments that I am proposing and some are simpler than others.

For instance, in clause 4 where, under "personal information", areas exempted, I see there that criminal record is one such matter to be exempted, I am proposing the deletion of that provision. Since a criminal record is a public matter, I do not see that as being any more private.

Under clause 7, I am concerned that the approval of the Minister could constrain the authority in giving the information requested. So I am proposing in clause 7, the first and second lines, we delete the phrase, "with the approval of the Minister".

2.05 p.m.

In clause 8, I think we would strengthen this by replacing the phrase "if practicable" with "except impracticable", so the onus would be on the authority to say that it is not practicable for us to do this. So I am proposing that as yet another amendment.

Under clause 10(2), it would seem to me that an amendment conceded to be necessary within twenty-one days should be made in the next report which could be a year later on. So I am proposing that we delete the phrase "as to whether to specify in the next statement to be published under section 8(2)(*b*) or section 9(2)(*b*), as the case may be, the document referred to in the notice;" and replacing that by the words "and immediately publish an appropriate addendum or corrigendum". In other words, if one concedes that there is an error, I think it should be dealt with immediately and not left for the next annual report when it could become lost in what is published.

My fifth amendment being proposed is to clause 23. Clause 23(2) reads:

"In a notice under subsection (1), a public authority—

(a) is not required to include any matter…"

I am suggesting that we say, "it is forbidden to include any matter the inclusion of which would make the document a privileged information."

That clearly tidies up a question that arose in clause 4, where we were dealing with "exempt information", which means, "information the inclusion of which in a document causes the document to be an exempt document". I am suggesting that if you do not want to publish a document, you could simply include something that will thereby render it privileged and I am saying that such behaviour should be forbidden.

Mr. President, by and large, I am in support of this Bill. The point I want to debate however is Part IV. Part IV exempts Cabinet documents and Cabinet decisions. I think that makes the central issue of information, pertaining to the exercise of a democratic government, ineffective. I think that there is a strong case for not allowing the broad exemption to all Cabinet documents and decisions such as is proposed in the Bill.

I would argue this way, Sir. There are three principal arms comprising government: the legislative arm, and the business of the legislative arm is conducted in public, in full view of all who would come and the media report us fully, so that there is openness in the legislative arm of government; a second arm of government is the courts of law, the business there is conducted in open court; the third arm is the executive, and I think whereas the Parliament could make laws and whereas the courts can hand down judgments, the arm that is to implement is the executive and so, that is really the arm of government which we want to monitor to see exactly how it is functioning and to force public accountability for its actions. As far as I could see from this Bill before us, the executive arm is being allowed to escape scrutiny almost completely.

I am making a strong case for us to look at this. The reason is that over the years the concern of man in society has been to stand up against the arbitrary exercise of state power; that has been the central issue and the doing part of the government is the executive. Suppose, for example, Sir, I wanted to know whether Culture or Agriculture were aware of the action of an official in the state arm to pave a savannah. I do not think, necessarily, I would get that information by interviews because you could answer a question in a way that really does not give the answer to the question being put; as sometimes happens here when parliamentary questions are put, they are sometimes evaded. But if I had access to the Cabinet's records, I may, from those records, be able to see who knew what on the basis of documents that were before persons involved in the executive. So, I am not belabouring the example, but I am making a general point that, in my view, the wholesale exemption of Cabinet documents, Cabinet decisions, the deliberations of committees, the advice being given, I think really is a serious omission from this Bill.

If I may take a specific example, clause 27(a), which refers to the nature of opinion, advice or recommendation. I think it is important in an open system that the public would be able to know that on the basis of this information, that information, these pieces of advice, a certain decision was made. In other words, my mind works this way, Sir: if we all had the same information we should pretty

nearly all come to the same decision, and where we did not, it is because there was a divergence of interests; so all we then would need to do is to get at the divergence of interests which caused such divergence in the decisions made on the basis of the same opinion. But if we do not know the information, then we are left to guess why a particular decision was made by the executive. I am insisting yet again, that really, the critical arm in the Government is the executive. I think it strongly influences the legislative arm and I think that we would be very wise to ensure that it never comes close to influencing the judicial arm, and we should protect that very strongly.

Looking at clause 24(4) specifically, it says:

> "For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request…is an exempt document."

I think that this is an empty clause, because the issue is not that the secretary signed it; the issue is who told the secretary what to sign or what not to sign, or did the secretary do it of the secretary's own initiative. In other words, that we say "the Secretary signs" does not tell us who took the actual decision. So we are in no way wiser to ask why is this exempt and who took that decision.

I know that in the amendments circulated clause 4 has been amended to include the Cabinet in the definition of "public authority", but apart from the inclusion of Cabinet in that definition, nothing else in the Bill has been changed consequentially. So, for all intents and purposes, the definition of "public authority" does not include Cabinet because the Bill leaves out all references to Cabinet.

I take one final clause. The last part of clause 27(2)(*l*) says:

> "…unless the report is to be submitted to Cabinet or a committee or subcommittee of Cabinet."

I am emphasizing the point that this Freedom of Information (No. 2) Bill excludes from public scrutiny all the information fed to the Cabinet on the basis of which it would make informed decisions, and all decisions and the reasoning going therewith coming out of the Cabinet which should be information properly in the hands of a well-informed public.

But, as I said before, generally, I think this is a move in the right direction; it is probably step one, but I do hope that we could strengthen this so that we could get the executive to properly account to the society at large.

I thank you, Sir.

Sen. Martin Daly: Mr. President, my position is basically similar to that of my distinguished colleague, Sen. Dr. St. Cyr, which is that I see this as a step in the right direction. The fact is, however, for many of the reasons given by Sen. Joan Yuille-Williams, if a particular public authority wishes to frustrate a person seeking information under this Bill, they would be able to do so for an extremely long time.

2.20 p.m.

Mr. President**,** I would just like to suggest that if the Government is serious about this Bill, we are going to need something of a "culture change" to go along with this Bill once it is passed.

Sen. Joan Yuille-Williams has already very perceptively pointed out—no doubt because of her experience in government—the lack of infrastructure existing at present to implement this Bill, and we always share her concerns. Indeed, we shared them with her when she was in government and we passed legislation without a word, about what is the plan and the budget, because there are budget implications in this for the infrastructure to support this Bill. So I am hoping that someone on the Government side would explain from a practical perspective, what the Government's plans are to put this infrastructure in place, and what sum of money they have committed themselves to, or requested of the Minister of Finance. I would expect to see a line in the presentation of the next budget that tells us what money is going to be spent to implement the Freedom of Information Bill.

Mr. President, as I indicated, I would like to say a few words about the "culture change" that has to accompany this Bill. There are large sections of the Government—not only among the politicians, but generally—who simply talk about accountability, but they do not understand that one facet of accountability is the provision of information in which people can make some accurate assessment of whether the Government has made a wise decision, a wrong decision, a fair or unfair decision, an honest or a corrupt decision.

The reason I see this as a small step forward is because I think our skilful journalists are going to be able to use this Bill, in order to ferret out things that Government would like to keep secret, and that is my main reason for supporting it. Even though it is going to be difficult and frustrating trying to get information from this Bill, our skilful journalists would be able to use it. The fact is that if the Government is now committing itself and there is something of a mission statement in clause 3 of the Bill, in which it says that:

"(1) The object of this Act is to extend the right of members of the public to access to information…

(2) The provisions of this Act shall be interpreted so as to further the object…and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information."

Mr. President, I am suggesting that generally speaking in the Government and the public service now, there is no way that the natural inclination of either our politicians or public servants, is to exercise their discretion to facilitate and promote the disclosure of information.

So I assume that in the budget and the practical steps that are going to be taken to implement this Bill, someone on the Government side is going to have a retreat first of all, for its politicians, especially those who snarl at the working press; it is going to have a retreat first of all to be attended by the politicians and subsequently, by the public servants—I believe the word is "sensitize"—to sensitize them to the fact that it is now an official policy of this Government to facilitate and promote the prompt disclosure of information. Merely to have that as a commitment on the part of any government is a good reason for passing this Bill.

Mr. President, we will wait to see as events unfold—and we certainly have startling events in this country—when my colleagues who have an interest in culture and agriculture seek to get information, whether this is going to be the new thing. I certainly hope that those personages—and I use the word "personages" advisedly—who describe themselves as not indecisive, do not become indecisive about facilitating and promoting the prompt disclosure of information about "hot pitch".

Mr. President, indeed, while on the subject of "hot pitch" and it is relevant because it is a startling event, which would certainly bring into play the comments of Sen. Dr. St. Cyr on Part IV and it would certainly bring into play clause 35(d). So perhaps it is as well that we have an actual, rather than a hypothetical example as bizarre as it may seem.

Indeed, while I work this practical example through those sections, it is known by some persons that I was put, with some degree of deliberation, to sit between two Reverends and they are always showing me—especially the one on my left—a certain book and nearly every debate we have before the debate commences, I am told that this book has an aphorism for every event and I am usually given, I think it is the text, for the legislation of the day that we are going to discuss.

Mr. President, as I work through the "hot pitch" example, directly relevant to clause 35(d) of this Bill, I would like to share with you—it is the first time I am going public with this—the text of the debate today, which was given to me by my good friend, Dr. St. Cyr. He showed me in this book a description of the day of the Lord's vengeance and the description goes like this and he said to me: "You must take this as your text for today." This is a description of the Lord's day of vengeance: "And the streams thereof shall be turned into pitch and the dust thereof into brimstone and the land thereof shall become burning pitch." *[Laughter]* I think Sen. Daphne Phillips wants to hear it again, "and the streams thereof shall be turned into pitch and the dust thereof into brimstone and the land thereof shall become burning pitch."

Mr. President, now I am almost on my way to a conversion. *[Laughter]* With the example of the land turning into burning pitch in mind, I have proposed certain amendments, the first of these is to clause 3(1)(a). *[Interruption]*

Mr. President, I do not know if the Attorney General has as yet received the new invitation that is being issued by the Government to events in the land of "burning pitch" *[Laughter]* but I will share mine with him later, so he probably got his. I received an invitation to attend a celebration of the Roaring Lion at the "pitched park savannah".

Back to 3(1)(a). I think it is very important that if we are going to make information public about the workings of Government, we have to disclose not only the rules and practices but the policies. That is fundamental. We must know what policy the Government is working by. After I was shown the text today, I retrieved the amendments which I had given to our industrious Miss Cox, and I am also proposing that we provide for the disclosure of "authorizations".

Much of Government's business is conducted on the basis of delegation. We delegate international brokers to sell airlines and oil refineries and they act on behalf of the Government, and I think it is important that insofar as an "authorization" is given by any public authority to someone to do anything that is going to affect members of the public, we should have that disclosed as well. So in the amendments which I have circulated, I am asking that line 3 in subclause (a) read "ensuring that authorizations, policies, rules and practices are disclosed". That is the purpose of the first two amendments. I must say that the word "authorization" is very much in my mind today, as a result of the text so kindly provided by Dr. St. Cyr.

All we know so far is that one Minister became visible, rather oddly seated next to the person who was not a Minister and appeared to silently concur. As a reader of body language, I thought the shoulders were a bit sloped, but anyway appeared to silently concur in the activities of an unelected person not directly accountable to any constitutional institution.

In fact, I am surprised that the Attorney General was able to come here today, because I would have thought that certain thorny questions would be posed to the law officers of his department and perhaps those of the Director of Public Prosecutions.

2.30 p.m.

May I say that I am also proposing an amendment to clause 4. I know this would present some difficulties for the Government, but I would like to, at least, have it debated. I have had the benefit of some private discussions about this proposal, but I would like to have it debated. I think it is important that we debate it and that is insofar as you are going to get information about state enterprises.

Under subclause 4(h) on page 11 you would only be able to get information about those state enterprises that are owned or controlled by the state. In other words, majority shareholding. We would not be able to get information about a company in which the state has a significant shareholding, but only minority shareholding and I believe that BWIA, for example, is a minority position and I believe TSTT is a minority position. I think that some of those enterprises are so large and significant that we ought to be able to get information about what the Government is doing in those enterprises, and how it is best representing our interest.

I understand that they may create—I am corrected by Sen. Marshall who says TSTT is 51 per cent, but I think BWIA is the minority. So that is a good example. I understand it may create some friction between the Government and the private shareholders, but I think it is something we ought to put squarely on the table and debate whether it is possible or not as the case may be.

The amendment to clause 39 which I propose is technical and it is simply to ensure that if you decide to have a review by the Ombudsman, but he is taking too long or a situation develops otherwise, you can go to court notwithstanding that you have availed yourself of a review by the Ombudsman. There is some learning in the books about not being able to bring public law actions if there are alternative remedies, so I would like to make it plain that that is possible and I understand that is consistent with the Government's thinking.

Mr. President, there are two other sections that trouble me greatly, but I have not as yet had the wit to consider how best to amend them. First of all, I think Sen. Dr. St. Cyr is absolutely right when he said that exempting Cabinet records and deliberations needs to be looked at very carefully. I know there have been traditions about keeping Cabinet papers secret for certain lengths of time. I believe there was a 30-year rule in Britain for a long time, but I would like to suggest that we need to look at this a little more carefully.

We are not a nuclear power, we are not a big power, we do not have MI 5 and MI 6, we do not have CIA, we do not have a royal family yet, though we now have decrees and that may be a sign of things to come. We do have military parades, but I do not think we need to confer protection on those. I suggest that being over-sensitive about Cabinet documents has to be looked at in the context of the small country and the small Government that we are. I want to repeat this: we are not involved in nuclear weapons as far as I know. God forbids what is coming in the Savannah next. We are not involved in nuclear weapons yet, we do not have high-powered international intelligence services, in fact, the intelligence services were totally unable to protect the Parliament in 1990, so they are not high-powered at all, they may have had some of Carlos' concrete in their brain. So we do not have those kinds of secrets to protect, and it seems to me that insofar as we have intelligence, for example, in relation to the war that everyone is using on drugs insofar as we have information about that, that would naturally be protected by other sections of the legislation dealing with things of defence, security, international events and so forth.

I would like the Government to take a very serious look at the whole of clause 24 which deals with Cabinet documents. The bold way to do it is to simply remove Cabinet documents as being exempt on the basis that if they are sufficiently sensitive, they will be caught by other exemptions in the Bill. The Government is in a bold mood at the moment, so perhaps their boldness would extend to removing Cabinet documents altogether. We could pitch those and get rid of them.

The other alternative, Mr. President—I think this is pitching week you know, Sir. We pitched the Savannah, we pitching the Cabinet records and then next week we coming to pitch the judiciary, so watch out! Another way of dealing with it, Mr. President, is to shorten the period. I know that the drafters have already been generous in cutting it down to 10 years but I would like as a compromise, Sen. Dr. St. Cyr's point of view and mine, which is supportive. I would like to look at that period of 10 years and I would like the Government to consider, and I

am going to propose it in due course in writing, but I want to debate it first. I would like the Government to consider going down to as low as three, but as an outer limit, five and I would say why.

If for example, someone has lied about the source of the pitch, the source of the funds to pay for the pitch, the consent of the Minister of Culture and Gender Affairs, and the consent of the Minister of Agriculture, Land and Marine Resources, it might be very useful if that could be unearthed within a three-year period while the Government is still in office or alternatively, within a five-year period where insofar as any of these people—particularly the Ministers in the Senate—who might go for election in accordance with tradition, it might be very useful to unearth those facts either while the Government is still in office, or at any rate very early in their second term, should they get one, and I am speaking about governments generally. It really is not going to be much good to bring these things to light and confront people after they have either emigrated, died, or become consultants.

How, for example, are we going to ask Mr. Draper anything? He lives in London. During the period of his last term of office, my good friend, Mr. Draper has gone to London so I really would like these facts to come to light before people die, emigrate, take up employment elsewhere and so forth. I would like the Government to consider three, but I would go with five and would argue very strenuously for five because I want the information that may be unearthed under this legislation to embarrass people while they are still around and if they are having a political career of any duration, then one can assume that it would last at least five years. Of course, if they are allowed runaway horses to pull them along, then they might not last longer than the Red House fire, but that is another matter. I really think one way of dealing with this is to shorten the period and I would like to see three to five years and I would propose that in committee.

Clause 26 also troubles me and the words “public interest”—you know governments are so unlucky and the Attorney General is particularly unlucky because whatever else you say about this Bill, it is very unusual in our tradition to have someone put forward something while in Opposition which is clearly meant to give the government a hard time and then, consistently with their proposal, when they come into office, seek to put it forward. So the Attorney General, whether the Bill is good, bad, or indifferent, it is a personal triumph for him because it is something for which he argued in Opposition, but he is not so unlucky. On the very day that he comes to the Senate, particularly where things are so calm, we have to have a Bill in which the words “public interest” appear so

many times. And of course, the words "national interest" are still ringing in our ears, and I have a little problem with clause 26 because it is the only one in which there is a double-barrelled requirement, or a double-barrelled exemption where international relations disclosure would be contrary in the public interest and would do these various things.

I do not quite see why we need the words "contrary to the public interest" as well as these things because I could see a Minister, or an official interpreting this to mean that even if it does not do any one of (a), (b), (c) or (d), for some public interest reason they are still not letting go the documents. I really would like to see the words "contrary to public interest" and the word "disclosure" removed so the document would be exempt if it did any of (a), (b), (c), or (d). I have not formally proposed that yet, because there may be some good reason we want to have an overriding public interest test in international relations as well as in pitching.

Finally, Mr. President, I am greatly troubled by clause 35, but I do not quite know how to resolve it. It is very laudable that notwithstanding the exemptions—I really think this is a very important clause—there are these four windows of opportunity where you could still get the document and I think that is very important, that a public official should not hide behind a document being exempt if there is:

(a) abuse of authority…;

(b) injustice…;

(c) danger to the health or safety…; or

(d) unauthorised use of public funds,"

I think if one studies that clause carefully and if it is properly drawn, it would go a long way towards diluting one's concerns about the number of exemptions, but I do not quite know how to fix it, Mr. President, and I would like to share with the Senate what is troubling me about it. It says:

> "A public authority shall give access to an exempt document where there is reasonable evidence that…"

What I do not understand is who is to produce the reasonable evidence, and who is to make the judgment about it. If I am going to the National Carnival Commission, or trying to get its documents about the unauthorized use of $4 million not yet budgeted for, the National Carnival Commission is going to be very, very reluctant in judging its own cause. They are going to be very reluctant

to say I can have the document when it may cause them embarrassment. So we have to look at clause 35 in order to clarify what this means.

