<table>
<thead>
<tr>
<th>Title</th>
<th>Freedom of information in Malaysia - a long arduous journey to the blue yonder.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Author(s)</td>
<td>Zalina Abdul Halim.</td>
</tr>
<tr>
<td>Citation</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>2000</td>
</tr>
<tr>
<td>URL</td>
<td><a href="http://hdl.handle.net/10220/3213">http://hdl.handle.net/10220/3213</a></td>
</tr>
<tr>
<td>Rights</td>
<td></td>
</tr>
</tbody>
</table>
ZALINA BINTE ABDUL HALIM
FACULTY OF LAW
UNIVERSITY OF MALAYA, MALAYSIA

FREEDOM OF INFORMATION IN MALAYSIA- A LONG ARDUOUS JOURNEY TO THE BLUE YONDER

SEMINAR ON ASIAN MEDIA AND FREEDOM OF INFORMATION
May 8 –10, 2000, Bangkok, Thailand
ZALINA ABDUL HALIM

Zalina Abdul Halim is a young lecturer from the University of Malaya, Malaysia.

She obtained her Bachelor of Law from the University of Malaya and her Master of Laws from University Of Melbourne, Australia.
Freedom of Information in Malaysia – A long arduous journey to the blue yonder

Introduction

This paper is about freedom of information in Malaysia and the extent of availability of information to the public. It is premised on the assumption that advancement of information in all aspects is important and yet it must be available to the masses if it is to be meaningful. This paper will give an overview of the position of the major laws relating to access to information and the state practice pertaining to information on the operations of administrative bodies and government agencies.

What is information?

Yes, information is a big thing right now. However, what does it really mean? It could be equated with knowledge yet information does not necessarily beget intelligence. Birkinshaw looks at information in its importance to man and what man makes of it. He said:

While information itself is important, our ability to discern the degree of the reliability of the information provided is essential in the exploitation of resources or relationships, or in the exposure of sham. Information acquired through scientific enquiry establishes that it is irrational to believe that consulting the auspices, the stars or the tea leaves is a reliable indication of future events. Information is necessary to make sensible choice or wise judgement. Moral and ethical evaluation depends upon information acquired through our own and our predecessors’ experience. Information in the form of facts constitutes the basis of order in our lives, of community, regularity and knowledge.

In a political, legal and economic scenario, information, especially real information is useful to expose a sham, declare legal rights and determine profit and loss. More importantly, information guides us to make sensible choices and wise judgement on how we best want to govern our lives wholly within the agreed parameters. It allows us to scrutinise the actions of those whom we have entrusted with power and authority, and make them accountable for their sins and misgivings. If we have information on our selves, we can also rectify any inaccuracies that may exist in our personal records. In a democracy, information allows us to exercise our rights as citizens and protect ourselves from the excesses of state authority. Information is thus empowerment for the ordinary human. Freedom of information is therefore the setting for that empowerment. However, as we have been made to understand, in the theory of political science, freedom is not an

---

1 Whether for economic purposes or social and political objectives.
2 Information, on various issues and in different voices, affecting the everyday life of the ordinary man on the street should be available and easily accessible to allow him to make wise rational decisions as befitting an autonomous and sovereign man. See Thomas Scanlon, "A Theory of Freedom of Expression", 1 Phil & Pub. Aff. (1972), 204-13.
absolute value. Because we live in a community, our individual needs and wants will always be secondary to that of the whole community.

Here in Malaysia everyone is sitting up and taking notice whenever the word “information” is mentioned. Information, information technology and global information all sound very intelligent and noble. They are something to be achieved quickly and before everyone else does. Malaysia's intention of becoming a major regional player in the information 'industry' is widely known and has been aggressively promoted worldwide. In 1996 the Malaysian Government launched the Multimedia Super Corridor (MSC). This initiative consists of creating a special corridor 15kms wide and 50kms long providing exclusive facilities, rights and privileges to pioneer multimedia industries set up in the area. However in spite of these grand ambitions, information on public interest and governance issues is difficult to access for the ordinary Malaysian. Why is that? Information can be expensive, inaccessible, inaccurate and incomprehensible, especially if it is information held by the government. Apart from what one reads in the newspapers, if one seeks information by oneself directly from the government agencies, one meets literally, face to face, with the Great Wall of China.

PART I Malaysia

Made up of 13 states, Malaysia has a population of 22 million, made up of Malays, Chinese and Indians. She had inherited from the British the Westminster Parliamentary system of government and the common law legal system. The constitutional monarch is the Yang Di-Pertuan Agung whose position is rotated among the nine rulers from the Malay kingdoms. The Malaysian Federal Constitution provides a bicameral legislature, consisting of the Dewan Rakyat (Lower House) and the Dewan

\[4\] The term information industry is used widely to include manufacturing and assembling computers, peripherals, computer chips, producing content whether in the form of software vis a viz computer programs or films; e-commerce; education in multimedia services (such as the setting up of the Multimedia University and the University of Telekom).

\[5\] The Prime Minister and the various Ministers related to the Trade, Tourism and Communications areas have been going on various whistle stop tours to promote the Multimedia Super Corridor (MSC). The MSC is basically a government initiative providing attractive investment opportunities into the information industry which includes legislative (Bill of Rights, Telemedicine Act 1997, Digital Signature Act 1997) and infrastructure facilities.

\[6\] Basically the government aims to attract investors to come and develop a new 'information' industry in Malaysia. The scope of this paper will not cover the MSC development.

\[7\] The Prime Minister himself warned of the widening knowledge gap between rich and poor nations because knowledge workers were being enticed by high salaries to work in developed countries. Sheila Murugasu, 'Gap between rich and poor nations widening, says PM, The Star, March 9, 2000. This can also strongly indicate an existence of an information gap as well between the rich and poor in a country.


\[9\] These are, Kelantan, Terengganu, Pahang, Johor, Negeri Sembilan, Perak, Kedah, Perlis. The remaining four states are headed by Governors (Penang and Malacca) and the Yang Di-Pertuan Negeris (Sabah and Sarawak). There are two Federal Territories known as the Kuala Lumpur Federal Territory and the Labuan Federal Territory.
Negara (Upper House). The Executive comprises of members from either House. The Federal Court is the apex of the judicial administration in Malaysia consisting of a Court of Appeal, the High Courts, the Sessions Courts and the Magistrate Courts. A majority of the population are bi-lingual. Bahasa Malaysia and English are spoken widely and are compulsory subjects taught in the primary and secondary levels. The Malay language is the national language and is the main medium of instruction in schools. There are also Tamil and Chinese medium schools catering to the cultural needs of the Indian and Chinese communities. It is projected that by year end 10% of Malaysia’s population will be hooked on the Internet.