Who has to produce the reasonable evidence? I assume it is the person seeking the document, but the much greater difficulty is, you will clearly have to use the cliché "Caesar to Caesar" if the person seeking the document is telling the public official who has the document: "Here is the evidence that you have abused your authority, you have created injustice and you have done injustice to an individual, created a danger to health and safety, or made an unauthorized use of public funds, that is why I want the document to hang you." It is very easy for them to say the evidence is not reasonable, it is not cogent and I know that we have to rush our parliamentary agenda in these last few days and the rush is catching, but I would really like us to look during the course of this debate to see how to fix this clause to avoid the difficulty that I see.

I really think it is a key clause in this Bill, but I do not quite know how to fix it but I do not like the idea of the person seeking the document, asking the person who the document might incriminate to judge whether there is reasonable evidence. After all, you can be told there is not enough time, the rain is too heavy, the Minister's cellular was busy, and whatever national interest. So I would like the debate to focus a lot on that clause.

Mr. President, if I may say so, that clause is one of the things that persuades me that this Bill is not a waste of time. Even though we have erected all these exemptions, there are ways in which they can be pierced. Mr. President, I have made my pitch. I thank you.

2.45 p.m.

Sen. Muhummad Shabazz: Mr. President, in truth and in fact, on this side, we see no real need for a Bill like this, none whatsoever. Not only is it that we see no real need, but we feel there is a pattern. We believe that the Minister has brought this Bill to this Parliament because, while in Opposition, he called so hard for us to bring a type of legislation like this, that now he is in Government, if he does not bring it, he would not feel so good about himself. So, he does everything to make sure that he presents a Bill like this to the Parliament because, at the end of the day, he wants to say, "I had been calling for it so I have brought this Bill to the Parliament." But he has brought it in a manner that really does not seem to be acceptable to us.

When I looked at this Bill, the first thing that struck me was that it is called the Freedom of Information (No. 2) Bill and that the main thing in the Bill is

about exemptions. They want to give information but there are so many things exempt from being given. Let me just give a breakdown.

In the preliminary of the Bill, there are five pages involved in that; Part II, 10 pages; the rights to access, 10 pages; Schedule, two pages; but exemptions, 15 pages. Something is not sounding right; maybe this should be the Freedom from Information Bill, instead of the Freedom of Information Bill. Then, how can I really look at this Government and believe it?

Since this Government has been in power, it has touched only two Ministers, the Culture Minister and the Information Minister. They took the portfolio away from him because he was not airing the kind of information that should have been given to the nation. They gave it to one of us who crossed on their side to bring a certain kind of information that they thought the people would accept. That is what they did. They made him the Minister of Information, Communications, Training and Distance Learning.

Sen. Cuffy Dowlat: We wanted to benefit from your experience.

Sen. M. Shabazz: They are not serious about information as far as we are concerned, because information to them from this side and how the nation is seeing it now, is what will do best to keep them where they are. They are not serious about giving real information to this nation.

Look at what is happening. Look at the whole situation with WASA and information. What is happening at WASA? There are problems with WASA and problems with what is happening. The only information that is being advertised is why it is important to have a desalination plant. We cannot even get information. They told us they have signed up everything. What is the information? How, in truth and in fact, do you get this type of information, or information that is necessary from this Government?

I go to page 17 and one of the first things I looked at was the time limit for determining requests. They said that when you make a request, it is going to be for free. You have to pay no money. Okay, fine. But clause 15 says:

> "A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made."

Clause 16 says:

> "Subject to this Act, where—
>
> (a) a request is duly made by an applicant to a public authority for access to an official document;

(b) the request is approved by the public authority; and

(c) any fee prescribed under section 17 that is required to be paid before access is granted has been paid,"

Now, in this whole thing, there is a certain period that is shown that if the authority fails to comply under clause 17:

"(3) …any access to official documents to which the applicant is entitled pursuant to his request shall be provided free of charge.

(4) Notwithstanding…where a public authority fails to give an applicant access to an official document within seven working days..."

So if you fail to give them it within seven days, the person is able to ask for their money so, somewhere before seven days or upon request, a fee has to be paid. It is not free that you are going to be applying for the thing. Because, if they are saying that you cannot get it now, then it means that if you are going to get back your money, you had to pay something up front. That, in a way, needs to be looked at or something seems not to be correct there.

It goes further. Hear this part of the Bill at clause 19(1), "Deferment of access":

"A public authority which receives a request may defer the provision of access to the document concerned if the document has been prepared—

(a) for presentation to Parliament;"

So if you go and make some kind of claim to get a document, somebody could simply say, "We are preparing it to go with a presentation to Parliament so you cannot get it." But, worst of all, if it has been prepared:

"(b) for release to the media;"

it means that if you say, I want this document but it is prepared for release to the media, you have to hold on or you have to wait. How long would it take to release it or to bring it to Parliament? The document was:

"(c) solely for inclusion, in the same..."

But these two points, I would like them to look at and try to have them explained better by the Minister when he gets up to speak.

As I have said, the Minister normally comes here and asks, "Why are you all arguing this point when you supported it in another place?" We did not support it in the other place; we are not supporting it here; the reason we are not supporting

it is because we understand how difficult it is to get information from these people.

Case to be brought forward, the Siparia incident, Sir. You know in Siparia at this point, there is a stalemate; nothing is happening in Siparia. The people cannot get anything; they cannot do any work in Siparia. Why? Something went wrong. When we called for information, they sent it somewhere. You got the information, now they are saying they are going to do it, but having gotten the information, look at the kinds of problems we had to go through. The person to give the information went sick. Who says that would not happen when you apply for information in certain places now? You hear the Chief Executive Officer, the person in charge, gone sick, and they do everything.

What type of information do they want released? Only the type of information that will make them look good. If somebody came and told them that the reason they are holding back the corporation in Siparia is because the father of a high official has to get money for his vehicle and they did not want to do anything until he was paid, because they believed that if we had the corporation in our hands, it would have been difficult for him to collect his money so they held it back; somebody would get annoyed with you and say, "We do not want that type of information."

The point is, we said that one of their people whom they brought as an alderman—this is information coming to us—is in Australia so they are trying to hold it back so they could make sure that person is here, so they will have a fair chance to win the corporation. If we do that, they will say somehow we are going against the national good and all different types of things.

The point is, the only type of information that we know they want is information that would keep them looking good; information that will keep them on top of it all the time; that is the only type of information they want. Other than that, they are really not interested in information. What are they telling us?

As a matter of fact, we have had a history when they just came into power. The information that had been coming out in the newspapers caused them to get annoyed with the newspapers. That was when they made the famous statement that "none shall go unscathed". They went so far as to tell everybody—that is the information they wanted to get—"Do not buy the newspapers; advertise and buy the *Rising Sun* only." Because that is the information they wanted us to get, *Rising Sun* or "Setting Sun" information.

They spent millions of dollars in the last election and they did not buy one advertisement in the *Rising Sun*; that is the type of people they are, Sir. They present one thing in one way to you; they want you to do it in a certain way but they do it in another way. How many ads did they buy in the *Rising Sun* with the $2.5 million spent for advertisement? None, Sir.

Sen. Tota-Maharaj: Did we buy any in the balisier?

Sen. M. Shabazz: But they want you to take that type of information only.

We go further. This Bill about freedom of information, some people may say, "Yes, it is a good bill", and by itself it may be good but if we watch the pattern of what has been happening before, into the type of bills they intend to bring, this is just a small part of that whole network, that thing they are bringing that when you check up the pieces, you would have one big thing that you cannot handle. This is just a part of it.

Equal opportunity is near to us; a number of other bills that are in the pipeline that have not reached here, that would be coming to us that would be part of this whole thing that, when you look at it, the whole nation would be in a state.

Sen. Cuffy Dowlat: You are having water in the pipes.

Sen. M. Shabazz: I have heard all the promises they have made. The information they gave us is water in all taps by the year 2000; computer in every school by the end of this year. The budget is coming up; we will hear different kinds of information in the budget, so the information is only information geared to make them look good.

We go a little further because when we talk, as I have shown you, 39 pages. Hear how ridiculous these people are, Mr. President. Clause 30(1) states:

> "A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual)."

They did not say "libellous"; they did not say any word like that. "Unreasonable"; and "unreasonable" and "reasonable" will be determined by them and they have "Setting Sun" information. Unreasonable or reasonable. We know that this is not going to be genuine.

People talk about what is happening in the Savannah. Personally, whether they pitch the Savannah or they do not pitch the Savannah, does not matter to me, because what matters to me—well, I cannot say it does not really matter—is they are not pitching any road in Laventille, none whatsoever. As a matter of fact, I asked, and I can say this here now.

We have some underprivileged children in an area and I asked a minister to pave the road around where I live because we normally hold a sports meeting and we wanted to hold it by Independence Day. I was given the assurance three times that it will be paved by Independence Day. I woke up one morning and saw the Savannah being paved, three acres, and a road that is much less than that, cannot be paved and nothing has happened. But I understand; I am cool with that; we, on this side, we are cool with that, but we want to let them know that we are not going to be fooled by their hype and I would fondly like to keep on saying, by their "Setting Sun" information.

Why has this Bill come before us now? I feel two things, besides the promise, I feel they are trying to bring a bill that they will pass when they are nearly out of power in the next year and come with a witch hunt at us while we are sitting on that side. They are trying to find a way of saying, "Let us investigate and do this", and they are bringing all these bills in order to do that.

The regional corporation, Mr. President, you would remember in this very Senate when they brought the matter dealing with the regional corporation election here recently, the information did not come to this Senate until about a week or two before, and when we objected, they felt it was all right, that we should not have objected and that is the manner in which they like to do things.

How could we, on this side, believe that we will get proper information from them when the time comes? We do not believe that, and whether this is good—because I said it the last time—there are good people who do bad things and bad people who do good things. This might be a good thing but the source from which it is coming, we do not, on this side, see it as a good source.

3.00 p.m.

There are many things, Mr. President, that we need to be informed about. There is no way that information is coming. It does not matter how we look at it or how we ask, we are not getting that information. Then the Attorney General comes to the Senate and says: "Bad government needs secrecy to survive. Secrecy strives in public places." A whole lot of oratory skills and from their heart we know that their words and their actions are saying two different things.

In clause 24 we heard a lot with respect Cabinet documents. Clause 24(1) states:

"A document is an exempt document if it is—

(b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for

> consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;"

A number of other things like that. When we look at it maybe as somebody said, Cabinet documents really should not be exempted because that really should be in the public domain. We should know what is discussed in Cabinet and have access to it. There may be decisions that were taken. What they have done is they have written off all Cabinet documents. There are some things in there, they did not say: "some that may have a certain effect" nothing like that! They just put all and say: "What we talk about, you have no right to know about it. The only information that you will have about that is the ones that we give to you." We need to look at that, Mr. President.

Clause 31(4)(a) states:

"A document is an exempt document if—

(a) it contains—

(i) a trade secret of a public authority; or

(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature,"

We need to look at that again, Mr. President. There are private companies in this country too that have some bearing on what happens with the public and the people of this nation. We need to look at whether all private companies should be excluded, or if there could be some information. There should be some exemptions as far as information from private companies is concerned. [*Interruption*] Some of them. Notwithstanding, that is our view.

> "Notwithstanding any other provision of this Act, where a request is made for access to a document held by the International Communications Network…"

Again, we need to emphasize on that. That point was brought forward by Sen. Yuille-Williams. We need to emphasize again that something must be wrong there. As a matter of fact, there is a radio station network called NBN which for the first time I have heard—we call it "No Bad News". When they were bringing that station forward what they said was, it will only report good news. I have no objection to good news only, but I feel that the reason they are calling for good news only—on a government station, a people station—is because they have certain things that they, indeed, really want to keep from the public. They want to control information with their radio station, their behaviour towards calypsonians

and their behaviour towards the media and anybody who comes up against them, they try their best to find ways, and they are working in a subtle manner to do that as they go along.

There are a number of instances that we could talk about. We could talk about what has been happening at the National Flour Mills as far as information is concerned. A ridiculous statement: a minister came and released information to us when they made Brian Lara the captain of the West Indies Cricket Team. He said Brian Lara should not have been made the captain, but he came back with new information saying all right, he agreed with Brian Lara to be the captain, and we said alright. The same minister.

We are now seeing where culture—Best Village in this country is what brought the information to the people of this country about what is happening in culture, in our villages, with our dances, with our religion, with everything. They came here, they brought an Orisa Marriage Bill, which we supported—as though they were doing everything, while they stopping and cutting and making Best Village less than what it is every year. Not only that, the minister in charge who said that Brian Lara should not be the captain—and we forgive him—comes back and says: "Best Village is too repetitive and it is boring at times." He is the minister in charge. That is what he called in on a talk-in show, Mr. President. Because that source is a source of positive and good information for this country.

I heard a man say something, he said: "Sometimes they are so negative about culture that if you put them in a dark room they will develop." They are negative about culture. Negative about the culture that informs and keeps the people of this nation moving forward. With regard to this whole matter about ICN and broadcasting. We are of the feeling that they could include ICN. If they only want ICN where they control and they only want us to read the "setting sun", there is a reason behind that. Anybody could see that. We have made the point before—you do not wake up one morning and find that you have a dictator ruling you. It happens by a series, it is like a pipe dropping water on a spot and one day when you look, you see a big hole there, just from that constant dropping. What they are doing is drop by drop tapping on the minds of this nation. One day this nation—well I think at our last election the nation understands where they are going and the nation has switched the tap off.

They do not want us to bring information to tell you that when they lost that election only three ministers and 50 people were at their celebration. If the newspapers say that, they say the newspapers have gone against them; three ministers. In that way I applaud the Minister of Culture and Gender Affairs

because she was one of them. Where were all of them? When they won before there were approximately 30 ministers. Today, do you know what we are hearing? [*Interruption*] Oh God boo, boo! Today, we are seeing a different thing.

As a matter of fact, the Government seems to have relinquished control to its financiers and supporters. This incident at the Savannah is an incident—when a minister could tell you: "I only know what was happening when I look out of my window." Something is wrong in the nation! When a minister could tell you he did not know what was happening, all the finance pass for it. They do it without passing money. He has to pass the money and does not know. Just after, with no concert hall, they built a place for approximately $70 million in Chaguaramas and broke it down after, and the nation must not say anything. It is the same thing that they are saying. Do you know what they have done? They are now saying that they do not know how much money was spent and the person who did it, did it for free. They are now saying: "although it is a good thing when it is finished, after the parade Cabinet will decide what we are doing." They may well break it down again, as they did with the hangar.

With the hangar it was worse. "Fus dey doh like to give you information" Mr. President. It is the fastest that I have seen a company doing any work in this country dissolve. The Pageant Company dissolved in two days. Or was it less than that Ex-Minister of Information? Sorry, Mr. President. The Pageant Company dissolved in two days. These people who do not like to give us information bring a Bill called "Freedom of Information". This Bill should, indeed, be "Freedom from Information" with your 15 pages of exemptions.

I do not want to get the Attorney General vex. He got so annoyed the last time, Mr. President, I do not want to get him vex. I want him to be cool. But I want him to understand that the information that I am bringing to him, the reasoning—even though it may be opposing to what he is doing—is a reasoning that will make for a better Trinidad and Tobago. Be honest! Be truthful and understand what is happening. We are not supporting the Bill because we do not trust you. [*Interruption*]

Mr. Maharaj: I will persuade you to vote for it.

Sen. M. Shabazz: We are not! Be honest. Come to us in a very honest and positive way. Be transparent—all the words that you used before.

We asked for information on the Airports Authority and the whole nation kept coming down on them. They asked: "What is there to inquire in that matter? They bring points that should be looked into. They are still saying: "We have

nothing to enquire into." While they are saying that, the contract is increasing by millions of dollars, and they have nothing to inquire into. There is so much work at the airport to be done that is not being done, but one of the contractors finds time to pave the Savannah. Something is wrong!

3.10 p.m.

Mr. President, we made the point that when they bring accusations, they should bring the evidence. This Bill would now give them room to hide the evidence and the enquiries. They keep asking, "What is there to inquire about?" We tell them to investigate InnCogen; bring out the information and show the nation that they are doing something about that. I am certain the hon. Minister of Finance would agree with me.

They talked about the Hall of Justice, but there is scandal, Sir, in the library project. When they went about saying that they wanted to name a road after Kwame Ture, his mother said that she wanted a library named after him; so why do they not name the library after him? That was a request. The library today is a scandal; it is one of the biggest projects, and for some reason because it is in Port of Spain they are not finishing it, they are not doing anything about it. Then they will come in the budget again and say that the library would be finished by September. Anyway, I should not go into that because it is on record in this House, that my hon. Prime Minister said that he makes promises and can only keep them if all goes well, which is logical. Well, I am asking him, for this budget, not to make all those promises, because people take them as positive information. When he said that the Government would give $1,000 to all pensioners, people took that as serious information. When the Minister of Finance—[*Interruption*]

Sen. Kuei Tung: Mr. President, do you remember—I think it was in 1964—when Dr. Williams promised a Curtis Matis television set in every single house? Where is it now?

Sen. M. Shabazz: You used that point already, but when I am doing my meditation tonight in my spiritual travels, I will ask Dr. Williams and bring the message back to you. [*Laughter*]

The mistake that this Government makes is that everything Eric Williams and the PNM did, whether it was wrong or right, they follow it and say, "Well, allyuh did it so let us go this way." A new dispensation—[*Interruption*] I am not giving you any room this time, Mr. Minister; let me finish this point, please. They made serious promises. They came here and a lot of the information they gave us, right

up from their campaigning to here—crime is crime—must be bad information. They said a computer for every school by the end of this year, that was information given to this nation. When the Minister comes back to read the budget, he will say, "I said a computer for every other school, but they left out "other".

Concerning the school bus situation in Trinidad, the association has asked us, "What is the position with the school buses?" The hon. Minister of Works and Transport had people coming to him; he held discussions with people about buses to the schools. The information he gave to them is that they will have everything legalized by the end of this new school term. Nothing was done about it! The people have come back, after having paid their $100, to the same situation they were in before. The hon. Minister has done nothing about it. Now PTSC is giving out public service licences, and these people could well be in jeopardy. I ask the Minister to look into that.

Mr. President, all the information the other side keeps giving, they may not get it 100 per cent correct, but right now this Government, I can assure you, is only getting out their information about 22 per cent correct. It really is 22.3 per cent correct.

The point I am making and I will continue to make, is that the reason we cannot take as sacred the question of information as it should be, is because, in truth and in fact, we do not have confidence in what they are saying. Not only that, but they seem to put forward their position in such a way as though they are correct, and when they find out that they are not, they do not come back to the Parliament and say that they made a mistake. They always try to make us believe that anyone who takes a position against them is opposing them.

We ask them to bring their information Bill. As we have said, we are not going to support it because we feel that it was not brought in the manner it should have been. Many of the exemptions and other clauses in the Bill need to be looked at. They need to look at the Bill again.

With what is happening in Tobago, what is the position there? What is this Government's real relationship with Tobago? We are trying to get information on that because they keep saying a different thing to us. For people who came in and whose intent was to forge a better Trinidad and Tobago, they have done nothing about Trinidad, but practically, absolutely nothing about Tobago. As a matter of fact, Tobago has been divided more than ever. When I look at the two Senators on that side—although they are my friends—I know that they are in a hard position,

because the Chief Secretary is saying they support you all. I would like the Minister to bring proper information in his budget about Tobago. Let us hear his plan for the future.

I said something in the Senate the other day, it was very pure, and they fought it in a way that up to now I do not understand why. We said in this Senate that there are people who are bringing Bills to the House dealing with religion, to make it better. When we asked for an enquiry into the National Petroleum Marketing Company, we wanted information. I will never stop talking about that in this Senate, as long as I get the opportunity to do so. Mr. President, do you know what was their answer, when we asked for an enquiry? They inquired but when they found what seemed to be wrongdoing, they said that they were not going to do anything! Nowhere did there seem to be a bigger cover-up that at NP. When we kept pushing for the information, they said it was because the man's name was Soodhoo, "I bet yuh if he was Voodoo, yuh would not say dat." These are people who respect religion!

Somebody asked me about National Flour Mills, more problems! The worst set of information we have gotten is on the problem with National Flour Mills. And you cannot come up against the Government, because you can be pushed and shut down, so do not come up against them. National Flour Mills is an issue.

The Government no longer seems to be run from the Cabinet, maybe that is why they do not want Cabinet Notes coming out. It is their friends and financiers who are running the Government. It is ridiculous to see a public servant doing his thing and nobody knows about it; not even a public servant, but a member of a board. He does not care really. He said, "I putting my job on the line, do what allyuh want, me ent care!" Somebody talked about body language, "Allyuh cyar touch me because my friends and dem keeping this party going, and anything allyuh do, allyuh go be in trouble."

Mr. President, with those few words I would like to finish by saying that we have no confidence in this Government. We do not feel that they are serious about getting true and proper information to us. We believe that the only information they want to give us is information that would be beneficial to them. We have seen it happen all about: in the calypso world, the cultural world and the business world; as long as you stand up against them, they will come up against you.

The people are looking and will deal with it. I am asking the Government that from now on it should bring the type of information that can re-instill the type of

confidence the people have always had with the people that controlled them. In that light, Mr. President, I say thank you.

Sen. Prof. Kenneth Ramchand: Mr. President, I am glad to have an opportunity to speak on what is clearly a very important development in our civic and political life. This Bill is important and necessary. It is a major document in the education of the citizen with respect to his rights and responsibilities, and it has potential to prevent corruption, abuse of authority and other forms of human imperfections among those in official positions.

I have one or two reservations about whether the potential in this Bill can be fulfilled, given certain clauses, and I will come to that later, but I want to begin on the very positive note that this is an important and necessary Bill. I congratulate the Government on what we must all consider a significant beginning.

I would like to see the provisions of this Bill extended to private enterprise, to institutions like the University of the West Indies and companies in which the Government has a share, whether it is a minority share or not. In other words, every institution which has some sort of control, impact or influence on the life of the individual and which gathers information about that individual which it uses in relation to that individual. Every institution of that nature should be subject to something like the Freedom of Information (No. 2) Bill. I see this Bill as a beginning then, and I hope that whether formally or informally, the practices that we try to cultivate through this Bill can be extended to other institutions and other areas of national life.

I have comments on four main areas. These are: the difficulty of accessing information; secondly, some general questions on exempt documents; thirdly, a comment or two on the definition of "public authority"; and finally some discussion on the extent and nature of the information that is actually being made available.

One hostile way of looking at the Bill is to read down the list of exemptions and say that all the things we really want to know about are subject to exemptions. Therefore, although it is called a Freedom of Information Bill, it has a long way to go when it comes to releasing the information. I do not want to knock the Bill; and I am not going to vote against it, because I feel this is a good beginning that we can work on and tune up to serve the purpose that is clearly in the mind of the Government.

Mr. President, on the question of accessing information, I know that there had been a suggestion sometime in the past, that anybody seeking information should

go to one authority and ask for that information. I can see that might not be the way to do it, but we have a problem: the ordinary citizen who is seeking information is not a researcher like Sen. Mark used to be. [*Laughter*] He does not have contacts, access and so forth; he needs to be helped. So if I want information about item "X", and I think it has only to do with agriculture or education, there should be a body to whom I can go and say, "Listen, I am trying to find out "X", I think the Ministry of Agriculture, Land and Marine Resources has this information; can you tell me if it is only the Ministry that has it; can you tell me what are all the places where I can get that information?" There ought to be a body which can say to him, "The Ministry of Agriculture, Land and Marine Resources has some, the Ministry of Consumer Affairs has some, the Ministry of Planning has some, and the Ministry of Housing and Settlement or whatever has some; here are the forms, apply to all of them and gather in your information."

The ordinary citizen needs help in gathering that information and there ought to be some agency to which he can go, not to make the application for the help, but to be advised as to the sources of information.

Unless we do something like that, the ordinary citizen is going to have to come to my private consultancy firm, or somebody else's private consultancy firm and say "Well, you have the Freedom of Information Act there, you do not know how to read that, I am like a lawyer, I will confuse you and I will then help you out, you just pay me."

3.25 p.m.

So, Mr. President, I would like to suggest to the Attorney General, that it might be worth considering establishing some clearing house or central authority that would have the information to pass on to the people who are seeking information and help them to use the appropriate application forms.

With respect to accessing of information, I thought I had a small problem in relation to clause 36 but in discussion with one of my colleagues I realized that it is a great problem. Clause 36(1) says:

> "Where a document…contains personal information of an individual and that individual alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that individual, correct the information."

If an authority has information about me, or a dossier about me, is building up a file about me, how do I know that such a file exists? I would like there to be

some kind of obligation on people who are keeping a file on me to tell me that they are keeping a file on me, the records exist. There is no way that I can correct inaccurate information that is on my file if I do not know that I have a file. So that was the problem as I saw it at first.

Mr. President, when one looks at clause 38, one sees that there is a complication that may arise. If someone writes to an authority that has a file on me, supplying information to that authority about me; if they say that the Senator has confiscated lands at such and such a place, or he has stolen such and such and that is on file about me; if somebody writes in that information about me and it gets on the record, and then somebody else whom he has advised—I have put in a document about Prof. Ramchand, write and ask for it and then we can publish it—I am suggesting that there can be a set up. If a file exists in the possession of an authority against me, it is very possible that an individual can be set up by someone writing in and getting the information, then publishing it and then nobody can be charged for defamation or libel. Mr. President, I do not know how we can solve this but I think the whole question about personal information needs to be looked at carefully to prevent citizens from being abused and defamed in this way.

On the question of the difficulty of accessing information, there are so many grounds for refusal that look like subjective or arbitrary grounds. It is so easy for an authority to say, it is too much trouble; or, to charge you a fee that would make you feel you cannot afford it. I feel that something has to be done to make the information more readily available and restrict the discretion that the authority has to refuse or put it off. Some of that discretion has to be removed. It ought to be a lot more compulsory, and we have to specify that you only pay a nominal fee. I do not see that this can be an economic undertaking. If a citizen goes for information then there should be a fixed small fee which he pays and he gets the information. I do not think that the authorities should be able to allege that is not a priority; that would take up too much of our time, or we have people doing many things and you would have to wait until next year or this will cost you a lot. I think that if this Bill is to work, the information has to be accessible and I would like to see steps taken to make accessibility easier than seems to exist at the moment.

One of the provisions is that every authority should publish information about its structure, its organization, its ground rules, its guides to its officers, the way in which it interacts with the public, *et cetera*. I do not know whether that provision is going to clash with the necessity that many of these institutions have to publish an annual report. We already know that these annual reports come in five, six and

seven years late, and they are quite brief. If the authority has to publish information about itself saying how it relates to the public what are the guidelines and what are its ground rules, and if this information is to be provided for the benefit and safety of the citizen, I welcome it, but do we have the manpower or the infrastructure to fulfil it? Can we work out what is the relationship between this new set of information that the institution has to publish and the annual reports?

Would it be possible for every institution that there be a default document which offers the basic information about the institution? Mr. President, that default document may be updated from time to time. Could we then ask the institutions to deliver their annual reports in time and incorporate the kind of information that they are enjoined to provide by this Bill. I am welcoming the possibility of getting the information, but I do not know if we have the mechanism to deliver it. I would like to see some specific rationalization about how it is going to be done.

On the second issue, Mr. President, the general questions that I have about exempt documents—I wonder whether the Minister, in his winding up, can tell us whether there are any bodies or persons in the society who would be entitled to have exempt documents or information, and in what circumstances that entitlement would exist. I have a question about the time limit on exempt documents. The Bill seems to suggest that Cabinet documents would cease to be exempt after 10 years. Like Sen. Daly, I feel that 10 years is too long. In my notes I said I would like five. I also want to ask whether all other documents are subject to a time limit. The time limit is given in the part of the Bill that deals with Cabinet documents, so I want to know if there is a time limit with respect to other documents, as well.

I hope the Attorney General can tell us whether an incoming government has access to the Cabinet Minutes and Cabinet Notes of the immediately preceding government and whether that would be a breach of this Bill. Is there an exemption which says that the new Government has access to all the exempt documents of the previous regime?

3.35 p.m.

Mr. President, Sen. Daly has picked up another point about which I wanted to speak and that is the use of the phrase, “contrary to the public interest”. It is used in clauses 26 and 27. The Attorney General said earlier on that many countries try to specify very precisely the kind of information and the conditions under which

there would be restriction of information. I think it is good to specify what is going to be restricted. So clause 26 purports to give a list.

"A document is an exempt document if disclosure under this Act...

(a) would prejudice relations...

(b) would prejudice relations...

(c) would divulge...

(d) would divulge..."

It seems to me that is a good and clear list. I do not know why, having given the list, you still say that a document:

"…is an exempt document if disclosure under the Act would be contrary to the public interest..."

This is a blanket ambiguity which is being introduced to allow the authorities to say, "Well, it is true, it is neither (a), (b), (c) nor (d) but we are still not giving it to you because it is contrary to the public interest". In 27(1) it is sneaked in at (b):

"Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—

(a) would..."

do so, so, so, so, so and then you sneak in a little "and":

"(b) would be contrary to the public interest."

So, Mr. President, I do not like the opening that has been made there for arbitrariness and I hope the Attorney General could either explain it—I do not want him to explain it away—or remove it.

On the definition of "public authority", the section dealing with service commissions, 4(i) says:

"a Service Commission established under the Constitution or other written law; or…"

In view of legislation to come and debates to take place involving the service commissions, is it possible that the Freedom of Information Act can allow the Government to achieve what it wants, in relation to the service commissions, via the proposed Bill to amend the Constitution of Trinidad and Tobago? For instance, if it is required under the Freedom of Information Act that a service

commission has to make available descriptions of its organizations and its workings, make available all files on its personnel, all its decisions about whether to promote, demote or sideline, all information about their operations that anyone could reasonably require, would that not obviate the necessity for the Bill that we are supposed to discuss next week concerning constitutional changes?

Mr. President, there is another matter which I had brought up with the Attorney General and I feel I should—he has said that he will address it and there might be some sort of typing oversight.—the original clause 5, which deals with non-application of the Act, says that:

"This Act does not apply to-

(a) the President;

(b) a commission of inquiry...

(c) such public authority..."

et cetera, and then:

"For the purposes of this Act-"

It does not apply:

"in relation to its or his judicial functions, a court or the holder of a judicial office or other office...shall not be regarded as a public authority;"

And, (b):

"in relation to those matters which relate to the judicial functions of the court..."

et cetera, et cetera:

"shall not be regarded as part of a public authority."

So originally the legislation is saying virtually that the judiciary is exempt, as it were, that the judiciary cannot be brought under the Freedom of Information Act. However, the amendment circulated now says they are; in addition there has been an omission of clause 5(2)(a)—[*Interruption*]

Mr. Maharaj: Mr. President, for the record, may I? I indicated to the hon. Senator that that seems to be a typographical error or something because I have the copy that I used in the other place and it has the (a) and the (b).

Sen. Prof. K. Ramchand: I am not trying to embarrass the Attorney General, Mr. President, I am just trying to make sure the question is raised. I thought he was going to answer it in winding up and I did not want him to forget.

Finally, Mr. President, I want to come to the most contentious part of it and that is, what information would be actually available, what would be exempted and to what extent the exemptions would constitute a denial of the most crucial information that a citizen or members of the information media would want. To what extent do the exemptions constitute a denial of the ostensible purpose of the Bill? Like everybody else, I want to focus on the exemptions with respect to the Cabinet.

People consider this a joke sometimes, but it is a serious point, that democracy has become very undemocratic in the sense that every five years I vote, a party gets into power, there is a parliamentary group, the party, 80 per cent of whom have to shut their mouths or do what the Cabinet tells them to do and say, and then there is a Cabinet which is utterly at the mercy of the Prime Minister because the Prime Minister could shuffle the Cabinet whenever he wants. So this democratic thing about one man one vote can, in some regimes, end up as a democratic dictatorship by one person.

I am not referring to this particular Government, but that is in-built in the system that we have inherited. The Westminster model allows for dictatorship by the Prime Minister who controls the Cabinet that controls the parliamentary party. Therefore, the part of the Government we need to be able to scrutinize is the Cabinet because it is what the—[*Interruption*] Beg your pardon? Yes. So, Mr. President, I would like, for instance, to know how discussions in Cabinet go. What is the give and take?

I want to know how Cabinet arrives at its decisions on matters before it. If a Minister puts up a note to Cabinet recommending "X" and the Cabinet recommends "Z", I want to know if the Minister defended his note. I want to know if his colleagues showed him on technical grounds that his note was unsatisfactory. I would like to know what is the actual process that goes on inside. [*Interruption*]

Mr. Maharaj: Mr. President, I wonder if maybe the hon. Senator may want to be a member of Cabinet so he could know how it operates. [*Laughter*]

Sen. Prof. K. Ramchand: Well, I understand that is a slander or excuse that has been used in relation to some members of the Textbook Committee.

So, Mr. President, I really want to know how these discussions go in the Cabinet, whether there is a democratic process and whether decisions taken are the combined will of the Cabinet. I want to know at Cabinet meetings how they decide what international conferences the Government would send delegates to, who they are sending, why they are sending that person and what they hope to gain. When there are negotiations with foreign investors, I want to know who pushed for what. I feel that what is going on in Cabinet, that is the heart of the nation's business.

So when the Freedom of Information Act tells me “exempt”, “exempt”, “exempt”, I feel I am deprived. I give in my little vote if there is an NJAC candidate, otherwise I do not vote, and then for the next five years I do not know what is going on because the proceedings of Cabinet are confidential. The proceedings of Cabinet are secret and, as the Attorney General said, there are many instances where confidentiality and secrecy are really euphemisms for conspiracy and collusion against individuals and against the people. So the question of finding out what goes on in Cabinet and having access to that information is very crucial.

Now, it is not entirely hopeless. As Sen. Daly has said, clause 35 offers a little window. I would not even call it a window, it is a crack, but you could peep through that. However, when looked at closely, Mr. President, it does not offer as much comfort as one would like it to offer. There are certain illogicalities.

> “…a public authority shall give access to an exempt document where there is reasonable evidence...”

Now, there are lawyers in Cabinet. If I go to them and say, “I have reasonable evidence”, they might say evidence is justiciable evidence. You are coming with a presumption and a suspicion; and if you have the evidence already, they can say, “What do you want the evidence for?” So you can tell me if I know that I do not need the evidence; and if I do not have the evidence, I am not allowed to ask! The regulation should provide me with the document on the basis of reasonable presumption or reasonable supposition. It cannot ask for reasonable evidence. If I had reasonable evidence I would not need the document!

Further, Mr. President, who decides that it is “reasonable”? I may feel it is perfectly reasonable that a little boy doing maths in Cedros will understand better if you talk about coconuts instead of cocoa beans. I might think so and I may feel that is reasonable but other people may say that is not reasonable. So we have two words here that would allow whoever is making the decision to decide against

what you are asking. If the person making the decision is the very Cabinet whose behaviour or operation you want to investigate, you have lost your case.

So, Mr. President, clause 35 is a very important one and I agree with Sen. Daly that we have to find a way to prevent themselves from protecting themselves through the use of phrases like "reasonable evidence". The first thing I would suggest is that we change "reasonable evidence". That has to be removed and there may be other things to be done to make clause 35 truly liberal.

3.50 p.m.

So, Mr. President, I am not being negative. I do think that an effective Freedom of Information Bill would be an education to our citizens in their rights and responsibilities. I think a good Freedom of Information Bill will help to reduce corruption and malpractice in government from the lowest official right up to the members of the Cabinet and therefore, I give my support to it, but I do have reservations in those four areas that I have indicated.

Thank you.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I rise to make a contribution on this very important piece of legislation which represents a milestone in our struggle for greater democracy, more openness and transparency, greater accountability and, of course, most importantly, people's participation, which are the fundamental principles of the democratic process. This Freedom of Information (No. 2) Bill that we have before us is about seeking to deepen these fundamental principles that govern our democratic process.

Mr. President, I begin by quoting from one of the constitutional fathers of the United States, James Madison, who said:

> "A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors must arm themselves with the power knowledge gives."

Mr. President, we have always known that information is knowledge, and knowledge represents power. This Government is attempting, through this piece of legislation, to provide our people, the nation, with greater access to government documents so that they can access information. Almost every piece of information or every Freedom of Information Act that I have looked at, I have seen some

consistency with what we now have before us, including all those exemptions that we have put into this particular piece of legislation.

Mr. President, information is about empowerment as well. It is clear that there can be no true democracy if there is no freedom of information. It was during the 1995 General Elections that we in the United National Congress informed the citizens of this land of our intentions, should we be given the opportunity to govern this blessed country of ours. In our manifesto of 1995, we stated quite clearly the recognition and importance of freedom of information. In fact, on page 23 of that manifesto, the United National Congress promised, and I quote:

> "Freedom of Information legislation would also be enacted by a UNC Government so that government-held information, subject to certain exceptions, would be accessible to members of the public."

That is a manifesto pledge of the United National Congress.

Today represents our fulfilment of that pledge to the citizenry of our beloved Republic. By bringing this very important piece of legislation to Parliament, it signals our commitment as a Government, as I said, to fulfilling that promise to the people.

How unlike, for instance, the previous administration that was there between late 1991—1995, whose manifesto during that period—if one would recall—promised competent administration and when they were in office they spoke about accountability at all levels, as manifested in their document. But, the Opposition PNM failed to live up to that promise during their term of office. They spoke about accountability, they spoke about openness, but during their tenure of office, not once did they bring legislation to the Parliament to deal with freedom of information.