PART II The Legal Regime

a. Federal Constitution

The Malaysian Federal Constitution provides for freedom of speech subject to certain restrictions including security reasons, friendly relations with other States, morality, public order and incitement to commit offences. Freedom of information is inextricably linked and intertwined with the freedom of speech and expression. Upon closer inspection one might say they are two sides of the same coin. Thus it is significant to note that in Malaysia speech is free so long as it does not offend the law. Considering the numerous restrictions abundant in Malaysia on a citizen’s right to free speech, one can equally be assured that likewise, there is a lack of freedom of information for the citizen. Sultan Azlan Shah opines that although the free speech right in Article 10(1a) does not mention the Right to Information, the fundamental right would be meaningless if

10 Article 43 Malaysian Federal Constitution.
12 There are four national Bahasa Malaysia daily newspapers with circulation sizes of:
   1. Berita Harian - 249,756
   2. Utusan Malaysia - 267,765
   3. Utusan Melayu - 8,186
   4. Harian Metro - 77,036
13 There are five national English Language newspapers with circulation sizes of:
   1. New Straits Times - 155,977
   2. The Malay Mail - 48,567
   3. The Star - 220,493
   4. The Sun - 79,150
   5. The Edge - 11,862
14 Article 10(2a) Malaysian Federal Constitution. Article 10(4) then reads:
   In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause 2(a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

It could be said that in Malaysia, after the restrictions are overcome then only does the citizen obtain the freedom.
15 In PP v Ooi Kee Saik [1971] 2 MLJ 108, Raja Azlan Shah J (as he then was) said ‘The right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases so long as he does not commit a breach of the law’.
the public lack the necessary information on which they could express their views. In spite of this eminent view, a right to information has yet to be legally nor judicially recognised in Malaysia. It remains till today merely as a lone cry for help by opposition parties and pressure groups out in the wilderness of the formidable bureaucratic vault of government and executive secrecy. At the moment, there is no specific legislation providing for access to information even for personal records.

b. Official Secrets Act 1972

Being a former colony of the British, Malaysia is blessed with the genetic makeup of the British bureaucratic stiffness and secrecy of government workings. Section 8 of the Official Secrets Act ("OSA") inherited the infamous myriad of criminal offences from section 2 of the UK Official Secrets Act 1911. There were two amendments made to the Act, in 1984 and in 1986. Many quarters opposed the 1986 amendments that had strengthened and widened the scope of the OSA. Essentially the section concerns official secrets, secret official code words, countersign or password. The OSA protects official information and documents irrespective of its contents or whether or not it is of a sensitive nature. The power to classify any document or information as an official secret is confined to the Minister and senior government officers. Once the

---

17 In 1976, former opposition leader Mr Lim Kit Siang moved a private member's bill for a Freedom of Information Act but was unanimously turned down.
19 The Franks Committee Report 1972 stated that 2,000 different offences could be drafted from s.2 of the UK Official Secrets Act 1911.
21 See ALIRAN, Issues of the Mahathir Years, (1990), Pulau Pinang, p 102-43.
22 "Official" according to section 2 relates to any public service.
23 Section 2 defines "official secret" as any document specified in the Schedule; any information and material relating thereto; and includes any other official document, information and material as may be classified as "Top Secret", "Secret", "Confidential" or "Restricted", as the case may be, by a Minister, the Menteri Besar or Chief Minister of a State or such public officer appointed under s. 2B. The Schedule specifies therein Cabinet documents, records of decisions and deliberation including those of Cabinet committees; State Executive Council documents, records of decisions and deliberations including those of State Executive Council Committees; Documents concerning national security, defence and international relations. Whilst in s. 2 provides that "documents" includes maps, plans, models, graphs, drawings, photographs, disc, tapes, soundtracks or other sound and data reproduced devices, films, negatives or other reproduced visual images devices. Previously the old ordinance provided “document” to include part of a document.
24 S. 8(1).
25 See s. 2 and Schedule.
26 S. 16A states that once a certificate by a Minister or a public officer certifying that the official document, information, or material is an official secret, it shall be conclusive evidence that it is an official secret and shall not be questioned in any court on any ground whatsoever. Further s. 30A gives the executive (via the Minister) the power, without prior reference to Parliament, to proscribe the manner of classifying, procedure of handling, manner of disposing, communication of other matters necessary to protect the safety or secrecy of any information. They also have the power to punish and compounding of any such offences.
information is consigned into special files (categorised in various degrees of secrecy), the documents and the information contained therein becomes hot coals to any unauthorised persons who come in touch with it.\(^{27}\) Under section 8 OSA, any person\(^{28}\) in possession or control of these items may be criminalised for doing any one or a combination these acts:

1. communicating directly or indirectly information to a foreign country other than the foreign country he is authorised or has a duty to communicate it to;\(^ {29}\)
2. communicating to a person he is unauthorised or outside his duty to communicate it to;\(^ {30}\)
3. using official secret for the benefit of a foreign country other than the foreign country for whose benefit he is authorised to use it;\(^ {31}\)
4. using official secret in a prejudicial manner to the safety or interests of Malaysia;\(^ {32}\)
5. retaining possession or control of information illegally;\(^ {33}\)
6. retaining possession or control of information contrary to his duty to retain it;\(^ {34}\)
7. retaining possession or control of information whilst failing to comply with lawful directions issued by lawful authority with regard to its return or disposal;\(^ {35}\)
8. failing to take reasonable care of information;
9. conducting oneself as to endanger the safety or secrecy of official secrets;\(^ {36}\)
10. Receiving official secrets knowing or having reasonable ground to believe at the time of receipt, that the official secret was communicated in contravention of the OSA.\(^ {37}\)

The wrongful communication of official secrets offences are punishable with imprisonment from one year to seven years as well as the category of wrongful receipt of official secrets is also punishable with the same sentence.\(^ {38}\) Previously before the 1986 amendments, the courts had discretion whether to grant a jail or fine sentence. The

\(^{27}\) S. 7A, s.8, s.11, s.13, s.14  
\(^{28}\) Any person includes a civil servant or a former civil servant, a government contractor or a former government contractor as well as someone who works or had worked for the contractor. Section 8(1)(c) OSA. More importantly any ordinary person who has been entrusted in confidence by a public officer who possesses information qualifies for criminal liability.

\(^{29}\) S. 8(1)(i).
\(^{30}\) S. 8(1)(i).
\(^{31}\) S. 8(1)(ii).
\(^{32}\) S. 8(1)(ii).
\(^{33}\) S. 8(1)(iii).
\(^{34}\) S. 8(1)(iii).
\(^{35}\) S. 8(1)(iv).
\(^{36}\) S. 8(1)(iv).
\(^{37}\) S. 8(2).
\(^{38}\) S.8(1) and 8(2). The original punishment provided before the amendment to s. 8(1) (through s.8(c) Official Secrets (Amendment) Act 1986, Act A660) and s. 5(d) Official Secrets (Amendment) Act 1986, Act A660) which came into force on 1.1.1987, was imprisonment not exceeding seven years or a fine not exceeding ten thousand dollars, or both such imprisonment and fine.
implication of these offences is that the threat of a heavy punishment awaits anyone who dares leak information on government mismanagement, abuse of power, inefficiency and wastage of public money. Especially if the person is a serving Member of Parliament or state assembly, article 48(IXe) of the Constitution disqualifies a Member of Parliament if he has been convicted and sentenced to one year imprisonment or fine RM2,000. The receiver of such information is also penalised. Imagine the editorial dilemmas faced by the chief editors and journalists who are committed to being the eyes and ears of the people, the watchdog over the government.

In 1978 the former leader of the opposition, Mr Lim Kit Siang became the first person to be convicted under the OSA on five charges of wrongful communication and receipt of official secrets. He had disclosed details of the tender and purchase of four fast strike crafts by the Royal Malaysian Navy at a graduates’ luncheon and in a letter to the Editor column in the Far Eastern Economic Review. The High Court declared that, in the absence of any definition of ‘secret’ in the OSA, the court found the attachment of the words “official secret” indicates secrets relating to any public service, or public service secrets or Government secrets. Thus secret official information relates to Government information kept from public knowledge or from the knowledge of persons specified. This depends on the manner the Government treats that document or information. The OSA provides for classification of official documents, information or material into specified categories known as “Top Secret”, “Secret”, “Confidential”, or “Restricted”. Therefore, even information that is already public knowledge, as long as it is stored in an official government document and classified as a secret, it remains an official secret. Mr Lim appealed on his convictions to the Federal Court. The Appellate Court rejected his appeal and affirmed the convictions stating that offences in the charges have clearly

---

39 At the trial he was fined a total of RM15,000 or in default 41 months imprisonment. Later on appeal the sentence was reduced to RM6,500.