It was the current Attorney General, Ramesh Lawrence Maharaj who, in 1993 and 1994, brought a Private Member's Motion on a Bill for Freedom of Information. The PNM did not support it when it was brought in 1993. Why? The PNM Opposition at this time and even when they were in government are not interested in freedom of information legislation. They did nothing to address the public outcry of the people.

I tell you, Mr. President, I recall in 1994 an editorial in the *Trinidad Guardian* entitled "Information, please", dated Friday, May 13, 1994. I want to quote this particular editorial for the benefit of my colleagues here. It reads:

> "Today we renew our call for a Freedom of Information Act which should be an integral part of our democratic system. It is our view that if the Press is to

> fulfil its role as an independent arbiter in national affairs, if it is to keep the citizenry fully informed about the disposal of the natural resources that belong to them, then the Press must have unhindered access to information, subject, of course, to national security considerations."

It goes on:

> "We remember also the difficulties encountered in attempting to obtain information on the lease of the ISCOTT plant to Caribbean Ispat, negotiated under the previous Government. We now know that the lease was not only inordinately generous to the Indian company—some say it was a virtual giveaway—but made no provision to secure the long term interests of local downstream industries."

Sen. Prof. Spence: *[Inaudible]*

Sen. The Hon. W. Mark: Mr. President, I am trying to deal with the struggle in this country over the years for freedom of information. Whilst it will not affect the commercial aspect, we are talking about the principle that is now before us. *[Interruption]* Mr. President, can I please continue?

As I said, this is a quotation from the *Trinidad Guardian*. It went on to say:

> "Now we have signed and sealed contracts for a number of major projects such as the Liquefied Natural Gas plant, NUCOR's Iron Carbide plant and Enron's 95 per cent stake in three SECC gas fields, the Kiskadee, Ibis and Oilbird. On the face of it, of course, the country must welcome such large investments in the development of its gas resources, but the details of these contracts are generally unknown and it still remains largely unclear to what extent the people will benefit."

Mr. President, what I am saying is that this is a very important debate and the *Trinidad Guardian* ended up by saying that the only way we can really deal with this issue of information and access to information is to have a freedom of information Act now. That was in 1994.

Today, we in the Government have brought to Parliament a Freedom of Information Bill. It is not a perfect Bill. This is a young democracy. On Tuesday, August 31, 1999, we will be merely 37 years as a nation.

Mr. President, this is why I question the response we had a short while ago from the Opposition Bench on this particular matter where, for instance, the information which we are trying to bring, which we described as the oxygen of

democracy, Sen. Yuille-Williams described it as carbon dioxide, as a farce, as a cover-up.

Mr. President, I want to tell you, what we are experiencing here—we have a short memory. I recall as a youth going to Progressive Educational Institute—I am from the West—and, from 1970 to when I left school in 1972, I had to exist under almost two years of a state of emergency. I had to leave my home at certain hours and come back at a certain time.

So, when people talk about freedom, and we are talking about freedom of information here, I will point out to this honourable Senate, the utmost hypocrisy of the PNM when it comes to the whole question of freedom of information.

I want to remind this honourable Senate, if they are not aware, that since the People's National Movement came to power in 1956, 29 licences for radio, television and cable were granted in this country. Between 1956—1991, the PNM granted merely two licences: one to TTT and the next one to a radio station. They nationalized both. They took over both stations, so they hogged information, they fashioned and shaped information to perpetuate their existence; that is why they remained in power for 33 years. Since then, they never granted a licence—they could correct me if I am wrong—to a radio or television station, or a cable company.

4.05 p.m.

Mr. President, they are talking about freedom of information saying that they are the "gurus", virtually of defending our democracy, and promoting freedom *et cetera* when they "lock down" this country for almost two years under a state of emergency. From 1970, emergency after April, four months, one-month extension and another four months. In 1971, state of emergency again from November right until February of 1972. People had no rights in our country.

[MR. VICE-PRESIDENT *in the Chair*]

Mr. Vice-President, this Government, in a short space of four years, has really demonstrated its commitment to extending and widening the democratic process, in an effort to ensure that citizens have greater access, appreciation and involvement in the democratic process. So when one talks about the "masters of propaganda", they are there. They went up on the Red House in the midnight hour, with bell in hand like Baptist to remove a dragon that was the weathervane. They said the dragon was causing turmoil in Trinidad and Tobago.

For instance, when one understands how they operate, you will understand why they are against a Freedom of Information Bill or a Freedom of Information Act. They believe in all kinds of "simidimi" *[Laughter]*. That is why they are not interested in this matter—"simidimi". Imagine the former Minster of Works and Transport, Mr. Colm Imbert, went up on that roof with some people. Could you imagine that? *[Interruption]*.

Sen. Prof. Spence: Pitch in the Savannah over a weekend. *[Laughter][Interruption]*

Sen. The Hon. W. Mark: We do not believe in "semidimi" *[Laughter]*. Mr. Vice- President, the simple point I am making, Sir, is that we are talking about the "masters of propaganda". Just as how they are trying right now to destroy our Prime Minister and the country's Prime Minister, it is the same way they destroyed a former clever and decent Prime Minister, back in the period 1986 to 1991—that same PNM. They are masters of trickery, misconception, deception, misinformation and gossip.

Mr. Vice-President, I campaigned in the west of the country, and you know what I discovered during my campaign? I discovered that these people had cottage meetings and issued circulars and pamphlets—they did not put their name on them—but the most racist and vicious propaganda they unleashed on the population.

Sen. Montano: Mr. Vice-President, on a point of order, these people have done nothing of the kind and it is highly improper to suggest that we in this Senate have said or done anything that is racist or anything of that sort. The Member must withdraw that statement.

Mr. Vice-President: I have no objections and I would allow the Minister to continue. *[Laughter]*

Sen. The Hon. W. Mark: Mr. Vice-President, what we are dealing here with is transparency and openness and we are seeking to deepen the democratic process. That is what we are about here. I am only saying these things in terms of understanding why the Opposition is against the Freedom of Information Bill. Why? When for instance, people would have access to information, even though there are some exemptions that they consider being okay, the Opposition said that there are too many exceptions. Show me any legislation in the world where there is a Freedom of Information Act in existence; any country where, for instance, what we have here is inconsistent.

In fact, in many respects, it might be even more advanced and progressive than many of the developing countries today. We are the first country in the Caribbean that is bringing to its Parliament freedom of information legislation. Many other countries have been talking about it, such as Jamaica, but they have not brought it as yet into their Parliament. Mr. Vice-President, we have brought it here. So that is why when one listens to the Opposition in particular, when they say this Government is a dictator—We have here all kinds of scurrilous remarks, coming from Sen. Muhummad Shabazz, who just rises and speaks without any research and so on—*[Laughter]* just vacuous statements he makes here and rambles about the place, and cannot come to grips with reality. *[Laughter]*

Mr. Vice-President, I am saying those who forget the mistakes of the past are condemned to repeat them. *[Desk thumping]* We must never forget as a nation that it was the People's National Movement who declared a state of emergency to lock up CLR James—Freedom! We are talking about freedom here and we must never forget in dealing with workers' struggle in this country, back in the 1970s and so on, this same PNM was talking about freedom of information. They were against the Freedom of Information Act. They are against anything to advance this country.

The People's National Movement imprisoned people like George Weekes—may God have mercy on his soul—put him in prison on Nelson Island for months. Our own Prime Minister was jailed by the PNM; they jailed even the President of the Republic. They declared a state of emergency around a lady's house in St. Clair. You did that! And you come here behaving like some Pontius Pilot, innocent child.

Mr. Vice-President, the PNM, as I said, they forget easily, but we have to remind Trinidad and Tobago, at all times, because they feel that they have a little opening and somehow they are going to be back in power, but we have to remind the population at all times. Even Stokely Carmichael, the late Kwame Ture, never committed any crime against this country but was banned by the PNM *[Desk thumping]* and the first government that allowed him in was the NAR and then we gave him VIP treatment back in 1996.

Mr. Vice-President, I am saying that it is very difficult for us on this side to understand and appreciate why they are against this Freedom of Information Bill, which is seeking to open the channel of information, through documentation to the citizenry of this country. Why are they against it? Why are they saying that it is oppressive, it is suppressive? Why? Do they believe that if we open up the information channel the Government and the people are going to unearth things?

[Interruption] I do not know if it is dirt or pitch. I do not know. Sen. Daly, it could be all kinds of matters.

4.15 p.m.

Mr. Vice-President, any administration that is quick to call states of emergencies to suppress the very democratic rights of people would surely not seek to support measures like these. They operate in an aura of dictatorship and autocracy, that is their frame of reference and that is all they seek to measure and judge others by.

We have always said freedom is never absolute. We do not have absolute freedom and, therefore, we have to be accountable at all times to the people, but good governance is about accountability. We want to say to the PNM, gone are the days of suppressive rule. We want to assure the PNM that despite what the Opposition would like us to believe, the evidence clearly shows that the PNM are the ones who have presided over suppression and secrecy and oppression in this country. This Bill, as I said, is a very important piece of legislation and I think that we have to go through it very carefully so we could understand it.

Mr. Vice-President, if we look at some of the important things, we might disagree on many areas, but if we agree that information is a basic and fundamental right of the people and, therefore, the concept of freedom of information, or the right to know, is enshrined, as the Attorney General said earlier, in certain universal declarations or covenants or documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Charter of Civil Liberty for the Caribbean Community— These things are inherent in them and if we say, for instance, that is a concept to which we are committed and which would strengthen our democracy and human rights, why is the PNM opposed to freedom of information? Why is the PNM opposed to democracy and deepening the process? Why is the PNM opposed to fundamental values which we are seeking to develop in this particular matter before us?

Mr. Vice-President, countries throughout the world have freedom of information legislation. Countries like Fiji, India, Sweden, and the Republic of South Africa have enshrined in their Constitution, the right of information. Countries like Australia, Canada, and the United States of America have also enacted legislation to give effect to that right. We are way behind. The PNM was in power for almost 33 years and did nothing to bring freedom of information to this Parliament. A young, dynamic, committed, almost visionary Government is

seeking to make up time that the PNM had, and within five years we are trying to bring equal opportunity legislation, accountability.

Mr. Vice-President, as far as we are concerned, the right to information forms the basis to almost all basic human rights and we know that the right to information also strengthens the principles upon which democratic government is based: namely openness as I said, accountability, transparency and public participation. These are very critical principles in the process of democratic development and, therefore, democracy and the right to information go hand in hand and that is why we must not accept this right as an integral right of a democratic government or a democratic process.

There are enormous benefits for any nation in which there is transparency and accountability in the governance of that nation and it is my view that it would instil greater confidence in the international community insofar as our nation is concerned. It would seek to promote greater integrity in public life and as Sen. Prof. Ramchand said, it would also serve to discourage corruption, foster economy, efficiency and effectiveness in our democratic development. This is what for instance, this Bill is about. It is about attracting greater foreign investment. The principles of governance and those subsets: transparency, accountability and public participation are the buzz words of today's reality, the global thrust towards integration, breaking down of frontiers and barriers. Countries are demanding greater accountability, more openness, transparency, and more people's participation. What this Bill will do and at least lay the basis in doing, is not only attract foreign investment, but also generate employment opportunities and greater prosperity for our nation.

I do not support the argument that this is a "secret order" and that this is about freedom from information, not freedom of information. I do not support that. I think that is a lack of understanding and appreciation of this very important piece of legislation. The PNM and the UNC are in warfare but there are times when the national interest, the public good, the public interest must be addressed and Mr. Vice-President, this is one in which we are seeking to invite the Opposition to join forces with us on this side in an effort to promote the national good and the public interest in terms of advancing the national welfare.

In May 1998, there was a Commonwealth Law Ministers Conference in which there was a proposal for a commonwealth-wide process of consultation to share model legislation and experiences in order to develop common standards of law and practice relating to citizens' right to know.

There was an expert group meeting on the right to know which met on March 30 and 31 this year and this marked the beginning of an effort to assist Commonwealth countries which are committed to ensuring freedom of information with good practice guidelines and recommendations regarding relevant legislation, and methods of implementation based on experience both within and outside the Commonwealth.

Mr. Vice-President, the principal aim of this expert group was to examine and endorse the Draft Good Practice Guidelines and Recommendations on the Right to Know for the consideration of law ministers which, as you know, was held in Trinidad and Tobago sometime around 3—7 May, 1999. It is quite historic that at that meeting which was held in our country, the ministers formulated a number of principles which I would like to share with this honourable Senate.

They said member countries should be encouraged to regard freedom of information as a legal and enforceable right. That came out of that very important conference which was held here. They also said there should be a presumption in favour of disclosure and governments should promote a culture of openness which was also agreed upon, and that is what we are trying to do—develop a culture of openness, less secrecy than you had, Sen. Shabazz, when you were there.

They also advanced that the right of access to information may be subjected to limited exemptions, but these should be narrowly drawn. That was a principle that they advanced. Another principle they advanced is that government should maintain and preserve records.

In principle, decisions to refuse access to records and information should be subject to independent review and that is why we said in clause 35 of this legislation that:

"…a public authority shall give access to an exempt document…"

Even a Cabinet Note—

"…where there is reasonable evidence that significant—

(a) abuse of authority or neglect in the performance of official duty;

(b) injustice to an individual;

(c) danger to the health or safety of an individual or of the public; or

(d) unauthorised use of public funds,"

These are matters—even though with all the exemptions as Sen. Daly said he wanted clarification—which the Attorney General will probably provide, but one has access to information even when one is refused. Why would you be against that?

The same Cabinet Note you want to have, you are getting an opportunity to do so. You do not have to flush down anything from here again in the future. I can get them. I can come, or go to an authority and make a case and say, "It is an abuse…"

Sen. Daly: Mr. Vice-President, although the invitation is apparently extended to Sen. Shabazz, could I kind of storm and ask him if he would go to the NCC and get the contract with the paving for us?

Sen. The Hon. W. Mark: When the Bill is passed we would have an opportunity to really test it in the arena of reality. *[Desk thumping]* That is how I would respond to that, Mr. Vice-President.

There is a worldwide trend that governments all over the globe are seeing the importance and relevance of legislation relating and pertaining to freedom of information and how this legislation would, in fact, contribute to the overall development of a society. That to my mind is the bottom line. We are trying to develop our society, we are trying to deepen the democratic process. I keep saying a democracy is not constructed or developed on the basis of "ole talk, robber talk, or comess" It is developed on the basis of institutions. We are trying to build institutions in order to strengthen our democratic fabric, the fabric of our democracy. Freedom of information contributes to the development of any society.

If there is Freedom of Information legislation in every single country of the world, humanity would be able to flourish better in the whole development process. People want the right. This Freedom of Information Bill will facilitate public participation in public affairs by providing access to relevant information to the ordinary grassroots that the Senator purportedly claims to represent. We need to empower people, not through PNM "ole" talk or 10-days. We need to empower people and, therefore, people who are empowered, are able to make informed choices and better exercise their rights. Information is knowledge, and knowledge is power. This is what we are about.

Freedom of information will also enhance the accountability of the Government. Every day the PNM and their agents accuse this Government of all kinds of nefarious activities. When we bring legislation to ensure we have greater

accountability, they vote against it. We bring something here to deal with freedom of information and to discourage corruption, to have greater scrutiny of public affairs, greater participation on the part of the people, and they oppose that.

4.30 p.m.

You bring integrity legislation, they are opposed to that, too. You are bringing a bill to deal with the Constitution to have parliamentary committees so that people could be accountable—ministers, directors of state enterprises, chairmen, whoever; they are opposed to that. The PNM is bluffing. They are not serious about development in Trinidad and Tobago.

Mr. Vice-President, I tell you that this legislation is going to enhance accountability of the Government; it will also improve decision-making; it will provide better information to elected representatives; it will enhance Government's credibility, at the same time, with its citizens and it will also provide a powerful aid in the fight against corruption; it also becomes a key issue in the situation of poverty and powerlessness. That is what, for instance, this thing is about.

We cannot see this Freedom of Information Bill in narrow, parochial terms. We cannot see it in that way. It is about people; it is about participation; and there is no doubt in our minds here of the need for this legislation in light of the enormous benefits that can be reaped from its implementation. So we are clear.

I want to deal with some clauses of this Bill now after giving you this long preamble. I want to get into certain clauses of this Bill and the effect of these, clauses 24 to 34, of this very important Bill. Again, exemptions that the Opposition and, of course, some of my colleagues on the Independent Benches have expressed concern about.

We have to recognize that whilst we are speaking of freedom in this Bill, we must always keep in mind that freedom is never an absolute or unlimited right. Because, absolute freedom can lead to chaos—you know that—absolute right. So, you must balance the public interest with our rights to access of information. So if Sen. Yuille-Williams or Sen. Shabazz comes across here tomorrow, they will understand that as a government minister, they will have a responsibility to protect the public interest; they have to understand that.

So, whilst we are committed to enhancing, expanding and promoting the rights of people, the rights of citizens, the freedom of individuals; we always have to balance those freedoms and rights against the national interest of our country,

and you do not expect us to bring a Freedom of Information Bill here to just give people freedom of information *carte blanche*. There has to be limitations; there must be exemptions. [*Interruption*] Now, we could debate that in terms of whether we want this one to be reduced or we want it to be modified, but at the end of the day, think about the national interest, think about the public interest and let us move forward.

As I said, the existence of these clauses is to ensure a balance between the right to access information on the one hand, and the need to preserve and protect confidentiality and privacy in public and private affairs.

There are so many models—I do not know how many Sen. Yuille-Williams looked at—of freedom of information legislation. You can look at Sweden, Canada, Australia, the United States of America, all these countries have freedom of information legislation in one form or another. We need to look at these pieces of legislation so that when we are debating these matters, we are able to understand that as a young democracy, relatively speaking, we are advanced.

For example, when I look at the *Human Development Report* of 1999 and I see that in terms of women and professionalism and political representation in Parliament and different areas of political life in the country, we surpass Norway, Italy and France as a country. Professional women are on the rise. Women who are involved in the political process are on the rise.

Sen. Shabazz: PNM!

Sen. The Hon. W. Mark: So, Trinidad and Tobago, as a small developing nation, relatively speaking, is on the march. But, I guess in our inward, narrow, political something, we are—but we are moving.

Mr. Vice-President, as I said, we need to keep in mind, when we are talking about this legislation, that freedom or right is not absolute, not even constitutional rights.

Sen. Daly: Not even speaking time.

Sen. The Hon. W. Mark: Even though the principle of the right to know is enshrined in international human rights documents, it is to be noted that the need for exemptions is well-recognized and accepted, all over the world. Even though it is enshrined, it is noted and accepted that there must be exemptions. That is recognized internationally so what we have done here is not inconsistent with our international obligations and, as I said, this is enshrined in Article 19 of the United Nations Universal Declaration of Human Rights of 1948 and Article 19 of the International Covenant on Civil and Political Rights.

Mr. Vice-President, I would be another 25 minutes and I would not want to keep my colleagues if they want to proceed, so I would pause at this time and continue as soon as we resume.

Mr. Vice-President: It would be convenient here to take the tea break but the speaking time has just about expired, so you would not have 25 minutes more; you would have 15 minutes more after the resumption. We now rise for tea.

4.36 p.m.: *Sitting suspended.*

5.13 p.m.: *Sitting resumed.*

[MR. PRESIDENT *in the Chair*]

Mr. President: I was told that the initial speaking time of the Hon. Minister had expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. B. Kuei Tung]*

Question put and agreed to.

Sen. The Hon. W. Mark: Mr. President, I was making reference to exemptions. I was indicating that it is a recognized and accepted practice in many jurisdictions where we have Freedom of Information Acts in existence. I wanted to indicate to this honourable Senate that the restriction that is there in this Bill is not something new or something that we have dreamt up or invented. Certainly it is not sinister in its intent. Therefore, there is no danger of oppression or it being oppressive or anti-democratic in terms of contentions associated with these exemptions that we have established in this very important piece of legislation.

Mr. President, one of the areas that many of our Senators are concerned about is clause 24. I just wanted to indicate that clause 24 speaks about exemption of Cabinet documents. It was felt by some Senators that ought not to be. In fact, they talked about reducing the time frame from 10 years to 5 years. I just want to indicate, Mr. President, that this is not a new practice. If you go to the Canadian legislation there is, in fact, a provision very close to what we have here as it relates to exemption from disclosure of Cabinet documents.

Section 12 of the Freedom of Information and Protection of Individual Privacy Act of Ontario also has a provision similar to the one that we are talking about; section 28 of the Freedom of Information Act 1992 of Victoria in Australia; also section 36 the Freedom of Information Act 1992 of Queensland has the similar provision, and Part I of the First Schedule to the Freedom of

Information Act 1989 of New South Wales. The point I am making, Mr. President is that it is not anything sinister, unusual, anti-democratic or even oppressive. It is an exemption, particularly, of Cabinet documents that you find in many jurisdictions.

Mr. President, I also wanted to indicate, as well, that if we go to clauses 25 and 26 which refer to defence and security documents and international relations documents in this Bill, these exemptions can be located in many other legislation, particularly the Australian and the Canadian legislation.

Clause 27 in this Bill, which refers to "Internal working documents", could also be located in clause 36 of the Australian legislation as well as clause 14 of the Canadian legislation and sections 20 and 21 of the Irish legislation.

In the case of clause 28, which refers to "Law enforcement documents" this is also found in clause 37 of the Australian legislation and clause 16 of the Canadian legislation.

Mr. President, clause 29, which refers to "Documents affecting legal proceedings or subject to legal professional privilege", is also found in section 42 of the Australian legislation and in section 23 of the Canadian legislation. We can go on and on in terms of the various clauses here in which, for instance, you find—[*Interruption*]

Sen. Dr. St. Cyr: Thank you very much, Mr. President, for the hon. Minister giving way. The question is, why is it necessary that these exemptions are there?

Sen. The Hon. W. Mark: Mr. President, I said earlier in my contribution—I cannot deal with that specific question, I can deal with it from a broad principle—that, for instance, we have to always balance the rights and freedoms of individuals and at the same time preserve and protect the national interest of any country. I could only posit that could be one of the reasons you have many of these exemptions. I cannot tell you specifically if that is the reason, but I could just surmise that it could be. That is what is governing our thinking in this particular piece of legislation: trying to balance the rights and freedom of individuals to access and, at the same time, seeking to preserve and protect the interest of the overall nation of Trinidad and Tobago.

Mr. President, as I said, there is adequate machinery, nevertheless, to deal with information and access to information notwithstanding the various necessary exemptions. I wish to draw to your attention various clauses. For instance clause 11(1) provides the general right of access to information. Clause 11(2) provides

for the general discretion of a public authority to grant access to documents where it can do so under any written law or order of a court.

Clause 16(2) provides a public authority with the power to edit an exempt document and give the applicant access to the document.

Clause 35, for example, identifies—as I mentioned earlier—four grounds on which a person can also have access to an exempt document in the public interest. Even though we have various, what I call, necessary exemptions, there are provisions in this Bill, in which the public of Trinidad and Tobago have a right to access and to try to get those very tight pieces of information that are exempted; and they can, probably, based on the information and the clauses here.

5.20 p.m.

Mr. President, a person may challenge a decision to refuse access to information or any document by way of a judicial review under clause 39, and the public authority must tell him of this right and the time within which to file the application. Under a judicial review application, the court can order the releasing of documents, if it becomes necessary. In clause 38(a) of the Freedom of Information (No. 2) Bill, there is an amendment which will allow a person to complain to the Ombudsman who can recommend to the public authority to grant access to the document. So there are many mechanisms that have been established to ensure that the citizen has some access even though we have a number of various exemptions.

This Bill contains adequate machinery to enhance the general right to access information, notwithstanding the exemptions that we have identified. It is only natural for us as individuals to be concerned with the kind of service with which we are provided. Mr. President, this Bill, in effect, can be called a service bill, and as citizens we would like to know the quality of service to be rendered to us. This Bill is about requesting information, and the question which citizens may have is, how long would it take for me to access information? I am aware, as so many of us here, of the perception of the public service, that there is a kind of bureaucratic red tape, and it takes quite a while for citizens of this country to access information. Therefore, the wheels of the bureaucracy turn very slowly, and we are aware of this.

With this particular Bill we are going to establish the relevant infrastructure necessary to ensure that the population, given the rights they have under this legislation, will be in a position to access the necessary information via documents that are required, as we have outlined here. At the Ministry of Public

Administration, we have set about to change what is called a very negative perception of the public service. We are seeking to develop what is called a kind of customer-oriented driven kind of organization. So that the reality is, in terms of the perception, we are trying to get to the root of the culture, this malaise that haunts our public service, as it relates to service to citizens of Trinidad and Tobago. This Bill is going to help my Ministry and the public service, as a whole, to revolutionize the operations in order to facilitate the population of this country to access information speedily. It is a very important fillip in the context of transformation in our public service.

Mr. President, with respect to the service of providing information, this Bill has put in place mechanism to ensure prompt and efficient service. For instance, once a request has been approved, under clause 16(1) as an example, the public authority must give access to the information and documents forthwith. We have placed a reasonable time frame for which an individual can expect to get a response. It is like a citizen charter: standards and norms have been established so that when people go to access information via documentation they are not given the runaround, they have to come back and go back; it is frustrating. We are trying to work on that system.

Therefore, it gives the person who made the request a reasonable period of expectation, and it also protects the public officer from unnecessary harassment from the person making the request. Clause 15 of this Bill indicates that a public authority must notify the applicant of the approval or refusal of his request not later than 30 days after the request has been made. So again, we are trying to provide the population with efficient, effective and prompt service. This Bill is going to revolutionize as well, how we do business in the public service.

In addition, the amended clause 17(3) states:

> "where a public authority fails to comply with section 15, any access to official documents to which the applicant is entitled pursuant to his request shall be provided free of charge."

Further, in the amended clause 17(4) where a public authority fails to grant a person access under clause 16(1) within seven days, he is entitled also to a refund of the fee that was paid. These can be viewed as accountability checks as it now places the public bureaucracy to account for the failure of delivering this service on time.

This Bill is not only timely, it is also essential in the development process of our country and in the promotion of good governance in Trinidad and Tobago.

Mr. President, I have no reservation or hesitation in giving my full support to this measure. I feel, as I said in my opening remarks, Sir, that it is going to deepen and actually enhance the fundamental principles that make our democratic process grow, expand and develop. I refer to the openness, accountability and the whole issue of people's participation.

Thank you, Mr. President.

Sen. Prof. John Spence: Mr. President, I am very happy to be able to speak after the Minister, because some of the things he said allows me to refer to an issue I was hoping I would have the opportunity to raise.

He has made the point that we are trying to increase the level of democracy. I think it was very timely that he said so, since we recently have been subjected to autocracy in its most blatant form. Of course, I refer to the way that the Chairman of the National Carnival Commission has gone about the paving of the Queen's Park Savannah. What worries me is that the Government, by way of the Minister, had an opportunity to emphasize the democratic approach by stopping the process, but they did not do that, they endorsed it. So they endorsed arrogance, autocracy and arbitrary action on the part of the Chairman. So I think it is very appropriate that the Minister should make that plea for democracy at this particular time. I hope that he could convey that to Cabinet so that the Ministers who took that action may be suitably advised as to the way they should have acted.

Mr. President, there are a number of issues which I think might be referred to. But first let me say that I agree entirely that it is important to have a bill of this sort, and I am in agreement with its intent and objective. I understand the difficulty about giving information, but realizing that some information has to be withheld, at least, for a period of time. I think some of our discussion really centres on the balance between those two difficulties.

Again, referring to the hon Minister's intervention, he used as an example that of information from state enterprises. He made quite a strong point about his efforts to get information from a state enterprise previously. But, of course, the way this Bill is presently framed will not help in that regard and, perhaps, rightfully so. I hate to think that we shall be able to get information from state enterprises that would have commercial implications, so I agree that the Bill is worth it, even though the Minister seems to be arguing differently by the way he presented his contribution.

I am happy to see that in clauses 7, 8 and 9 there is an attempt to indicate that there are certain reports which should be available even before they are asked for and, in that regard, I support that. But to carry it a bit further, we are not quite sure how one does it by way of this legislation, but I think it is important to recognize that many government departments carry out their activities year after year, and do not report. I can give the example of the Ministry of Agriculture's Research Division. Any research institute, organization or unit—I headed the Cocoa Research Unit at the university, which had a small budget of a couple of million dollars, and there was an annual report within six months. So anybody could look at that annual report and determine what research we had done, whether we had achieved anything or whether the expenditure was valid or not.

For the Ministry of Agriculture, Land and Marine Resources Research Division, one estimate gives its budget at $40 million per annum. The last annual report giving the scientific achievements of that division was issued in 1954! There has never been a scientific report since 1954! So if we are talking about information which allows you to judge how a department or unit is performing, and if you want to be able to track the very substantial sums of expenditure put out to these institutions and ministries, then I would say that it is important somehow in this legislation, if that is its objective, to ensure that these reports are given.

I do not know whether the hon. Minister could, perhaps,—since he is the Minister of Information—tell me of any one department or ministry that gives an annual report, because I do not see them. Annual reports should be part of the transferral of the information process. It is extremely important. How can you judge annually, the budget? We have the Review of the Economy and these general documents, but you cannot judge in detail whether the money is being well spent, unless you are able to look at those reports, whether it be Ministry of Agriculture, Land and Marine Resources, or the Ministry of Works and Transport, and the like.

Instead of which, we have to listen to long presentations about what the Ministry of Works and Transport has done, very detailed presentations by the hon. Minister of Works and Transport and, of course, you cannot listen to that and really make sense of it. But if there is a report that is set out in technical terms and the rest of it, you could follow what is going on. [*Interruption*]

Sen. Baksh: Mr. President, I will like to pass the July 1999 report of the Ministry of Works and Transport to the Senator. [*Desk thumping*]

Sen. Prof. J. Spence: Thank you. But, of course, this is not a public document. Thank you very much for giving me the report, but this should be in the form of a publication.

The second point I want to make is that, if only we had a national library—and we will when the building is finished—a copy of each of these reports could be placed in the national library, so that any member of the public can, at least, go to the library and know what the Ministry of Works and Transport did for this year. So I hope the hon. Minister would allow this report to go to the library; at least, the Parliamentary library. But certainly, this is extremely important if we have to pay any credence to what the hon. Minister of Public Administration has said about the need for transferring information to the public. So let us forget the fine speeches and make sure, not only that we settle the machinery for people to ask, that is one thing, but let us give them information before they have to ask for it, and this will give them knowledge of what to ask for.

When I read this annual report, it gives me a clue as to what questions to ask and where to ask the questions, so I think that is extremely important. I regret to say, Mr. President, that it applies to Parliament as well. The *Hansard* reports are still three or four years behind time. That is quite disgraceful. I am embarrassed every time one of my friends says to me, "What is wrong with the Parliament of Trinidad and Tobago?" The *Hansard* report should be out at least two weeks after, one week for the presenter to review.

5.35 p.m.

We have all the technology these days. We can go from computers straight on to desktop printers. Why is *Hansard* taking four years to go out? If we really want information to go to the public, why are we not doing that?

With respect to Parliament—I keep making this point repeatedly—we have The Information Channel, TIC, why are not the full proceedings of Parliament broadcast over that channel so anybody can look and see what is going on? Not just what the news media happen to pick out because somebody makes an emotional speech and therefore the news media pick it up. What should happen is that—and this is a very important thing for the schools—as it is done in Britain, one can go to the television sometimes and look at the proceedings of Parliament. Why do we not do that? The hon. Minister, unfortunately, is no longer the Minister of Information but perhaps he can persuade his colleagues to use some of the time. The station is there and it costs nothing to do it. It would give the public information; if that is what we want to do; but, no, we do not want to do that. Do

we really want the public to know what goes on in Parliament? That is the problem; we do not want them to know. I really feel that we ought to do something about that *Hansard* issue and the television publication.

On the point of parliamentary proceedings, I think, perhaps we need to look at this a little more carefully, because in the legislation it does include Joint Select Committees. My understanding is that the proceedings of those committees—according to our parliamentary practice—are confidential. So it seems to me that there may be a conflict between our parliamentary procedures here and the provisions in this Bill. Perhaps what we should be saying is “the reports of the Joint Select Committees”, so that there is no doubt, “would be available” and not just, “Joint Select Committees” because that implies the proceedings, as well. I think with the parliamentary committees—if they ever come into being—there may be the problem that some of the proceedings may be *in camera*, and those parts of the proceedings *in camera* might not be easily available to the public. So we need to look at those two issues with respect to the availability of information.

With respect to clause 38(1)(a), I would just like to call attention to an amendment that has been circulated by Sen. Daly, which modifies this particular provision somewhat, because, as he has pointed out to me, it is possible for someone to write a defamatory letter to a government agency and then to demand that it be released to the public, and thereby slander some persons—but it is privileged and cannot be sued. So I think the provision here which Sen. Daly has put in—"unless malice is proved"—is an important one and I would certainly support that.

With respect to clause 35, I think I would like to open that up a little more and add a subclause (e) in which I think it would be useful if we could say,"it is in the public's interest". So in addition to the provision under clause 35, which allows exempted items to be released, we could add another possibility and, that is: “if it is in the public interest." Now somewhere about we put "in the public interest not to release" and I think we should open it up again by putting a subclause (e) in clause 35, "if it is in the public interest."

With respect to clause 4(j)—I think it is "k" in the amalgamated version of the Bill—I think perhaps there may be an error there. I discussed this point with the Attorney General because it would seem to suggest that private bodies would also be subject to scrutiny to release of documents. I do not think that could have been its intention. So possibly it should read "these bodies that are funded by the Government and are under the control of the Government”, rather than "or" as it is in the Bill. Otherwise what we may have done is to have introduced a provision

here which would require this Bill to have a special majority and I do not think this is what was intended.

Finally, I have some concern over the provision that includes the service commissions under the purview of this Bill. I would really like the Attorney General, in his winding up, to let us know what sort of information, he would contemplate, might be released by service commissions. I think it was Sen. Prof. Ramchand who suggested that if we had the provisions in this Bill then perhaps there might not be the need to have that same provision in the Constitution (Amdt.) Bill which included the service commissions. I think there is something in the point as made; and perhaps one can either have it here or there, if one is going to have it at all. My concern is that we have it at all.

I have always agreed—I do not want to anticipate the discussion of that Bill but I think it is important that we discuss here because it is in this Bill, as well. I have also felt there should be some form of accountability of service commissions but I am not yet convinced that the way to do it is the way that we are going about it here. I think it really needs a separate discussion and perhaps a separate legislation to deal with accountability of service commissions. So I have some reservations of including them in this, without some further information—perhaps in the Bill; certainly somewhere about—as to what sort of information they would be required to give. I think it is important that we hear from the Attorney General, in his winding up, as to what we are trying to do in the service commissions with this Bill. Otherwise my position would be to delete clause 4(f) which includes service commissions.

Thank you very much, Mr. President.

Sen. Prof. Julian Kenny: Mr. President, after the many contributions, mine would be a very, very, brief one. The hon. Leader of Government Business tells us that information is knowledge and knowledge is power and I agree with him. I think that very frequently, people do not understand the difference between knowledge and information. The problem is that some people have more information than others and herein lies the problem, in that my particular knowledge of something may be quite superficial because I lack the information. A person who is exercising power may, in fact, have all the information and that person's knowledge is far superior.

There are two or three things which concern me: one is the personal information—Sen. Prof. Ramchand has already raised this. I just mention two sorts of personal things involving myself and I frequently wonder about them.

One of them was in 1970, when the state made a mistake and arrested me and put me into a cell for about six hours—it was a little violent but I did not suffer all that much—but I was, in fact, doing the work of the state in education. I was guarded with machine guns and there was a lot of writing going on and I was eventually released. I was mistaken for somebody else because I drove the same colour and model car. I often wondered about whatever was written: Is there a file on me? How does one find out? The state obviously has to watch people. Is there an army of people out there recording all sorts of things about us? Does somebody keep a file? I cannot go on a fishing expedition and say to the Minister of National Security: "Do you have a file on me?"

5.45 p.m.

Now the other one is more recent and it is a bit disturbing in that I have had a disagreement with TSTT, which is telephone communications. I left TSTT's Internet service and went to another one that was more efficient. I terminated my service with them but they still kept sending me bills. When the bills got up to about $500.00 I got a letter from TSTT telling me they had terminated my service and had handed it over to a debt collection service. Now, I did not owe TSTT a cent. Somewhere now there is a debt collection service where perhaps my name is there as a bad payer.

There must be all sorts of information like this where, I may go into a store to buy something, somebody who does credit checks or similar such things might say, you know, "You are a bad payer". This sort of information does not belong. I think the basic information the state will want of any ordinary citizen is if they are applying for a passport, *et cetera,* or if they are entering into some contract with the state. I have often wondered about this. How many people are involved? What is the size of the state apparatus? If I ask the question then they will say giving me this information is not in the national interest, so I do not think this has been clarified to my satisfaction, this sort of personal thing.

The other comment I would like to make, which has already been made, is about Cabinet Notes. With my limited experience, I have actually written two Cabinet Notes for another administration and I do not think that anything I wrote could possibly be considered controversial. In fact, I have been the subject of a Cabinet Note when I was going abroad on behalf of the government and there appears to be vast volumes of these notes that really should not be—I mean, these things should be shredded. Anyway, I think there is an argument for certain matters that Cabinet discusses being confidential but I do not think that everything which goes into Cabinet ought to be.