40 Public Prosecutor v Lim Kit Siang [1979] 2 MLJ 37; [1980] 1 MLJ 283. The charges were:

(1) receiving secret official information having reasonable ground to believe at the time of receipt that it was communicated in contravention of the Act - s.8(2);

(2) failing to give on demand information relating to an offence suspected to have been committed under s.8(1)(i) - s.11(a)(aa);

(3) failing to take reasonable care of secret official information in his possession being information obtained in contravention of the Act by not taking proper steps to prevent publication of the information (November 3, 1976 issue of the Rocket, an opposition newspaper) - s.8(1)(iv);

(4) communicating directly secret official information he had in his possession which was obtained in contravention of the Act to persons other than to whom he is authorised to communicate (speech made at Selangor Graduates’ Association luncheon) - s.8(1)(i);

(5) communicating directly secret official information he had in his possession which was obtained in contravention of the Act to a person other than those to whom he is authorised to communicate (letter published in the September 24, 1976 issue of the Far Eastern Economic Review) - s.8(1)(i).

41 Looking at the definitions of “official” and “official secret” in s.2 OSA.

42 Public Prosecutor v Lim Kit Siang [1979] 2 MLJ 37, 40.

43 The appellant argued that the Act was modelled on the English Act 1911, conceived in hysteria when the world faced the prospects of World War 1. The legislation made everything secret, even matters that ought not be made a secret. The catch-all nature of s.8 was neither fair nor purposeful. There must be some information caught by the Act which ought to be revealed to the public to ensure good and proper government.
been committed. Further it said that the duty of the appellant as a Parliamentarian does
not include the right to disclose secret information outside the walls of the House to the
public at large, whatever his motives might be.\footnote{45}

Two years later this principle\footnote{46} was applied and followed in the case of \textit{Datuk
Haji Dzulkefly bin Datuk Abdul Hamid v Public Prosecutor}.\footnote{47} Here in this case, the
\textit{Kinabalu Sabah Times}\footnote{48} (‘\textit{K.S. Times}’) published an article criticising the then Sabah
Chief Minister for statements made to a national daily concerning the Philippines
refugees. A reproduced copy of a letter\footnote{49} written by the predecessor Chief Minister to the
Minister of External Affairs was published along with the article. It transpired that the
\textit{K.S. Times} obtained this letter from the appellant who had earlier received the copy by
post through the ordinary mail. The appellant was convicted on four charges of unlawful
communication and receipt of secret official document\footnote{50} The Federal Court held that the
law must give protection to documents and information that the originator or the owner
treats and keeps as such.\footnote{51} It is not open to anyone to regard it as otherwise. The fact
that a document was stolen, reproduced and then sent by post to the appellant
anonymously does not strip it of the glove of secrecy over the document and the
information therein.

The legislation does not qualify nor define official secrets\footnote{52} as information that
has the character of secret for example sensitive information relating to very delicate
government matters for instance national security and defence. In fact, the wording of the
provisions enhances the secrecy of government workings and shields the government
from public scrutiny as well. Unfortunately, the courts have found their hands tied to do

\footnotetext{44}{The Federal Court considered that since the recommendations made in the Franks Committee Report (1972 Cmnd. 5104), the Official Secrets Act 1911 remained the law of England. The Official Secrets Act, Act 88 for which the appellant has been charged also remains in the Malaysian statute books.}

\footnotetext{45}{Whatever marks of disdain derision or abuse the Act might bear, it has to be abided by unless and until it is changed by Parliament, and until then, it is still the law of the land and the case against the accused remains to be decided on the law as it stands” per Raja Azlan Shah C.J. (Malaya) as he then was at page 296 referring to the view made by Mars-Jones J. in the trial of Aubrey, Berry and Campbell reported in \textit{London Times}, November 14, 1978.}

\footnotetext{46}{Confidentiality and secrecy of a document depends upon the manner in which the owner of the document treats that document, \textit{Louis v Cattle} [1935] 2 KB 454.}

\footnotetext{47}{[1981] 1 MLJ 112.}

\footnotetext{48}{Jacob Peter Bedion, “Harris open policy on refugees under fire” \textit{Kinabalu Sabah Times}, January 11, 1978.}

\footnotetext{49}{The Photostat copy did not bear the word “Rahsia” (secret), nor carry the printed letters CMD, nor the state crest and the address of the Chief Minister’s office. However it contained the reference number "S303/571/86".}

\footnotetext{50}{The charges were: (1) receiving secret official document – s.8(2); (2) directly communicating the document to the author of the article – s.8(1)(i); (3) indirectly communicating the document to chief editor of \textit{K.S. Times} – s.8(1)(i); (4) not taking reasonable care of the document – s.8(1)(iv).}

\footnotetext{51}{Evidenced by clear markings on the document such as stamped “Confidential” or “Restricted” and stored in locked cabinets with limited access to certain personnel.}

\footnotetext{52}{It is tacitly recognised as “protecting all official secrets of the nation”. See ‘Act drawn up to protect secrets’ \textit{The Sun}, Kuala Lumpur, January 14, 2000.}
anything about it. Open justice is also sidelined in trials concerning official secrets whereby in addition to the ordinary powers of the court to exclude the public from any proceedings, the Public Prosecutor may apply to the court to exclude the public from the hearing on the ground that the publication of any statements made in the course of the proceedings would be prejudicial to the safety of Malaysia. Since these two reported decisions there have been no other reported decision on prosecutions under this Act. The latest victim of this draconian legislation was the Parti Keadilan Nasional Youth chief, Mohd Ezam Mohd Nor who was arrested and charged with "communicating an official secret to an unauthorised foreign country, or using it against Malaysia".

c. Evidence Act 1950

Government information is also protected in court proceedings whereby section 123 of the Evidence Act 1950 prevents the production of any unpublished official records or information therein relating to affairs of State without the permission of the head of the department. The public interest is also a ground to raise in seeking non-disclosure of government secrets or communications. However the Federal Court had commendably

---

53 S. 16A.
54 The common law exceptions as stated in Scott v Scott are:
55 S. 27.
56 The Briefing Paper on the 1986 Official Secrets Act Amendment by the National Union of Journalists Malaysia stated that there were 3 others charged under the OSA. These were 2 journalists James Clad (correspondent for the Far Eastern Economic Review) and Sabry Sharif (defence correspondent for the New Straits Times) and an opposition MP P Patto. The journalists had pleaded guilty for their charges on advice and it is believed that the charges on P Patto were later dropped.
57 The charge was related to the release of documents about a former Malacca chief minister and the Minister for International and Trade Industry. See Seema Viswanathan and Joseph Lee, 'Ezam held under OSA - Charge concerned info about Rafidah and Rahim, he says' The Sun, Kuala Lumpur, January 14, 2000. Within the same report the Deputy Prime Minister and Home Minister was quoted as stating that more may be arrested, depending on police investigation, pointing out that the arrests are not a crackdown against opposition members but "normal" police action. It is interesting to note that next to this front page news was a small column reporting the Kuala Lumpur Stock market obtaining its biggest gain in Asia as investors shrugged off the news of the arrest of four prominent Opposition party members. See also Lordes Charles and Nelson Benjamin, 'Ezam Arrested - Keadilan Youth chief to face OSA charges' The Star, Kuala Lumpur, January 14, 2000.
58 Mohd Ezam Mohd Noor claimed trial to the charge under s 8(1)(I) of the OSA for revealing classified Anti-Corruption Agency (ACA) reports. These reports were the ACA Investigation into International Trade and Industry Minister Datuk Seri Rafidah Aziz and the ACA Investigation into Tan Sri Rahim Thamby Chik, Malacca Chief Minister. The Keadilan Youth leader was said to have divulged the contents of the two documents (deemed classified government documents) to members of the press at a media conference. See Joseph Lee, 'Ezam claims trial to OSA charge - Keadilan Youth chief faces up to 7 years' jail if guilty', The Sun, Kuala Lumpur, January 15, 2000.
59 Cap.
60 Who shall give or withhold information as he thinks fit, subject, however to the control of a Minister in the Federal Government, and of the Chief Minister in the case of a department of a State Government.
61 S. 124 Evidence Act 1950 states that no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure. Provided that the court may require the head of the department of the officer to certify in writing whether or not such disclosure would be detrimental to the public interest and, if the head of the department
restricted the claim of Crown privilege by declaring in *B.A. Rao & Ors v Sapuran Kaur & Anor*\(^62\) that the issue as to whether the disclosure of certain information would be prejudicial to the state would be decided by the courts.\(^63\) According to Raja Azlan Shah at page 150:

> In this country, the court in an enquiry of all available evidence decides objection as to production as well as admissibility contemplated in sections 123 and 162 of the Evidence Act. This is because the court understands better than all others the process of balancing competing considerations. It has power to call for the documents, examine them, and determine for itself the validity of the claim. Unless the court is satisfied that there exists a valid basis for assertion of the privilege, the evidence must be produced. This strikes a legitimate balance between the public and private interest… Where there is a danger that disclosure will divulge, say, State secrets in military and international affairs or Cabinet documents or departmental policy documents, private interest must give way. It is for the court, not the executive; ultimately to determine that there is a real basis for the claim that ‘affairs of state is involved,’ before it permits non-disclosure. [Emphasis mine]

The case concerned a medical negligence claim whereby an inquiry had been held into the death of the deceased and the respondents sought disclosure of the reports and findings of the inquiry. The appellants appealed on the ground of privileged unpublished official records under s.123. The Federal Court held that the mere assertion of confidentiality and that affairs of State were involved without evidence to substantiate was not considered to be sufficient to exclude the evidence sought by the plaintiff.\(^64\)

Whereas in *Takong Tabari @ Takung Tabari (Suing in her Personal Capacity and as Administratrix of the Estate of Jeffrey Satuk Gabaar, Deceased v Government of Sarawak & Ors*)\(^65\) the defendant attempted to raise the ground of official secret documents to prevent inspection of the documents of the Department Board of Inquiry Report.\(^66\) In this case, as a result of an explosion and fire in the premises occupied by the 4th defendant, the plaintiff’s husband suffered severe burns and died. The defendant argued that firstly, since the document had been classified as “official secret” it could not therefore be disclosed. Secondly, by virtue of section 16A of the Official Secrets Act, the certificate issued was conclusive evidence of the Document being an official secret. Section 16A states:

> certifies that such disclosure would not be prejudicial to the public interest, then the officer shall disclose the communications

\(^62\) [1978] 2 MLJ 146.

\(^63\) The Federal Court adopted the view given by the House of Lords in *Conway v Rimmer* [1968] AC 910. There it was unanimously held that the Minister’s discretion as to the effect of disclosure was not to be accepted as conclusive and that it was for the courts to inspect the documents in question privately in order to determine whether public interest in suppressing them outweighed the interests of the parties to the proceedings and the general public.

\(^64\) See also *Wix Corporation South East Asia Sdn Bhd v Minister for Labour & Manpower* [1980] 1 MLJ 224.


\(^66\) The report contained Findings of the Board, notes of interviews, relevant correspondence and documents, photographs and diagrams.
A certificate by a Minister or a public officer charged with any responsibility in respect of any Ministry or any public service or the Menteri Besar or the Chief Minister of a State or by the Principal officer in charge of the administrative affairs of a State certifying to an official document, information or material that it is an official secret and shall not be questioned in any court on any ground whatsoever.

Richard Malanjum J viewed section 16A as not intended to prohibit the admissibility in the Court of Law of a document certified as an official secret. It is only to oust any action directed to question the reason or ground for the classification of a document as an official secret. The judge stated that it is entitled to invoke section 162(2) of the Evidence Act to determine the admissibility of the documents. The learned judge also referred to a passage of Raja Azlan Shah’s judgment in the *BA Rao* case where his lordship opined that information on government affairs is somewhat ambiguous. His lordship said:

"While it is clear that the final decision in all circumstances rests with the court, and that the court is entitled to look at the evidence before reaching a concluded view, it can be expected that categories of information will develop from time to time. It is for that reason that the legislature has refrained from defining “affairs of State.” In my opinion, “affairs of State”, like an elephant, is perhaps easier to recognise than to define, and their existence must depend on the particular facts of each case.

The protection of immunity for government documents from disclosure could be waived by the act of the government officer tendering the said documents into court.

d. **Printing Presses and Publications Act 1984**

The Printing Presses and Publications Act (‘PPPA’) is another beautiful maze of right turns and dead ends for the media organisation, which inhibits the dissemination of information and participation in discussion of important public interest issues. Indeed it is unfortunate that the Malaysian Supreme Court chose a literal interpretation when faced with a constitutional challenge to the validity of section 8A of the PPPA. Having

---

67 It is not per se correct to say that once a certificate has been issued certifying that a document is an official secret it is completely excluded from being disclosed in court. At page 6 of the unreported decision, p.44.

68 S.162(1) and (2) Evidence Act 1950 reads:

(1) A witness summoned to produce a document shall, if it is in the possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

(2) The court, if it sees fit, may inspect the document unless it refers to affairs of States, or take other evidence to enable it to determine its admissibility.

69 See n. 42, at p 150.

70 *Public Prosecutor v Datuk Haji Sahar Arpan* [1999] 3 CLJ 427.

71 Act 301, 1984.

72 Prior restraints on publication are abundant in the Act. Restriction on owning or possessing a printing press s.3 and s.4 to license requirements s.6.

73 S. 8A reads:

(1) Where in any publication there is maliciously published any false news, the printer, publisher, editor, and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to
compared article 19(1) of the Indian Constitution and found the absence of a reasonable restriction condition under article 10(2)(a) in the Malaysian Constitution, the Supreme Court declared through a judgement given by His Lordship Edgar Joseph Jr SCJ that:

When infringement of the Right of freedom of speech and expression is alleged, the scope of the inquiry is limited to the question whether the impugned law comes within the orbit of the permitted restrictions... if the impugned law, in pith and substance, is a law relating to the subjects enumerated under the permitted restrictions found in CL 10(2)(a), the question whether it is reasonable does not arise; the law would be valid...

The Home Minister may in his absolute discretion prohibit as well as impose conditions on the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of publications. The grounds for exercising this discretion are:

1. prejudicial or likely to be prejudicial to:
   a. public order,
   b. morality,
   c. security;
2. likely to alarm public opinion;
3. likely to be contrary to any law;
4. prejudicial to or likely to be prejudicial to:
   a. public interest or,
   b. national interest.

Public interest is not defined and it is a vague concept. National interest could perhaps often be equated with the interest of the ruling government. These are among the bases to prohibit dissemination of information by the media. The information albeit false or otherwise does not filter down through to masses. It is unknown clearly on what basis

imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

For the purposes of this section, malice shall be presumed in default of evidence showing that prior to publication, the accused took reasonable measures to verify the truth of the news.