I do not know what the present administration does but in a previous administration I was given the figure of 7,000 Cabinet Notes in one year and this is a bit unusual in a democracy. In most of the major democracies Cabinet notes are few. At one Cabinet meeting there might be three, four, five, six, seven or 10 notes and if you are doing 7,000 a year from meeting once a week, I am not sure that—if you do the little division there must be hundreds of things.

My other concern is the practicability of this thing. I am supporting the legislation, obviously. It is a good start. But, I mean, given our existing bureaucracy that Sen. Mark knows only too well, how practicable is this? I am just about to mention another example of the sort of problem that a citizen has. Now, I am claiming to be a slightly unusual citizen because I am standing here because the Constitution puts me here. I have sought information in my capacity as a Member of this House. I have sought information from the University of the West Indies. I have written requesting information related to a matter that I wish to raise in Parliament, a Private Members' motion, and the university just simply does not reply.

Now, what am I to do? My work is frustrated. I have actually gone out to the university to seek other information and I am told: “This is confidential; you cannot have it”. I said, “Yes, I know it is confidential, but I have come as a Member of Parliament seeking information”, and they just simply told me no, and I think that many people have this problem when they go to official institutions. This is one of the problems that I have as a Member of Parliament and I do not have the research staff myself so if I am preparing something I have to do all the legwork. I do not have an assistant, I am not in an office where I could use somebody, and this is a big problem.

Usually, when one goes there one does not go to someone and say, “I am a Member of Parliament. I want this information”. One goes there politely, “I am preparing something”, and one gets a blank over and over. So if a Member of Parliament is being blanked, I pity the poor citizen.

Sen. Prof. Spence: If I could just take the point, Sen. Kenny, this would, in part, be resolved if the university once more issues annual reports but they no longer do. It seems to me very unfortunate that the Government of Trinidad and Tobago has not insisted that the university issue detailed annual reports.

Sen. Prof. J. Kenny: Thank you, Sen. Prof. Spence. I am glad that he is the one making the point and not me because I have become a red flag if I mention the University of the West Indies.

Finally, Mr. President—I told you I would be brief—this point really is addressed to Sen. Mark. I know this is a piece of legislation that we would support. The spirit of the legislation is freedom of information. You mentioned the word, "timely". Thirty days is not timely and, in the spirit of this legislation that you have brought before Parliament, do you not think that you could give us a little information about the Queen's Park Savannah and events?

Rather than having me be misinformed or form erratic opinions, do you not think that when public funds are being spent without the approval of Parliament and when there is clear and obvious abuse of authority, the Government should jump at it in the spirit of this legislation and say, "We know this has not been passed yet but we are so genuine, it is coming from the heart, it is five acres or three acres; it was authorized by Cabinet or it was not authorized by Cabinet; it has been approved by a Minister or not approved by a Minister; it cost so many million dollars or it did not cost; or, there is a written contract between some party and another party?" This is the basic information that allows us to form an opinion, and that is the knowledge of what has actually gone on. Thank you, Mr. President. [*Desk thumping*]

Sen. Vincent Cabrera: Mr. President, I too would be brief. I propose to simply look at some of the exemptions firstly, deal with some brief remarks on specific parts of the Bill and then venture a few thoughts on possible strengthening of the Bill. Now, a lot has been said about the exemptions and I was able to pull some information from the Home Office in terms of Britain where, as the hon. Sen. Yuille-Williams did indicate, she is aware that this legislation is at present before the British Parliament and consultation is taking place and so forth. However, one of the developments is that the Home Office has been able to put out a document making comparisons in terms of the various jurisdictions.

Very quickly I would say that the information I have is that the exemptions in relation to international relations, whether they would or would be likely to prejudice the question of the economy, whether they would or would be likely to prejudice exemptions relative to investigations and proceedings conducted by public authorities dealt with as class exemptions, law enforcement exemptions would or would be likely to prejudice judicial functions, exemptions also dealing with decision-making and policy formulation, in addition personal information and exemptions relative to information provided in confidence, that in the legislation which is on the books, Mr. President, all these exemptions I just dealt with are found in Australia, New Zealand, Ireland, the Netherlands, the United States of America and Canada. Now, there are others but I promised to be brief so

I would not go on. I would simply make the point that internationally all Freedom of Information Bills do, in fact, have many exemptions.

I noted a while ago that Sen. Dr. St. Cyr did seek to find out what were the reasons for the exemptions and, of course, they would have to be stated individually. Again, I do not have time for that but in my own research I have discovered, in fact, one that is very important to me, the question of people doing business with public authorities. It is held that those doing business with public authorities have the right to ensure that their confidence is, in fact, respected. In many cases public authorities need access to information held by others which they will only be prepared to release if they know there is a measure of confidentiality attached to it. So I would like to possibly posit that and ask the Senate, including the Opposition, to support the Bill and not attempt to cull it to make the Bill look shallow in the eyes of the population, to make the Bill be intended for what it is not intended.

I say clearly that we ought to really commend the hon. Attorney General. Do not leave it for some historian 40 or 50 years from now to record his struggles through the days of the Opposition and now in Government in bringing the Bill. [*Desk thumping*] We should really give him his kudos because he has struggled for it and what he has brought before the Senate is in keeping with international legislation. In Trinidad and Tobago people find it very difficult to compliment people and they find it very attractive to do the opposite.

I go on quickly, Mr. President, by commending, in particular, clause 8 of the Bill which, in fact, talks about giving information as far as possible. I would say that in industrial relations, and even in legislation, one has to be balanced and clause 8(3) says that:

> "This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such document is not so made available, the public authority shall, if practicable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2)."

So that when some of the hon. Senators were making their submissions in terms of the suspect exemptions, I thought they would have seen this part of the Bill and also commend it.

I move on very quickly, Mr. President, to clause 9 of the Bill and it was very interesting to me that, in fact, 9(b) said:

> "a report, or statement containing the advice or recommendations, of a body or entity established outside the public authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advise or making recommendations to the public authority to the Responsible Minister of that public authority;"

In other words, it says that such reports have to be submitted and I again commend this part of the Bill.

I continue with clause 9(g). This, to me, has a lot of political importance because it says:

> "a report prepared within the public authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;"

La Brea and energy come to mind. I think I need say no more on that, but if the public had the right to that kind of information I think the historical considerations surrounding that LNG plant would have been different.

6.00 p.m.

Again, the section dealing with duty to assist applicants. I am almost certain that this is, perhaps, the first time that the duty to assist a citizen and applicants seeking information is, in fact, enshrined in the legislation. This provision could be described as a client-friendly provision and should also be commended.

Finally, in terms of the specific parts of the Bill that I want to look at, clause 21(1) says:

> "A public authority dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations."

My view here is that we need to proceed with caution on that one, because it may be abused by individual public servants. I am not here attacking the public

servants, because there are those who, in fact, even without the law, assist people when they go into government offices. Unfortunately, all of them do not.

I would like to, as I said, share some thoughts on what I consider to be, possibly, further strengthening of the Bill. Now, a general observation in this respect is that while the Bill speaks of exempt documents and exempt information, it says nothing about persons and individuals who may illegally access exempt information and then illegally distribute such information. Not being an attorney, I am simply advised that there is no official Secrecy Act in Trinidad; we inherited that one from Britain and, possibly, we may want to enshrine in the Bill what happens if somebody, in spite of a document being deemed to be exempt, seeks to, in fact, access and disclose such information.

I am also suggesting that in clause 9(1) we may add a subsection (n), which could possibly say that:

(n) any other report pertaining to a public authority which is within the possession of any public authority.

And the purpose here is to strengthen the Bill. Because we may find that there is some public document, some report which is not covered by subsections (a) to (m).

Mr. President, I hope my short intervention has allowed people to understand the need for the exemptions which have been put within the legislation; also, that the Bill itself is commendable and I have focussed on certain areas. I end by saying that it is unfortunate that earlier on, some Senators took a negative view, but what this Parliament is about doing is putting Trinidad and Tobago centre stage with progressive legislation and when we have passed this Bill, we would be able to say that we have, in fact, entered into the big league in terms of what one finds in countries like Europe, United States and other progressive countries which ensure that the democracy of their country is strong enough to allow information which is necessary for public empowerment to be divulged.

Finally, clause 35 should not be discounted at all. I would not call the Senator's name, but when a certain Senator was in fact, speaking, I think he did not read the Bill, although Sen. Mark made reference. Clause 35, after it sets up the right of the individual to receive information and deals with the question of the exemptions, it says:

"Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant—

(a) abuse of authority or neglect in the performance of official duty;

(b) injustice to an individual;

(c) danger to the health or safety of an individual or of the public; or

(d) unauthorised use of public funds,

has or is likely to have occurred and if in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so."

So when this law has been passed, assented to, proclaimed and so forth, if one has any perceptions of the public with regard to illegal paving or whatever, one can then initiate what is one's right then under the law.

So I end by commending the Attorney General and, of course, his hard-working team in bringing a most progressive law to the Parliament and, in spite of the negative statements that have been made, I want to urge, in particular, the Opposition to support this. These days they are beating their chests and they are quite sure that they would return to government, but if they do, this law will ensure that they will not be able to cover-up as they have been doing historically in terms of the successive regimes in terms of Trinidad and Tobago. It would also ensure that they would not be able to come to Parliament and read people's private medical records, as was done in the case of that famous pilot, a Trinidadian, Malcolm Hernandez.

I want to thank you, Mr. President, for the opportunity to make this brief intervention and I hope that the entire Senate will support this Bill. I thank you. *[Desk thumping]*

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, may I express my thanks to all Senators who have contributed in this matter and to all who have participated in one way or another, in that, some Senators who have not participated expressed certain views to me, and I wish to give the assurance to all Senators that those views are being considered, I passed them to the draftspersons and we will discuss it more at the committee stage.

But may I say that I find it very disappointing that the Opposition could adopt the position that it has adopted in such an important measure. This reflects, really, a lack of full appreciation of what the functions and duties of the Opposition are in relation to a matter which involves empowering individuals in Trinidad and Tobago.

Mr. President, I took the trouble, when I was presenting this matter this morning, to show how it is recognized by the United Nations and countries that are members of the United Nations, that it is important to have legislation giving the right to information. The Opposition has not said, "Well, we are against this Bill and against certain provisions of the Bill, and we want to substitute other provisions"; they have said they are not supporting the Bill. So they are not supporting, really, what the United Nations has said about freedom of information legislation. They have not supported the Harare Declaration. They are not supporting all the other international and regional requirements. They have not even supported Caricom, because Caricom has taken a position that they would want to have this kind of legislation.

One can understand that if there were a Bill like this, there would be certain provisions which one would have difficulties with because it is not an easy Bill. It is a Bill which has taken many years in order to have it finalized and to have it blossom into what it is before us. It may be that there will be other changes which will have to be made before this Bill is proclaimed, but the fact of the matter is that we want to be able to create a legal framework whereby official information can be given as a matter of right.

Now, what is the existing position in law? Because we have heard a lot from the Opposition about the "Rising Sun", the setting sun, culture, Pageant Company and the Airports Authority. We have heard many allegations of corruption. Okay. But what is the present position? The present position, as the Opposition knows, is that it would have these views, it would come to Parliament, it would ask for information, and the minister may get some information from the company or from the authority and that information is given in Parliament. There is no legal right, no coercive machinery which can compel the public officials to provide this information.

Mr. President, the Government, any government under our system, operates on a basis that there are ministers, but the ministers do not do most of the Government's work; public officials do it. When one has a Cabinet minute or document, the minister does not keep it; it is kept by public officials, the Cabinet Secretariat. So to come here and say that a minister could put something in a Cabinet minute, it reflects the ignorance of what happens, the ignorance of governance. This is not about the information which the ministers have, this is information which is in the ministries and government departments. If, for some reason, the minister has it, he has an obligation in order to supply it.

The present position is that the Opposition can make all kinds of allegations against the Government, but the Opposition would not have facts, would not have—if I may use the word—evidence, would not have the data. What this is going to do is not only give the Opposition or every individual that right to get the information, but to give members of the media the right: not a favour, not a grace, not an indulgence; a statutory, enforceable right which means that if a minister or department does not give that information, a court can order a mandamus against the minister or the department to command them to give that information if the court believes that information has to be given. With regard to the present position, it cannot be done. So the Opposition is against having a legal framework for this information to be given.

Now, the major objection of the Opposition is that there are too many exempt matters. Mr. President, this morning I read, not only from what governments have said, I read from what the Civil Society Movement has said. I will be able to show that the headings for this exempt information and other information not to be disclosed are matters which are recognized and established.

Mr. President, just for the record, I want to show that in relation to all these matters, there are precedents. As Sen. Mark said, if one picks up any freedom of information legislation, one would have to see exempt information and information which would not be disclosed as a matter of right. The reason for that is that under the existing law, for example, this information is not available. The reason it is not available is that, for many reasons established by law, it cannot be given. For example, it is the law of the land of Trinidad and Tobago that Cabinet minutes cannot be disclosed unless a court makes that order in relation to a particular matter, but the courts have declined to order Cabinet minutes to be produced.

What is the reason for that? There is an important principle. The whole Constitution of Trinidad and Tobago, on Cabinet government, is based on collective responsibility. Therefore, what happens in the Cabinet room, whether a member agrees or disagrees, when a decision is taken, there is collective responsibility for that particular decision. If the law permits what happens in the Cabinet room to be made public, it will undermine Cabinet government. That is what the court has found! In the House of Lords, Privy Council, United States courts; that is the law. That is why in Trinidad and Tobago one cannot get a Cabinet minute.

6.15 p.m.

Now, I am not saying that you cannot get it because there are many Cabinet decisions, which probably do not involve any situation where it should not be

disclosed. There are many Notes, which means that you can disclose them, but the existing law does not permit it to be done but the Government has discretion in order to do it. That is why in this Bill we are saying that even though a document is exempt, Cabinet would have the authority or public authority to make that document available, even though it is regarded as exempt. If Cabinet decides that it is not going to make it available, the courts would have the power in order to compel it to be made available.

Under the existing law the court cannot do that. I can probably envisage a case in which one can show that there is something misleading and one has discovery and, Cabinet says it is immunity, the court could then look at the document and one will have to show a list between the two people, but it has never happened. The existing position is that there is no machinery and, therefore, what we are doing is creating machinery to give people that right.

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade. Mark): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of the matter now before the Senate.

Question put and agreed to.

FREEDOM OF INFORMATION (NO. 2) BILL

Hon. R. L. Maharaj: Thank you very much, Mr. President and Senators. Let us take another example. Under the present system, if the Opposition wants to find out what is happening in any state corporation, the Opposition can write a letter to the Minister, the Minister does not have to reply; they can write a letter to a company, the company does not have to reply. If there is any refusal and one has to go to court with it, they would not be able to get any redress because there is no basis in law now to be able to do that. The Opposition can then ask a question in Parliament, the Minister answers and Parliament accepts it and unless it can be proven that the answer is totally wrong, there is nothing that could be done. That is the position and this is what has been happening all the time in Trinidad and Tobago.

Mr. President, I was on the other side, I saw the weakness of this form of Government. I saw how people were not empowered in order to get information available to them. I saw how an Opposition could not perform its functions to society because one could not get information. So that when the Oppositon saw that, they decided that this was not in the best interest of Trinidad and Tobago and the Opposition in Government has decided that regardless of what the position is,

they want to create a situation whereby you must have that kind of accountability, and that is what this Bill is about *[Interruption]*. It has become a case because the Opposition made it a case. *[Desk thumping]*

Mr. President, so that what would happen with this Bill is that a member of the media can request the information and if it is not given, there would be a form of redress. A Member of the Opposition or an Independent Senator can do that.

Let us look at some of the countries, which passed this legislation. Cabinet document; in Australia, section 34 of their Freedom of Information Act, similar provision. In Canada, section 21 of their Access to Information Act, similar procedure. In Ireland similar procedure and situation. The most recent country, South Africa, similar situation. In respect of defence security and international relations document which is stated in clauses 25 and 26 of our Bill: in Australia, section 33 of their legislation, section 15 of the Canadian legislation and section 24 of the South Africa legislation and I can go on. Internal working documents; in Australian, Canadian, Ireland, and South Africa legislation. Law enforcement document; in Australia, Canada and Ireland. I have done it in respect of all. I have examined them and it showed that this has been and this is what exists.

I take Sen. Daly's point, that the fact that it is there does not necessarily mean that we cannot look at it, but the point he made is that instead of 10 years it should be five years. Well, we can consider it at the committee stage, but we cannot have freedom of information legislation without recognition. Regardless of who is in government or what party is in government, without a recognition that in order to make society stable, there must be recognized exceptions which one must have and that is found to be so. One can consider that there are many matters, which you cannot just have automatically as that. There must be a filtering process and that is why the law, at the present time, protects these matters which cannot be disclosed.

At the present time for example, there is a law of confidence and there are certain matters one cannot get and the law recognizes these exceptions. I think it was Sen. Ramchand, who said "that one can take a very hostile view of the Bill and say, well you know, there are so many exceptions and, therefore, the Bill is not worthwhile." He also said that is not the way to look at this matter. The way to look at this matter really, is that we have to recognize that there are exceptions in law at the present time, which prevent this information from being had and we are going to have an improvement in the situation in which there would be this right, and you would have a situation in which you would be able to test it, in any event, in court.

Mr. President, with respect to Sen. Shabazz's contribution, I would not deal with all of what he has said because much of what he said—with the greatest of respect to him—really did not call for a response. He made the point about the news—I think it was Sen. Shabazz and Sen. Yuille-Williams—and I do not know why this is so difficult to understand. The clause dealing with the television station owned by the state.

Hon. Senator: Clause 37.

Hon. R. L. Maharaj: Clause 37, thank you very much. Mr. President this is how clause 37 reads in the amended form:

> "Notwithstanding any other provision of this Act, where a request is made for access to a document held by the International Communications Network, that company shall not be required to give access under this Act to any part of the document which discloses the source of any information obtained in the course of making any programme or broadcast."

What is the Opposition's answer to this? That this violates the freedom of the press and that it should also apply to the entire press. If one aspect of the debate today shows—with the greatest respect to the Opposition—they did not read and study this Bill. What this clause is doing is protecting the fundamental rights of the media. At the present time, there are established principles. I said it in my opening remarks and I will say it again, that a journalist cannot be compelled to give the source of his information. For example, if a journalist at ICN reports that a Government Ministry is corrupt, the Minister or anybody else cannot call him and force him to give that information.

6.25 p.m.

I know the last administration tried to do that with people at ICN and when they did not give it they were fired. To give the source of information is protected. So if this Parliament legislates to make a journalist able to give his source of information, it would be acting contrary to principles of law so that is why we cannot do that. We believe, notwithstanding what some may say, this Bill recognizes that the press must have that right because if it does not have that right then it can affect the freedom of the press.

We cannot support the Opposition by saying we should take away that, or make it apply to all media. For the Senator to say to make it apply to all the media also displays, with the greatest respect to him, his ignorance of this matter.

Sen. Shabazz: I did not say that.

Hon. R. L. Maharaj: I do apologize. But for him to support that contention or for it to be said—because this Bill—and I am sure the Opposition made that statement: let it apply to all the media.

Mr. President, this Bill only applies to getting information held by the state, it does not apply to getting information held by a private body or individual. The state operates, as Sen. Dr. St. Cyr said, under three arms: the legislative arm, the executive arm and the judicial arm and it authorizes information from the state from those three arms. It cannot go against private individuals, if it does, you would naturally need a constitutional amendment that would have serious repercussions and we have not found any Freedom of Information Act—there may be—but I have not been able to find it which would say that you could compel private individuals to give you information. This would mean that you are attacking all the major fundamental rights and the philosophy which underpins this Bill and bills like these.

The state through all its arms must be able to give information to the public and the public is entitled to know that information. That is why in this Bill even though there is a situation with Cabinet, Cabinet must consider under this Bill whether it would withhold information or give information because if what is requested involves those matters, information must be given.

Mr. President, points have been also made with respect to the private enterprise and other matters in relation to why the Bill cannot deal with those matters. I think I will be speaking for all the Members on this side when I say that the Government does not want any praises for this Bill. The reason we say this is because it is long overdue. As a matter of fact, the Opposition in government recognized this in 1980 at the Commonwealth Law Ministers meeting in Barbados. The then government recognized that this Bill was essential. Under our Constitution, it was also recognized that if you have the freedom of opinion and expression, that you cannot really express properly if you do not have the information, and if you do not have it from the state. So there was an obligation from 1962 and after 1976 for governments to pass legislation like this and that is why in the NAR Manifesto in 1986 there was a promise to have Freedom of Information legislation. But getting legislation like this through is not easy because it is breaking the whole traditional role of governance, breaking the traditional culture of the public service, and breaking the traditional culture of bureaucracy. We are very fortunate that we have it here before us and I would ask that we do not allow it to escape from us.

Mr. President, the Government is very open to suggestions, requests for amendments, and whatever. I want to give the undertaking that the Bill would not come into effect until a date of proclamation is given and I also want to give the undertaking that with respect to the matters, I would try to see how I can accommodate the situation. If I cannot go with it at this time, I give the undertaking that the matters would be considered and if necessary, come back to the Parliament and have an amendment before it is proclaimed.

Sen. Dr. St. Cyr: Mr. President, I still have a little difficulty in that I am not convinced that in an open governmental situation such as is desirable—and we all know the country at large cannot have access to the information basis on which a collective Cabinet decision is being taken—I am still not convinced that I am satisfied on that point.

Hon. R. L. Maharaj: There is machinery to get information on which a decision has been made. This Bill is about a right to get certain information and inspect certain records. Clause 24(1) says:

"(1) A document is an exempt document if it is—

(a) the official record of any deliberation or decision of Cabinet;

(b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;

(c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;

(d) a document that is a copy or draft, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or

(e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published."

Those are the exempt parts.

All I can tell you is that I went through it, it is recognized in all countries under the present law at the time. This is how it is recognized but we are changing this and saying although it is exempt, that the Cabinet, as a public authority, would have the power to disclose these documents and if they wrongly refuse to disclose it, the court has the power to compel the production of it.

At the present time now, you cannot get it. If I abolish that rule completely, I have tried to see what are the reasons myself and when you look at the cases, there are important matters which affect the public that you cannot have some of the deliberations at the time, and you cannot have some of the input at the time because it has to do with the principle of collective responsibility, and cases have shown that. There are many considerations and those are the matters which are going to be changed.

What I have difficulty with is that this has been going on all the time and now there is an attempt to change it, to make it better, and give greater empowerment and maybe after two or three years this whole thing might change. But we have to start somewhere and this is what this is all about. If one looks also at the next subclause, it says:

> "(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence."

Under the present law whether it is 20, 25 or 30 years you cannot get it. This is going to change it to say after 10 years there can be nothing, release it.

Sen. Daly has said 10 years is too long, let us look at three or five years and this is what we are trying to do. I want Senators to understand, and especially those who are not lawyers, that what is important about this is that for the first time in Trinidad and Tobago there will be a legal, statutory, enforceable right to get information; whether you can show a connection between the document and yourself or not, you are entitled to get it and if dissatisfied with the answer you have a machinery to go to court in relation to it and to get it. That is the importance of it.

Mr. President, all I can say is that it is recognized—as a matter of fact I did not have time this morning, but I would say it now—that in countries where Freedom of Information legislation has been passed there has been in relation to investigations, discovery of corruption. There has been reduction in the public costs of running governments in England and other countries. Just think of it. It is an important tool in order for the public, parliamentarians and the media to know what is happening in government. Even if I were not on this side, and I was in this august Chamber as a Senator, I would feel very privileged that I was part and parcel of enacting a piece of legislation like this.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

6.40 p.m.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Sen. Daly: Mr. Chairman, the proposed amendment is as follows:

In subclause (1)(a):

(i) In line 3, insert between the words "that" and "rules" the words "the authorisations, policies".

(ii) In line 6, insert between the words "those" and "rules" the words "authorisations, policies".

Mr. Maharaj: Mr. Chairman, in relation to the proposed amendment by Sen. Daly, in relation to the insertion of those words, we do not have any objection to that.

Sen. Prof. Spence: Mr. Chairman, what clause are we on?

Sen. Daly: Clause 3.

Sen. Prof. Spence: Oh, I beg your pardon.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Chairman: There are proposed amendments, also.

Sen. Prof. Spence: Mr. Chairman, I had raised an issue in relation to clause 4 for the inclusion of the service commissions and I believe Sen. Daly has drafted an amendment. May I ask that clause 4 be deferred? There are some other things which, perhaps, the Attorney General, might want to modify in clause 4, but we could not complete it. I think he wanted to look at 4(k). I raised something under 4(j).

Mr. Maharaj: Mr. Chairman, in 4(k), Sen. Prof. Spence raised with me certain matters, but I notice that in the copy I have, it does not show that. I do not know from the official record how it reads. It says:

"(k) a body corporate or unincorporated entity

(i) in relation to any function which it exercises on behalf of the State;

(ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or

(iii) which is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control;"

Sen. Prof. Spence: That has to be an amendment.

Mr. Maharaj: Yes, there should be an amendment because it had an "or" there; it should be "and".

Sen. Prof. Spence: Mr. Chairman, I was asking if we could not complete clause 4 because Sen. Daly has an amendment coming in (j) on the definition of "Service Commissions". So, could we defer it?

Mr. Maharaj: Sure.

Mr. Chairman: There is also an amendment by Sen. Dr. St. Cyr to clause 4 as follows:

In paragraph (b) of the definition of "personal information" delete the word "criminal" appearing in line 3.

Mr. Maharaj: If I may answer this. What this means is that the personal information, if a person has a criminal record and the information is wrong, the person can correct that information.

The clause of the Bill which deals with correcting personal information could give a person the right to correct that information. Let us assume the state has that a man has six convictions; in truth and in fact, they made a mistake and he only has one or he does not have any at all and he cannot get his record visa to go, something like that.

Sen. Dr. St. Cyr: I withdraw, Sir.

Mr. Chairman: Proposed amendment by Sen. Dr. St. Cyr withdrawn.

Sen. Daly: I would withdraw my proposal to clause 4 which was:

In the definition of "public authority", delete the semi-colon at the end of paragraph (h) and add the following words "or those in which the State directly or indirectly holds twenty per cent or more of the ordinary share capital".

The Minister of Finance had a word with me about the difficulty, Sir.

Mr. Chairman: Proposed amendment by Sen. Daly also withdrawn.

Sen. Prof. Spence: There is still one.

Mr. Chairman: There is one to come still.

Sen. Daly: Clause 4(g), I proposed an amendment that affects—well, it is not coming in here, Sir, but it does bear on service commissions. I want to put it respectfully. Can we close 4, Sir, but we will reopen if it is necessary in light of the amendment I am proposing.

Mr. Chairman: Well, we can defer it. Do I have consent to defer until later?

Assent indicated.

Clause 4 deferred.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I think there is a typographical error here because in the House, from the records we have, it was to delete paragraph (b) of subsection (2) and substitute what is now (b); but instead they deleted (a) and (b). I have the *Hansard* here so I do not know if I should really amend it because it reflects inaccurately what was done in the House. I do not know how I should do it. I need your guidance. Clause 5(2) should really read:

"(2) For the purposes of this Act—

(a) in relation to its or his judicial functions, a court or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a public authority;

(b) a registry or other office of the Court and the staff of such a registry or other office in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority."

As it is printed before the Senate, it gives the impression that (a) was taken out, but (a) was not taken out, so I do not think I could ask to amend it because it is a typographical error.

Sen. Daly: May I say something?

Mr. Chairman: We will treat the inclusion of (a) as a typographical error.

Sen. Daly: But I was just going to point out, Sir, for ease of reference, if you look at page 12 of the printed Bill, you will see the words that were left out.

Mr. Maharaj: That is correct, for ease of reference as Sen. Daly has said, (a) was left out in the printed Bill. Subclause (2)(a) was left out, so we will just regard that as a typographical.

Sen. Prof. Ramchand: So, Mr. Chairman, the amendment in the other place was that "not" was removed from (b).

Mr. Maharaj: No. The amendment in the other place was the entire (b) was deleted and a new (b) replaced, but (a) was not touched.

Sen. Daly: Mr. Chairman, can I raise something on this? It bears on the amendment which is coming. Perhaps you could indulge me and let me explain what is the amendment I am proposing and then it would become clear why I want to raise something about this clause.

The difficulty I have with this 5(2):

"a registry or other office of the Court…"

—and to short circuit it, meaning in relation to court administration—

"shall be regarded as part of a public authority."

Many of us here have a considerable anxiety about any interplay between the Executive and the Judiciary in the form of the Judicial and Legal Service Commission. The amendment which I am proposing, which will come, is to put in a new clause in terms similar to what is said about the Cabinet and to ask that official records, or decisions, or deliberations, or extracts which disclose those, or whatever, of the Judicial and Legal Service Commission, be in the same terms as Cabinet documents and be treated as exempt documents. How it relates to this is that if we say:

"a registry or other office of the Court…"

—in relation to court administration, what I am concerned about is, when we say "other office", do we mean another office that is similar to a registry? Or, do we mean any office of the court whatever?

You see, I can understand, for example, that in the new rules I do not think we have a registry, again, we have some other kind of office. So, if the intention here is office that is like a registry, then we should say so. Otherwise, for example, the rostering functions of the Chief Justice would be caught by this and I have a problem with that. You see:

"a registry or other office of the Court…"

The office of Chief Justice has administrative functions that relate to court administration like the rostering of judges and I do not know if we really intend that that should be the subject of a request for information. I am very worried about it.

You see, where we make this distinction of the Judiciary in its judicial capacity and its administrative capacity, there are these very difficult questions. I would have preferred to see 5(2) say:

"a registry or other similar office of the Court and the staff of such a registry or other similar office…"

to make it plain that we are talking about the clerical and administrative functions of the support staff.

Mr. Maharaj: Mr. Chairman, may I say that at the present time, there is a Court Administrative Department and in that Court Administrative Department, there are several other offices. What has happened is because of the problems that countries had in trying to make court administration accountable, there has been a division to ensure that one can get information from the court administration. That is why, for example, as you know in the United Kingdom, in Australia and in Canada, there is court administration giving information, so this is in relation to those offices with court administration.

Sen. Daly: Well, then we are on the same wave length. Can we then say:

"a registry or other office of court administration…"?

What I am concerned about is if we simply say "other office of the Court"—

Mr. Maharaj: Am I not clear?

Sen. Daly: That is my point. If we are agreed that what we are talking about is the registry or people performing similar functions, those tracking cases and so on, then I would like this tightened up a bit.

Mr. Maharaj: What do you suggest?

Sen. Daly: I am saying:

> "a registry or other office of court administration and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate..."

So, what I am suggesting is that you put "a registry or other office of court administration".

Mr. Maharaj: Okay.

Sen. Daly: "and the staff of such a registry or other office of court administration in their capacity…" Policy-wise, we are on the same wave length.

Mr. Maharaj: I do not have a problem with that.

Sen. Daly: I am very grateful.

Mr. Maharaj: "a registry or other office of court administration and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority."

Are you happy with that?

Sen. Daly: I am very grateful for that.

Mr. Chairman: Hon. Members, I have the inclusion of (a) as a typographical error.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

6.55 p.m.

Clause 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Dr. St. Cyr.

Sen. Dr. St. Cyr: Mr. Chairman, I beg to move that clause 7 be amended as follows:

"In subclause (1), delete the words 'with the approval of the Minister—' in lines 1 and 2"

and simply say: "a public authority shall—" and continue with what he shall do.

Mr. Maharaj: Mr. Chairman, what the Senator is asking me to do is to take away the responsibility of the Minister, because the Minister would have to account for what happens and what does not happen. Therefore, if it has to be published he must be able to see it, he must be able to know it, and he must be able to get it. If it is put without that, things would be published without his knowledge and under section 76 of the Constitution, he is responsible for the management and administration, but unless it is done this way, it could be published without him seeing it. I would ask you to believe that it can happen without him seeing it. Then he is answerable and accountable for it. [*Interruption*]

Let us assume that he is not approving it and it is there, apart from parliamentary pressure—because this is what has to be done—this has to be published. Let us assume it is prepared and he is not approving it, apart from parliamentary pressure, there can be court orders against him to do it. At the present time, it does not happen. There is no publication, so I will ask the Senator to let us see how it works and we could always—

Mr. Chairman: Senator are you saying that the amendment is withdrawn?

Sen. Dr. St. Cyr: I withdraw my amendment.

Amendment withdrawn.

Sen. Cabrera: Mr. Chairman, there is a typographical error in clause 7(1). Clause 7(1) should read as follows:

"a public authority shall, with the approval of the Minister—"

Mr. Chairman: In any event, the printed Bill has it. Thank you.

Clause 7 ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Dr. St. Cyr.

Sen. Dr. St. Cyr: Mr. Chairman, I beg to move that clause 8 be amended as follows:

"In subclause (3), line 5, delete the words 'if practicable' and substitute the words 'except impracticable'."

I just thought that this would strengthen and put the onus on the other foot if we change the phrase "if practicable" to "except impracticable".

Mr. Maharaj: Yes, Mr. Chairman, we will accept that amendment.

Clause 8, as amended ordered to stand part of the Bill.

Clause 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Dr. St. Cyr.

Sen. Dr. St. Cyr: Mr. Chairman, I beg to move that clause 10 be amended as follows:

"In subclause (2), paragraph (a), substitute for the words 'as to whether to specify in the next statement to be published in section 8(2)(b) or section 9(2)(b), as the case may be, the documents referred to in the notice' the words 'and immediately publish an appropriate addendum or corrigendum'."

It struck me that in clause 2(a) even though a decision is taken within 21 days of receiving a notice, the correction is made in the next statement, which could be anything up to a year later and also be lost. Once you accept that there is something to be corrected you take steps to correct it immediately.

Mr. Maharaj: My advisors are seeing whether we can accommodate the situation. It is the correct thing of official information—under clause 8(2)(b); there are times when it would be published. It would mean that there would have to be a special publication.

Sen. Dr. St. Cyr: Yes, that is what I am suggesting, and for two reasons: if action is to be taken within 21 days then, whatever was published which was wrong should be corrected and published as such.

Mr. Maharaj: Would it be all right if we give instructions for him to draft it to say to be published in the *Gazette* and thereafter for it to be within a certain period of time and for the records to be amended for the next occasion? Could you defer that and I could draft it, Mr. Chairman?

Clause 10 deferred.

7.05 p.m.

Sen. Prof. Ramchand: Mr. Chairman, in line 2 of clause 10(1) a word is missing. It should read, "a statement published"; it is just a typographical error.

Mr. Chairman: It was in the original Bill, but it is omitted from the one the hon. Attorney General circulated. [*Crosstalk*] Can we move on?

Clauses 11 to 22 ordered to stand part of the Bill.

Clause 23.

Question proposed, That clause 23 stand part of the Bill.

Sen. Dr. St. Cyr: Mr. Chairman, I beg to move the proposed amendment as follows:

"In paragraph (a) of subclause (2), delete the words 'not required' in line (1) and substitute the word 'forbidden'."

It seems to me, Sir, that this amendment is necessary to prevent the inclusion, in an otherwise accessible document, of some little information which, thereby, would cause it to be an exempt document. The intention in clause 23(2)(a) is clearly to prevent that, but I am saying that it is weak as it is and we should probably forbid it. So the proposed amendment is to change the words "not required" and to use the stronger word "forbidden".

Mr. Maharaj: Could you give me a minute please, Mr. Chairman. [*Interruption*] I think the Senator is correct, but instead of using the word "forbidden" can we use the legal drafting words "shall not". So it would read "it shall not include". So we delete "is not required to include" and put "shall not".

Sen. Prof. Ramchand: Mr. Chairman, it must be some Grenadian who drafted this Bill. In 23(1), line one, it reads, "Where in relation to a request 'foe' access", it should be "for access". Would those things be picked up automatically?

Mr. Maharaj: I think the hon. Senators is thinking of too many foes at this stage. [*Laughter*]

Clause 23, as amended, ordered to stand part of the Bill.

Mr. Maharaj: Mr. Chairman, can we go back to clause 21? Is it possible? In fairness to Sen. Philip Marshall—

Mr. Chairman: Yes, with leave of the committee.

Agreed to.

Clause 21 recommitted.

Question again proposed, That clause 21 stand part of the Bill

Mr. Maharaj: Sen. Marshall has raised a matter in clause 21 and was kind enough to give me some authority for the proposition. He actually produced the draft Freedom of Information Bill of the United Kingdom, and in respect of clause 21(1), after the words "from its operations" he proposes to insert the following:

> "provided that before refusing to provide information on these grounds, the authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference."

That has come out of the Freedom of Information Bill of the United Kingdom. If I may just put it as Sen. Marshall giving a clause 2(5). I am indebted to him for that.

Clause 21, as amended, again ordered to stand part of the Bill.

Clause 24.

Question proposed, That clause 24 stand part of the Bill.

Sen. Daly: Mr. Chairman, in clause 24(2) the Attorney General said that we would look at the period.

Mr. Maharaj: I found out that the intention was to amend that section in the Constitution before it is proclaimed. Is it not about the Ombudsman? [*Interruption*]

Sen. Daly: Mr. Chairman, I ask through you: the Attorney General made reference to South Africa, Australia and somewhere else, what sort of time periods do they have?