No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

PP v Pung Chen Choon [1994] 1 MLJ 566.
Ibid, at p 575.
S. 7(1) PPPA, substituted the old s. 7(1) under s. 3 of the Printing Presses and Publications (Amending) Act (Act A684/87) which came into effect on 8.1.1988.
The publication that contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which then falls under the descriptions of restrictions. S. 2 PPPA states that "publication" includes –
(a) a document, newspaper, book and periodical;
(b) all written or printed matter and everything whether of a nature familiar to written or printed matter or not containing any visible representation;
(c) anything which by its form, shape or in any manner is capable of suggesting words or ideas; and
(d) an audio recording.

This ground replaced 'prejudicial to the relationship with any foreign country or government'.
under the PPPA that the publication of the popular opposition mouthpiece *Harakah*\(^{79}\) was restricted to twice monthly in March. It is truly sad that the government chose to take this action as the public is again denied of an alternative view and indeed perhaps a truer picture of what is going on.\(^{80}\) John Stuart Mill's argument of a marketplace of ideas theory where all ideas are exposed and letting the public decide which is the better or true argument is totally ignored in this instance.\(^{81}\)

e. **Sedition Act 1948**\(^{82}\)

The significant point regarding freedom of information under this legislation is the insertion of an innovative definition of seditious tendency in the aftermath of the May 13\(^{th}\) racial riots, which had also severely restricted the access to information in parliament. The Emergency (Essential Powers) Ordinance 1970\(^{83}\) brought in a seditious tendency definition not requiring the tendency of causing hatred or contempt towards the Ruler or Government;\(^{84}\) alteration of any lawfully established matter or government;\(^{85}\) hatred or contempt against the judiciary;\(^{86}\) disaffection or disaffection amongst subjects;\(^{87}\) ill-will and hostility between different races.\(^{88}\) Thus, it is a seditious offence by the mere act of raising for discussion sensitive issues without even considering the motives\(^{89}\) behind it, even in Parliament.\(^{90}\) Section 3(1)(f) states that it is a seditious tendency to question\(^{91}\) any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III\(^{92}\) of the Federal Constitution or Article 152\(^{93}\), 153\(^{94}\), or 181\(^{95}\) of the Federal Constitution. In *Mark Koding v PP*\(^{96}\) the

\(^{79}\) The formerly twice weekly edition newspaper of PAS ('Partai Islam Malaysia').

\(^{80}\) It was reported albeit in a very small column, that 200 people held a protest at the National Mosque, against the government for restricting the publication of the PAS newspaper *Harakah*. Led by two speaker, they criticised the move saying the government is not exercising freedom of speech and the tabloid, according to them, was merely stating the truth about what was happening in the country. Unnamed source, 'Protest against decision on Harakah', *The Sun*, Kuala Lumpur, March 12, 2000.

\(^{81}\) Per Holmes J in *Abrams v United States* (1919) 250 us 616, 630: '... the ultimate good desired is better reached by free trade in ideas, that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes can safely be carried out.

\(^{82}\) Act 15 (Revised 1969).

\(^{83}\) PU(A) No. 45/1970.

\(^{84}\) S. 3(1)(a).

\(^{85}\) S. 3(1)(b).

\(^{86}\) S. 3(1)(c).

\(^{87}\) S. 3(1)(d).

\(^{88}\) S. 3(1)(e).

\(^{89}\) S. 3(3). 'The intention of the accused when he made the speech and used words which are alleged to be seditious is not material or relevant for it is provided in section 3(3) of the Sedition Act that the intention of the speaker shall be deemed irrelevant if in fact the words have a seditious tendency'. Per Ajaib Singh J. in *PP v Oh Keng Seng* [1979] 2 MLJ 174 at 177.

\(^{90}\) *PP v Mark Koding*, *Mark Koding v PP* [1982] 2 MLJ 120.

\(^{91}\) However questioning the implementation of these special matters is allowed as opposed to questioning the existence of the rights guaranteed by it. This is stated under s. 3(2).

\(^{92}\) On citizenship matters.

\(^{93}\) National language is the Malay language and the protection on the teaching and learning of other languages.
Federal Court held that the amendment to the Sedition Act and to Article 63\(^97\) of the Constitution have validly limited freedom of speech in Parliament. Under Article 63(2) provides for privilege of free speech to members of the legislature. However Article 63(4) states the non-application of the privilege to offences under laws passed under clause (4) of Article 10 or offences under the Sedition Act as amended by the Emergency (Essential Powers) Ordinance\(^98\). It reads:

Clause (2) [of art 63, providing for immunity for a member of Parliament for anything said by him in the House] shall not apply to any person charged with any offence under the laws passed by Parliament under CL (4) of art 10 or with an offence under the Sedition Act, 1948, as amended by the Emergency (Essential Powers) Ordinance No 45/1970.

This constitutional provision seriously affects the quality of debate and discussion in parliament hindering the public's access to information via their elected representatives. What is interesting about Mark Koding's case was that the motive for arguing the abolishment of Chinese and Tamil schools in his maiden speech in Parliament was to eradicate the problem of racial polarisation. If these different medium of instruction schools continued to exist providing different streams of education along racial lines (by virtue of the medium in a particular mother tongue language) would in time further polarise the different races. Notwithstanding this crucial foresight, Mark Koding, and anyone else who dares point out sensitive matters,\(^99\) was silenced by the Sedition Act.

Section 4 provides the offences of committing or attempting or conspiring acts which if committed have a seditious tendency;\(^100\) uttering seditious words;\(^101\) printing, publishing,\(^102\) selling, distributing, reproducing seditious publications,\(^103\) importing seditious publication\(^104\). The punishment for a first offence is a fine not exceeding RM5,000 or imprisonment to a maximum of 3 years, whilst subsequent offences are liable to imprisoned to a maximum of 5 years. Having possession of a seditious publication is also an offence.\(^105\)

---

\(^94\) Reservation of quotas in respect of services, permits, etc., for Malays and natives of the States of Sabah and Sarawak.

\(^95\) Guarantee of Rulers' sovereignty, powers and jurisdiction.

\(^96\) [1982] 2 MLJ 120.

\(^97\) Constitution (Amendment) Act 1971 (Act A30).

\(^98\) No. 45/1970.

\(^99\) Well known members of opposition parties Karpal Singh (Democratic Action Party) and Marina Yusoff, vice-president of Parti Keadilan Nasional were arrested under the Sedition Act. See 'Karpal's arrest a political move, charges Kit Siang' The Sun, Kuala Lumpur, January 14, 2000.

\(^100\) S. 4(1)(a).


\(^103\) S. 4(1)(c).

\(^104\) S. 4(1)(d).

\(^105\) S. 4(1). Punishment for first offence is fine maximum RM2,000 or imprisonment up to a maximum of 18 months. Subsequent offences are punishable with imprisonment of up to maximum 3 years.
f. Police Act 1967¹⁰⁶

The public is also hindered from obtaining information when assemblies or gatherings are restricted and prevented from being held. Section 27 gives the police power to regulate conduct¹⁰⁷ in public places, to preserve public order and security, including assemblies, meetings and processions. If permits are not obtained or a licence condition is not complied with, offences of unlawful assembly under section 27(8) would be committed.¹⁰⁸ Our right to assemble peaceably without arms¹⁰⁹ is frowned upon and is many times seen as an opportunity to behave destructively.¹¹⁰

g. Commissions of Enquiry Act 1950¹¹¹

Commissions of enquiry appointed to conduct enquiries on have the power to exclude the public¹¹² and the press¹¹³ from their proceedings.¹¹⁴ The findings of the enquiries are not generally made available and it is up to the Commission’s discretion whether to do so.¹¹⁵ The lack of information relayed to the public upon discoveries of abuses, scandals or corruption is worse when there aren’t any commissions of enquiry set up. The authorities have to be prodded to make the investigation or enquiry reports by ministry departments public.¹¹⁶ Usually it is a mere matter of reporting to the Heads of Department or to the Minister and later some bits of information will be released to the press. The reports are of course official secret documents and official information unless unclassified.¹¹⁷ Commission reports are not binding on the government.

¹⁰⁶ Act 344.
¹⁰⁷ By issuing licences and making conditions in them.
¹⁰⁸ Penalty of fine between RM2,000 to RM10,000 and imprisonment maximum 1 year. Madhavan Nair v PP [1975] 2 MLJ 264; Lau Dak Kee v PP [1976] 2 MLJ 229; Chai Choon Hon v Ketua Polis Daerah Kampar & Govt of Malaysia [1986] 2 MLJ 203; P Patto v Chief Police Officer, Perak & Ors [1986] 2 MLJ 204.
¹⁰⁹ Article 10(1)(b) Federal Constitution.
¹¹⁰ See report headlined ‘PM thanks those who did not take part in demo- ‘This will help ensure peace and progress’, The New Straits Times, Kuala Lumpur, April 18, 2000. The Prime Minister was quoted to have said , ‘they know they have representation in Parliament and State Assemblies which are the best places for them to voice whatever opposition they have’.
¹¹¹ Act 119 (Revised 1973).
¹¹² S. 8(g)(i).
¹¹³ S. 8(g)(ii).
¹¹⁴ Unless their they are directed to do otherwise under their terms of reference.
¹¹⁵ S. 22.
¹¹⁶ The Democratic Action Party through its national chairman Lim Kit Siang urged the Youth and Sports Minister to make public the inquiry report into the million ringgit South Pole parachute jump scandal without delay to avoid parliamentary censure. ‘Make report on jump issue public’ The Sun, Kuala Lumpur, January 31, 2000. The disastrous Naval Training Complex (PULAREK) scandal is another example of public cover up where the Ministers in the Works Ministry and the Defence Ministry kept evading responsibility. No departmental report was made public and in the end the tender process of awarding projects to the cheapest tender was blamed for the shoddy work. See Transparency International in Letter to the editor column, The Star, Kuala Lumpur, April 22, 2000.
¹¹⁷ See s.2 and schedule in the Official Secrets Act 1972.
h. Local Government Act 1976

This legislation provides for the establishment, functions, powers and duties of the local government body having responsibility to manage the public amenities within a particular district or town area. There are some provisions that allow the public access to information on their operations therefore allowing public scrutiny on their actions and decisions. Such as in s.23 that states local authority meetings are open to the public and the press unless otherwise decided by the authority. However meetings of local authority committees are not open to the public and it is during these meetings that important decisions are made. Minutes of all local authority proceedings are required to be kept and are open to inspection and copying by ratepayers without a fee.

Again in contrast, minutes of committee meetings are not open to inspection. Thus it seems the avenue of access is meaningless because most of the discussion and decisions on substantive issues are made at committee meetings.

i. Defamation Act 1957

The unchecked use of defamation actions and the award of excessive damages to stifle media reporting on public interest issues vis-à-vis affecting public personalities, can be construed as restricting access to information. Recently the Minister in charge of legal affairs in the Prime Minister’s Department gave his view that it was only until the common law on damages has been overridden by local statute would the disparity between damages for personal reputation and loss of life and limb be reduced.

118 Act 171 (‘LGA’).
119 S. 27(3) LGA.
120 Shad Faruqi views the practice of excluding the public and the press from their meetings as improper and objectionable whereupon the local authorities have the discretion under s.23 to do so. Especially considering their practice of ratifying pre-Council Committee decisions briefly without discussion. Full council meetings are kept very short and are often adjourned to transact important business in committee meetings in which the public is prohibited. See Shad Saleem Faruqi, ‘Principles and methods of enforcing accountability in the Malaysian public sector’ in Goethe Institute, Seminar on Ethics & Economic Development (1993), at page 35.
121 Act
122 The Minister in charge of legal affairs has stated that he will bring this issue to the government’s attention and he hoped that the Bar Council, Attorney-General’s Chambers and the Coordination and Legal Committee of the Prime Minister’s Department can research the issue before any form of review is considered.
124 Common law is the rules of practice and common sense that has evolved over the centuries in England and that has been adapted in Commonwealth countries with local modifications to suit local circumstances.
125 Restrictions are placed on awards for loss of life and limb while awards in defamation cases are based on common law principles which give judges more discretion.
PART III  Practice of freedom of information

a. Reform of the Civil Service

Measures to increase information exchange between the government and the public have been implemented. One such measure is the Malaysian Civil Service Link (MCSL), the first public sector online information system developed in 1994. Its purpose was to assist users to obtain government information and promote public domain databases as well as networking of government agencies. Users need to install special communications software in their PCs before they could access the CSL. The assistance of the IT division in the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) to install the software. Thus, in order for the system to work, firstly, one has to equip oneself with the necessary facilities and software. Secondly, the relevant government agencies must provide information to the CSL and ensure that the information is always accurate and up-to-date. In-house mechanisms and procedures to achieve proper information storage and management must be continuously monitored. Apart from the CSL, government agencies and state government websites have also been created to provide information and opportunity for public feedback. However, the maintenance of updated information on these government websites has not been adequate nor efficient. There had been many reports of poorly managed websites with inadequate and backdated information published in the media. The opposition leader had alerted their weaknesses time and again but only recently the Ministers concerned have opened their eyes to the appalling situation.

One of the flagship applications in the Multimedia Super Corridor project is the implementation of the E-Government that is internetworking the whole government administration, its ministries, agencies and departments. Thus the administration of the

---

126 Sumali Amat, ‘Transforming Access to Government Information’ in Muhammad Rais Abdul Karim (ed), Reengineering the Public Service- Leadership and Change in an Electronic Age (1999) Peladuk Publications, Kuala Lumpur, 229, at 230. These information contained in five types of databases which are:

1) ministry - profile of government agencies covering matters such as objectives, functions, incentives and exemptions, laws and regulations, publications (information contained in brochures, pamphlets, forms, annual reports, guidelines and books) licences and permits;
2) services - information on services provided, prerequisites, forms payments, names and contact numbers of contact persons;
3) public service news - covering information on tenders, public news and CSL news;
4) tariffs - information on import duties, export duties and sales tax;
5) statistics - information on commodities and trade statistics.


128 A central text retrieval system with remote telephone dial-in for system access. Allows only 12 concurrent users to access the CSL at any one time. Sumali Amat at page 230.