Mr. Maharaj: Ten years. As a matter of fact, we had a much longer period, and we tried to find out what other countries had done.

Sen. Daly: Is it 10 years from Project Pride yet?

Mr. Maharaj: No; do you mean under the last administration?

Sen. Daly: Of course. [*Laughter*] Sir, I would not press the point. [*Crosstalk*]

Clause 24 ordered to stand part of the Bill.

Clause 25 ordered to stand part of the Bill.

Clause 26.

Question proposed, That clause 26 stands part of the Bill.

Mr. Chairman: I believe that while there is no formal proposal before us, Sen. Prof. Spence had made reference to some changes. I have it noted here. [*Interruption*]

Sen. Prof. Spence: Oh, yes I suggested that there should be a subclause (e), which says, "if it is in the public interest". [*Interruption*]

Mr. Chairman: Is that in clause 26? [*Interruption*]

Sen. Prof. Spence: No, sorry, I think it is later on.

Sen. Mark: Was it not in clause 35?

Sen. Prof. Spence: Yes, it is not clause 26, but in clause 35.

Sen. Dr. St. Cyr: Mr. Chairman, I think in the debate it was being suggested that the words in lines 2 and 3 of clause 26, "would be contrary to the public interest and disclosure" might be left out. I think Sen. Daly suggested that.

Sen. Prof. Ramchand: The words, "contrary to the public interest" seem to be creating an unnecessary opening for denying. It states that a document is an exempt document if disclosure would prejudice relations and so forth; it gives a list, so there does not seem to be a need for this blanket licence, "contrary to the public interest" as well.

Mr. Maharaj: The Ministry has looked at this matter in relation to the law and what has been done in other countries, and in all the legislation we have seen it drafted like this. When one looks at the law, if it has to be determined by a court, the court could now determine what is in the public interest. I would think that if the words "public interest" are deleted, it might cause problems. In legislation like this there is no precedent without having it in the public interest, where the court would have to administer it.

7.20 p.m.

Sen. Prof. Ramchand: But then, logically, if you had "contrary to the public interest" you need not even give the list (a), (b), (c) and (d).

Mr. Maharaj: Yes, you have to particularize what may not. For example, it would not be in the public interest if the disclosure:

> "(a) would prejudice relations between the Government of the Republic of Trinidad and Tobago and the government of any other State."

It would not be in the public interest if it:

(b) would prejudice relations between the Government of the Republic of Trinidad and Tobago and an international organisation of States…"

So a court would have to find that it would not be in the public interest to do that in relation to the facts of the matter. And it goes on—I think I might be causing problems if I delete it.

Clause 26 ordered to stand part of the Bill.

Clauses 27 and 28 ordered to stand part of the Bill.

Sen. Daly: Mr. President, can I raise my new amendment as it comes into this part?

Mr. Chairman: Which part?

Sen. Daly: The one that has just been circulated. *[Interruption]* Let me `explain. Mr. Chairman, I have just circulated an amendment that bears the number "24" but it does not have to be "24", I would like to explain what it is.

Mr. Chairman: Yes, go ahead.

Sen. Daly: The purpose of this amendment is to secure, as an exempt document, records and deliberations of the Judicial and Legal Service Commission, but I am really suggesting that it be a new section; that it stand alone; in other words, it would not be tacked on to any of the other exempt document provisions. It could be any number in Part IV. Mr. Chairman, I just want us to deal with it before we leave Part IV. *[Interruption]* I am sorry, I thought it had been circulated. I beg your pardon, Sir, could we come back to it before we leave Part IV? It logically belongs in Part IV. Perhaps, we can go ahead and come back to it.

Clauses 29 to 34 ordered to stand part of the Bill.

Clause 35.

Question proposed, That clause 35 stand part of the Bill.

Sen. Prof. Spence: Mr. Chairman, I am suggesting that a subclause (e) be added—it just states "it is in the public interest", it just opens it up a bit.

Mr. Maharaj: *[Crosstalk]* It "is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so."

Question put and agreed to.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed, That clause 36 stand part of the Bill.

Sen. Prof. Ramchand: Mr. Chairman, I just want to be sure that this title be picked up in clause 36(3) which reads:

"For the purpose of this section, information may be corrected…"

Mr. Chairman, a computer might not take that.

Mr. Chairman: It is in the original Bill, I think it is just your print.

Sen. Prof. Ramchand: Yes, I just cannot be sure that it would be picked up by the computer.

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move the following amendment to clause 37 which reads as follows:

"Substitute for the words 'International Communications Network', the words 'National Broadcasting Network'."

Sen. Cabrera: Mr. Chairman, ICN, in the third line, should read "National Broacasting Network" instead of "International Communications Network".

Mr. Chairman: I did not quite catch you.

Mr. Maharaj: I have been informed that with regard to ICN there is a new company which owns all the assets of ICN and it is "National Broadcasting Network." So instead of "International Communications Network it should read "National Broadcasting Network".

Question put and agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Sen. Marshall: Mr. Chairman, I am afraid, we have gone pass page 30, clause 27(2). I do not know whether that should read "king" or "Prime Minister".

"In the case of a document of the "king", I think it should read "kind".

Mr. Chairman: I am sorry, you have "king" rather than "kind" but the original print is correct. *[Laughter]* The printed Bill has it correctly spelt.

Sen. Mahabir-Wyatt: Mr. Chairman, it also occurs on several other pages, so I would suggest we get rid of the word "king"; we also have one on page 35, *et cetera*.

Mr. Maharaj: What happens is that after all this process is done the Chief Parliamentary Counsel Department, together with the Clerk, go through it to make sure there are no typographical errors. *[Interruption]*

Mr. Chairman: Let me just point out that the typewritten document is not the official one. It has only been rented by the Attorney General for convenience, but the printed Bill has it correct.

Mr. Maharaj: Yes.

Clause 38.

Question proposed, That clause 38 stand part of the Bill.

Mr. Chairman: We have a proposed amendment by Sen. Daly.

7.30 p.m.

Sen. Daly: Mr. Chairman, I beg to move that clause 38(1) be amended as follows:

"Delete line 4 and substitute the following:

'this Act unless malice is proved'"

Mr. Maharaj: Mr. Chairman, I can see the point which Sen. Daly is making, because if this information is published and it is libellous, one needs to be assured that the immunity would only apply if it is not done with malice. So I would go along with that.

Sen. Daly: Thank you very much. I appreciate that.

Mr. Chairman: We have to identify the document because in the Attorney General's printed document there is no line 4.

Sen. Daly: I am afraid I used the old one.

Mr. Chairman: You referred to the printed Bill?

Sen. Daly: It would be page 42, 38(1), line 3. Sir, may I ask out of an abundance of caution whether, from a technical point of view, putting it there is the right case? I did not see where else to put it.

Mr. Maharaj: Yes. I am told it reflects your experience and expertise in drafting.

Sen. Daly: Thank you.

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

Clause 39.

Mr. Chairman: I think there is also a proposed amendment by Sen. Daly to 39.

Sen. Daly: But there is a problem here with 38(A) and 39, is there not?

Mr. Maharaj: Are we going back to 38(A), Mr. Chairman?

Mr. Chairman: Oh, there is something on 38(A)?

Mr. Maharaj: Yes. We did not do 38(A), we did 38, unless 38(A) is not part of 38. [*Crosstalk*] Oh, I am sorry, well okay. Mr. Chairman, it is a new clause.

Sen. Daly: Page 43.

Mr. Chairman: We will do 38(A)?

Mr. Maharaj: Yes.

Clause 38(A).

Question proposed, That clause 38(A) stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I mentioned I had a discussion with Sen. Daly but after that discussion it has been brought to my attention that what happened with the Ombudsman is that as a result of the Opposition's request in the House this amendment was accepted because it was felt that there should be another authority before one goes to court, or to avoid going to court. When we placed this clause we intended also that we would make the consequential amendment to give the Ombudsman that jurisdiction so that it would just have to be done before it is proclaimed.

Sen. Daly: Would we have to amend the Constitution?

Mr. Maharaj: Yes. It would have to come in a separate Bill in order to clarify that he can assume this jurisdiction. But if I may say so, it is not an entrenched, it is just a simple—but I should mention that we had gone with the policy where, after a refusal, one can go directly to the court and there was no

need to have another body. It was advocated that there should be some body and it was thought that instead of setting up new machinery, because there would have to be a new set of staff, *et cetera*, his jurisdiction can take that, and in some countries I think they have added it to the jurisdiction so it is a—well this amendment will have to be done.

Sen. Prof. Ramchand: Mr. Chairman, if 38(A) is something new and it is not in the printed version then we need to look at the fifth line which says:

"…the Ombudsman shall, after examining the document it is exists…"

Is that correct?

Mr. Chairman: 38(A) is an amendment in the other place.

Sen. Prof. Ramchand: Yes, yes.

Mr. Maharaj: It means "if it exists".

Sen. Prof. Ramchand: Yes, "if it exists".

Mr. Maharaj: Yes, because if it exists it will be exempt.

Mr. Chairman: "it" should be "if"? Is it typographical?

Mr. Maharaj: Is it typographical?

Mr. Chairman: Let me see what—

Mr. Maharaj: I did not—what does the original have?

Mr. Chairman: There is no original.

Mr. Maharaj: Yes, there is. So it is there in the House, it is just a typographical error.

Mr. Chairman: Yes, it is just a typographical error.

Mr. Maharaj: But we are indebted to Sen. Prof. Ramchand who seems to have developed a—

Sen. Mark: He is a man of literary talents.

Sen. Prof. Ramchand: I just do not trust the machines to pick them up.

Mr. Maharaj: They are not textbooks. [*Laughter*]

Question put and agreed to.

Clause 38(A) ordered to stand part of the Bill.

Clause 39.

Question proposed, that clause 39 stand part of the Bill.

Mr. Chairman: There is a proposed amendment.

Sen. Daly: Sir, I would not like to pursue this until I see what is the amendment to the Constitution. I withdraw it. I think it is dangerous to just stick it in.

Amendment withdrawn.

Clause 39 ordered to stand part of the Bill.

Clauses 40 to 42 ordered to stand part of the Bill.

Mr. Chairman: Now we have to revert to clauses 4, 10 and 24. We have to decide how we are dealing with them.

Sen. Daly: Clause 4 is dependent on what I have proposed as the new section. Can we take it at your convenience, Sir?

Mr. Chairman: How do we want to treat with it?

Sen. Prof. Spence: Clause 4 is actually a new clause. Can we consider that a new clause which has been circulated?

Mr. Maharaj: A new clause 4?

Sen. Prof. Spence: No, a new clause.

Mr. Maharaj: But it impacts on 4?

Sen. Prof. Spence: Yes, it impacts on 4.

Sen. Mahabir-Wyatt: It might.

Sen. Prof. Spence: It might.

Mr. Maharaj: Yes, I understand.

Mr. Chairman: But there is no proposed amendment on clause 4?

Sen. Prof. Spence: No, no, no.

Sen. Daly: No, Sir. I just asked that we leave 4 open in case, when this was circulated, we thought it impacted on 4. I do not think it does, but—

Mr. Chairman: Let us deal with 10 and then 24.

Mr. Maharaj: Clause 10 is the one with Sen. Dr. St. Cyr?

Mr. Chairman: Yes, Sen. Dr. St. Cyr. We will go back to clause 10.

Clause 10 reintroduced.

Question proposed, That clause 10 stand part of the Bill.

Sen. Dr. St. Cyr: Mr. Chairman, I beg to move that clause 10 be amended as follows:

> "In subclause (2), paragraph (a), substitute for the words 'as to whether to specify in the next statement to be published in section 8(2)b) or section 9(2)(b), as the case may be, the documents referred to in the notice' the words 'and immediately publish an appropriate addendum or corrigendum'."

Mr. Maharaj: Mr. President, in relation to the proposed amendment to clause 10(2) by Sen. Dr. St. Cyr, I propose that, taking the policy of this amendment into consideration, clause 10(2)(a) be amended by deleting after the word, "notice", in line 2 of (2)(a) those words, until "notice", just before "and", and inserting after "receiving a notice", the words, "and publish the decision in relation to the document referred to in subsection (1) no later than seven days thereafter in the Gazette". It will then continue, "and cause the person to be given notice in writing of his decision". Would that be satisfactory, Senator?

Sen. Dr. St. Cyr: Yes, Sir.

Mr. Maharaj: Thank you very much.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Sen. Prof. Ramchand: Mr. Chairman, in the interest of—my conscience is worrying me about something. I did ask the Attorney General whether documents other than Cabinet documents were subject to the 10-year stipulation. I cannot remember whether he answered. But the way this thing is written it looks as if it is only the Cabinet documents that have the 10-year stipulation.

Mr. Maharaj: Yes, it is correct, but it is only if you look under the clause relating to—no, no, "shall apply to"—no, it is not only Cabinet.

Sen. Daly: "Internal working documents" are 10 years.

Mr. Maharaj: Subsection (1) "shall cease to apply"—no, all the documents, sorry. It is all. You almost convinced me.

Sen. Prof. Ramchand: You would not like to think now about cutting the 10 to 5?

Mr. Maharaj: I thought we decided that already?

Sen. Prof. Ramchand: No, you were agreeing to change it to five and then opportunistically you—

Mr. Maharaj: No, I did not agree to change it. No, no, no. I said that all were 10 years and we had initially had a higher period. But, you know, if I may say, Mr. Chairman, the freedom of information legislation in the United States has been amended from time to time and what happens is that we may find that after a year or two years these things are amended to meet the particular situation, so I would suggest that we start and see how it works.

7.45 p.m.

Clause 24 recommitted.

Question again proposed, That clause 24 stand part of the Bill.

Mr. Chairman: With the consent of the Committee, I want to revert to a proposed amendment by Sen. Daly, to clause 24, which reads as follows:

Add the following paragraphs to subclause (1):

(f) an official record of any deliberation or decision of the Judicial and Legal Service Commission;

(g) a document that is a copy or draft of or contains extracts from the document referred to in (f);

(h) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Judicial and Legal Service Commission other than a document by which a decision of the Commission was officially published.

Sen. Daly: May I explain? What I meant to do was follow the scheme of clause 24 and that is to say:

"A document is an exempt document if it is—

(a) an official record of any deliberation or decision…;

(b) a document that is a copy or draft…;

(c) a document the disclosure of which…"

Then we would also have to put the 10-year—

Mr. Chairman: Since we have already approved clauses 24 to 35, we have to identify which clause we want. *[Interruption]* Because it would not make a difference if we had it as any other clause within clauses 24 to 35.

Sen. Daly: No, Sir. Wherever it goes in Part IV.

Mr. Chairman: Unless you open it at clause 24 because it follows (e), (f), (g) and (h) as you have it here.

Sen. Daly: It has to be a stand-alone; it cannot fit in with Cabinet documents. I do not mean for it to be part of the section dealing with Cabinet documents. So it could be clause 24A or anything.

Sen. Prof. Spence: Could we propose clause 24A?

Sen. Daly: It would say: "A document is an exempt document if it is—", and then (a), (b), (c), not (f), (g) and (h).

Mr. Maharaj: Mr. Chairman, I am having difficulty in accepting this and I was wondering if Sen. Daly would agree, since the measure cannot be implemented until we come back to Parliament, that I consider this matter. Because it seems to me that to put Cabinet under the Constitution on the same basis as the Judicial and Legal Service Commission—especially as we have done a State Liability (Amdt.) Bill in which the commission itself can be liable in court in relation to certain things. It is something which I cannot really agree to at this stage. Since we have to come back to Parliament in relation to this Bill, I hope he would agree that we defer this. I can give consideration to it, but I certainly cannot agree to it at this time.

Sen. Daly: I do not have a problem with it being considered at some other time, but we are under the gun now, having to finish by September 8, 1999, and I have a problem with that. So if this Bill will not be proclaimed until—the Parliament, not just in some private conversation—the Parliament comes back with its proposal, then we can defer it.

Mr. Maharaj: As I told you, for this Bill to be effective, we have to come back to the Parliament in respect of a Constitution (Amdt.) Bill for the Ombudsman, so that, in any event, it would not be proclaimed and I give you the undertaking that we could consider this matter at that time.

Sen. Daly: I accept that undertaking.

Sen. Dr. St. Cyr: Mr. Chairman, would you allow a comment please? I am interested in the Attorney General's comment that we should not treat the Judicial

and Legal Service Commission on par with Cabinet, but I am also bothered that we should treat the Judicial and Legal Service Commission on par with other commissions since this handles the appointments in the judicial arm of the state.

Mr. Maharaj: I am sure that we can discuss that next week, if you do not mind.

Sen. Dr. St. Cyr: This seems to be a warm-up session for next week.

Mr. Maharaj: I hope it would not be a warm-up. I hope that we will be able to treat with it in the same way.

Sen. Prof. Spence: *[Inaudible]*

Mr. Maharaj: *[Inaudible]*—the impact of that amendment. In other words, if we do not complete this exercise in this session, all the work that has been done will go down the drain. Since we have to come back, this cannot be implemented—apart from putting the infrastructure—without the clause dealing with the Ombudsman, and that needs an amendment of the Constitution. The Opposition had requested that so we have to come back.

Sen. Daly: I accept the undertaking. So it is deferred?

Mr. Maharaj: Well, we cannot say deferred, we could say, withdraw on the basis—and my undertaking is on record.

Sen. Daly: Yes, that is fine. I withdraw it on the basis of the Attorney General's undertaking.

Amendment withdrawn.

Clause 24 again ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

Mr. President: A division has been requested, will the Clerk take it please. *[Discussion]* Request withdrawn.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, in moving to have this honourable Senate adjourned to next Thursday, let me inform the Senate that we have arrived at an agreement: Opposition,

Independent and Government, rather than come here on Monday, August 30, 1999, we have agreed that we are going to come here on Thursday, September 2, 1999 at 10.30 a.m., at which time we will commence debate on the Constitution (Amdt.) Bill.

If we are unable to complete debate on Thursday, we have all agreed to come back here on Saturday, September 4, 1999 at 10.30 a.m.

Mr. Maharaj: We may not be here on Saturday.

Sen. The Hon. W. Mark: We may not be here on Saturday, September 4, 1999 once we have agreement and we go forward.

We have a Variation of Appropriation Bill that is going to be debated in the other place on Friday, September 3, 1999; and that Bill comes up to this House on Monday, September 6, 1999.

If we are unable to complete the Bill on Monday, we have a final day on Tuesday, September 7, 1999. Is that clear? So nobody would be disappointed and nobody would, in any way, be caught by surprise.

Mr. President, I beg to move that this honourable Senate do now adjourn to Thursday, September 2, 1999 at 10.30 a.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.57 p.m.