130 The essential components in this plan are:
nation will develop hand in hand with new technology. Nevertheless it is submitted that
the introduction of E-Government would not easily transform the stiff and rigid
bureaucracy\textsuperscript{131} to become more transparent, open and accommodating as experienced by
daily visits to any public service counter. It is just that we will no longer need to face the
bureaucracy face to face\textsuperscript{132}, however the attitudes will still remain the same.\textsuperscript{133}

b. Tender Process and Environmental Impact Assessment Reports

The tendering of major projects and supply contracts is one of the best kept
secrets in Malaysia.\textsuperscript{134} Very seldom is the public adequately consulted on major
infrastructure project that suddenly sprout behind their backyards or even the fact that
their land would be compulsorily acquired. One amusing instance of this secrecy was the
revelation by the Sabah Deputy Chief Minister who is also the Minister of Infrastructure
Development.\textsuperscript{135} Apparently the Deputy Minister said that both neither the Government
(state) nor his ministry were a party to the proposed Pan-Borneo railway line project and
the State Government totally disclaimed any knowledge of being a party to the
Memorandum of Understanding.\textsuperscript{136}

\begin{itemize}
\item effective individuals – personal multimedia computing will provide government employees the tools
they need to dramatically enhance tasks and learning efficiency;
\item High performance teams – workstations can be combined into workgroup computing environments to
create high performance teams. Tools for workgroup collaboration, information handling, time
management and decision making can lead to new team-based structures and high performance;
\item Integrated government – enterprise-wide government information infrastructure based on standards
set the precondition for the new organisational structures that cut across traditional government lines.
Government-wide information infrastructure also disable intermediation or middle layers of
duplication;
\item Open government – as governments reach out electronically, delivering services to their customers, the
value of the service transformed. Documentation is available online, proposals are submitted online,
proposals are submitted online, funds are dispersed using Electronic Data Interchange (EDI) and information about projects is made
available to the public electronically; and
\item Interconnected government – as more and more communication, information and transactions move onto
the Net, governments can generate new processes for citizen participation through efforts such as electronic
brainstorming and electronic voting. See Mohd Adzman Musa and Osman Abdul Aziz, ‘Building a
Government Infrastructure’ in Muhammad Rais Abdul Karim (ed), \textit{Reengineering the Public Service –
\end{itemize}

\textsuperscript{131} See report by Carolyn Hong, ‘Net security panel set up – Need to consider many implications of
electronic government’ \textit{New Straits Times}, Kuala Lumpur, April 14, 2000. The Deputy Prime Minister was
reported as saying that an electronic government had many implications on the access to information
including official secrets, as well as the number of people using the government’s services. He also said,
“we must be confident that the data is secure”.

\textsuperscript{132} Simple government transactions such as driver’s licence renewal, tender applications and compounding
payment can be made electronically.

\textsuperscript{133} Including the Official Secrets Act 1972.

\textsuperscript{134} With the help of the OSA. See \textit{PP v Lim Kit Siang} [1979] 2 MLJ 37; \textit{Lim Kit Siang v PP} [1980] 1 MLJ
283.

\textsuperscript{135} See article in The New Straits Times headlined ‘State unaware of RM30 billion Pan-Borneo railway line

\textsuperscript{136} However a spokesman for one of the companies involved in the project stated that reports of the
proposed project had been submitted to the Chief Minister’s office and to the Infrastructure Development
In regards the requirement of making environmental impact assessment ('EIA') reports before embarking on major activities affecting the environment, public input and views on the proposed project are often sidelined. In fact, a project could still carry on in spite of the EIA report not yet being approved. Even worse, a potential environmental disaster and ecological destruction can easily be swept under the carpet by simply referring to an earlier approved EIA report that does not indicate the exact area of the project, as it was made prior to subsequent changes in the proposed project area. It is truly tragic to have to sacrifice our beautiful environment all for the sake of development, when perhaps there wasn't even a need for that development.

c. Local Authorities Meetings

When it comes to environmental issues for instance the indiscriminate dumping of toxic waste, the public is left out of the true facts. There is no mechanism to enable the public to inquire, complain and seek redress to the authority concerned. Findings on the health risks on the aftermath of discoveries of indiscriminate toxic waste dumping are suspect and vague.

d. Legislative Proceedings

The public expects to exercise influence over the executive and an avenue for airing their grievances through their representatives in parliament. Information about Ministry. He further explained that the Chief Minister had directed the Infrastructure Development Ministry to prepare a detailed report for the Government on the project.

---

137 In the Bakun litigation, the Court of Appeal held that since land and rivers was a State matter (falling under the List II - State List in the 9th Schedule of the Federal Constitution), the provision excluding public participation in the making of the EIA report under the Natural Resources & Environment Ordinance Cap 84. (1958 Ed.) is a valid provision (although the Federal Environmental Quality Act 1974 (No. 127) requires public participation). *Kajing Tubek & Ors v Ekran Bhd & Ors* [1996] 2 MLJ 388; *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors & Other Appeals* [1997] 3 MLJ 23.

138 It has been discovered that the highland Simpang Pulai-Lojing-Gua Musang-Kuala Berang third East-West link under construction is causing heavy silting and erosion of the fragile highland terrain. Nine kilometres of the road being built encroaches into the Ulu Kinta catchment area and the Sungai Raya catchment. In early February, the Sungai Kinta brought down a torrent of mud causing the Ulu Kinta water treatment plant to be shut down as machinery was clogged with mud. The water treatment plant provides water supply to 40% of the population of Ipoh city. Not only was there no official investigation made and what more for the report (if any) to be released to the public. Following the incident, the Works Minister said that it was excessive rain (!) that caused unfiltered flood water to enter the treatment plant. See report by Tan Cheng Li, 'Steep stakes' *The Star*, Kuala Lumpur, March 14, 2000.

139 Edward Rajendra, 'Water near quarry free from toxins - Sawdust and wood chips at dumpsite had helped absorb harmful chemicals, tests show' *The Sun*, March 12, 2000. Apparently the findings were disclosed by a company which was the subsidiary of a company engaged to conduct cleaning up of toxic material, which had conducted tests on water samples taken near the illegal dump site. It was discovered that hundreds of drums of scheduled wastes have been illegally dumped at a disused Public Works Department quarry over the past 14 years.
executive decisions, actions, policies and spending can be gleaned through the proceedings in parliament. This is implemented through several methods:

- doctrine of collective and ministerial responsibility
- question time in Parliament and State Assemblies
- Debates and Motions
- Committees of the Legislature
- Constituency Work by Members of Parliament and Assemblymen

However due to the electoral history Malaysia and the majority of composition of members of parliament belonging to one party, these tried and tested Westminster techniques of accessing information (and democratic participation) rarely achieve concrete changes in government policy. Issues of major concern are ventilated in the legislature yet, due to excessive management of proceedings\textsuperscript{140}, they do not receive the necessary attention and action that they deserve.\textsuperscript{141}

PART IV Recent Developments

The opposition and the government have been in a war of words with the government having the upper hand. The other side has had to resort to using their own mouthpiece such as Harakah and the independent Ekslusif. It is argued that the mainstream media is a propaganda machine for the ruling government. Under the marketplace of ideas theory, this can be considered as propagating one of many views albeit having a tendency to portray one side more favourably than the other. Consequently, left to the market forces, the more powerful and wealthy media albeit controlled by certain factions would have more channels to air their views\textsuperscript{142} and the minority views (who happen to have less resources) will have less opportunity to air their views.\textsuperscript{143} The lack of various viewpoints or access to different kinds of information is

\textsuperscript{140} Accusations that the House Officers (Speaker and Deputy Speaker) exercising favouritism to government MPs have been reported in the press. See Esther Ng, ‘Whose turn is it to speak then?’, \textit{Sunday Star}, Kuala Lumpur, April 16, 2000.

\textsuperscript{141} Reports of poor attendance in sittings and lack of quorum by the ruling party MPs are also rampant. The Parliamentary Secretary of the Ministry concerned usually responds to questions and most of the time they are at a lost of the real circumstances of the matters raised. See comment by Foo Yee Ping, ‘Move that makes all look bad’, \textit{Sunday Star}, Kuala Lumpur, April 23, 2000.

\textsuperscript{142} It has been pointed out that political parties belonging to the ruling coalition own most of the mainstream media, either directly or through nominees, including print and broadcasting hence having control over editorial policies. See Edmund Terence Gomez and Jomo K.S., \textit{Malaysia’s Political Economy: Politics, Patronage and Profits} (2\textsuperscript{nd} ed) (1999) New York, Cambridge University Press; Edmund Terence Gomez, \textit{Politics in Business: UMNO’s Corporate Investments}, (1990) Kuala Lumpur, Forum Enterprise; Edmund Terence Gomez, \textit{Corporate Involvement of Political Parties in Malaysia}, (1993) Kuala Lumpur.

\textsuperscript{143} Lack of opportunities and media access have caused the opposition to seek other unconventional venues and forums exposing them to more attacks from the government, such as using dirty tactics by manipulating religion for their own agenda. See Cik Embun Majid, ‘Dollah to meet MBs, CMs, over misuse of mosques – Certain groups continue this act despite warnings, says Abdul Hamid’ \textit{The Sun}, Kuala Lumpur, January 31, 2000. The ongoing feud on the religious and political divide among the Malays
more acute when there are legal prohibitions on the media. These days there seems to be a haven for independent viewpoints and opposition content in the websites on the Internet. Newspapers on the Net such as malaysiakini.com and Harakahdaily.com give a breath of fresh news to the hungry public. Truly with the advent of the Internet and as it becomes more accessible to the public, it has somewhat liberated the people in their quest for more information. Nevertheless the impact of freedom of information on the Net is only miniscule compared to having a copy of the newspaper in your hands for only RM1.00 and watching the leader of the opposition’s counter statement on the news is also vital to providing information to the democratic citizen. Information technology literacy is still beyond the grasp of millions of others in Malaysia and it comes with a high price.

Apart from the opposition, the legal profession in Malaysia has time and again sounded the government to remove all restrictions limiting the full exercise of the right to freedom of speech and expression. However, to date, matters still remain the same. Nowadays, the government speaks of K-economy or Knowledge Economy and even K-Society, yet it is clear that the existing civil liberties or basic rights of the citizen is not upheld nor is the citizen able to exercise them as he would like. Apparently new rules of transparency for the public and private sector under the new K-economy Masterplan were being planned with new regulations for disclosure to shed the sult (secrecy) syndrome. What this means is unclear since the full details of this masterplan had not been released to the public yet. Yet, recently it was reported in the media that the government would look into strengthening the security procedures of public documents and the like in the wake of recent cases involving highly classified papers.


See discussion in Part II.

A very popular site is the laman reformasi which is the mouthpiece for the reformasi movement.

S. 3(3) of the Communications and Multimedia Act 1998 (Act 588) declares that the provisions of the legislation shall not be construed as permitting the censorship of the Internet.


The K-Economy Masterplan is to replace the Vision 2020 longterm development plan. The Prime Minister announced in his keynote address at the Second Global Knowledge Conference held in Kuala Lumpur recently (8th March 2000) that Malaysia will take a second leap after Vision 2020 by adopting the “Strategic Initiative One” to reinvent Malaysian society through the K-economy Masterplan. The K-Economy Masterplan would for the entire nation and for every citizen encompassing a policy of brain-gain infusion and a reduction of unskilled foreign workers.

By the time the public is told, it is a mere announcement or launching of something which is going full steam ahead as decided by the authorities. The Prime Minister is reported as saying that the national strategic plan would be adopted by September, with the whole process of national consultation, brainstorming, drafting and national mobilisation completed in 18 months. Leslie Lau, ‘Face of Malaysian society will change, says PM’, The Star, March 9, 2000.

See report by Philip Golingai, ‘Secrets Plug – Govt panel to check info leakages’ The Star, Kuala Lumpur, April, 2000. In March, Malacca Chief Minister Datuk Wira Mohd Ali Rustam said that staff of
PART V  Conclusion

Many countries especially in the Europe have moved towards a jurisprudence of wider access to information and a public right to information is considered integral to freedom to form informed opinion and communication. Iyer explains that the rationale for this is that ‘he who seeks information must have the right to secure it when he wants it, not at the whim or will or time of a minion of government.'

One can refer to the accepted universal standard of freedom of speech and expression that includes freedom of information contained in Article 19(2) of the Covenant on Civil and Political Rights which states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The words of the European Convention on Human Rights under Article 10 echoes the same sentiments. It seems that in Malaysia this call is unheeded, and it is truly sad for the Malaysian people in spite of the advances that has now been achieved by the nation. Although there is a major movement to shift the paradigm within the public sector by modernising and upgrading the civil service in its operations, information storage and services to the public, real changes are still missing. Overall lack of information, transparency and accountability is still felt by the nation. Censorship laws abound in this land of information for all. This scenario is anathema to any grand ambition of becoming a major communication, education and entertainment provider in the region. As pointed out by one writer,

If we want Malaysia to be a conduit for information to other nations around us, as long as we practise censorship we will lose out to any rivals who don’t. To censor information is to show a lack of regard for its integrity, for whatever reason. No society that does that can really call itself an information society.


153 However, Malaysians are generally quite tolerant of this situation, they do not resort to drastic actions, in spite of the clamour for change, more freedoms and investigations into corruption allegations as evidenced by the letters sent in to the letter to the editor column and demands by the opposition within and outside of Parliament. The few demonstrations held by Anwar’s supporters have simmered down and kept under wraps by the authorities with arrests and convictions for illegal assemblies.

154 A major obstacle to the film industry is the Cinematograph Films and (Censorship) Act 1952 (Act 35, Revised 1971).

155 Plans to build an e-village and entertainment studio within the MSC area was recently announced by the government.

In fact, informed decisions cannot be made without adequate information. It makes a mockery of our fundamental rights and liberties enshrined under Part II of our Federal Constitution if we are blocked from finding out the truth of what is out there and what is being done in the name of administration of the nation. With the current state of affairs in Malaysia, it is difficult to envisage in the near future, a right to information for the citizens of Malaysia to effectively participate in the governance of the country through their elected representatives of choice in Parliament.

It could be if there is more awareness among us regarding the need and importance of information, by this is meant all kinds of information not simply information technology know-how (of knowing how to switch on the word processor or logging on the Internet). We must wake up and realise that in spite of what the Government have told us, democracy is not merely exercised very five years by crossing a box in the ballot sheet. Bringing up dissent to the fore, openly discussing public interest issues and abuses of power is also democracy of the ballot box of which getting to the truth, receiving information on from all angles empowers us to make the right choices at the ballot box.

It is obvious that the existing laws need to be reviewed and major overhauls need to be done on the 'sudit' or secrecy mentality of these laws and within the civil service. Malaysians composing of mixed races, culture and people are essentially obedient and obliging. Bring on the doomsday storyteller of the racial riots of May 1969 and everyone will cringe with fear and panic. Come hither the Internal Security Act¹⁵⁷ and arrest all these party poopers who simply cry wolf on administration and good governance as well as cause alarm to everyone. No trials need be held as they are are known to be guilty because they dare speak up and cause commotion. So, we ourselves self censor and limit the flow of information, even to ourselves. Ensuring that the Asian economic tiger continues to roar seems to be more important.

Although everything seems gloomy yet do not despair. We now live in a new age and a more enlightened society. Possibly there is a light at the end of the tunnel. In spite of the numerous restrictions on our freedoms, slowly but surely with persistence and determination, change can be achieved. It helps too when from time to time, there are gentle pats and knocks made by influential quarters reminding all and sundry that criticism is not doom.¹⁵⁸ To get to the blue yonder may be arduous but it is still within the horizon.

¹⁵⁸ See report entitled, 'View criticisms positively, Sultan urges Tenaga staff' Sunday Star, Kuala Lumpur, April 23, 2000. The Sultan of Perak told the staff of a major electricity company to view criticisms in a positive and constructive manner and use them as the impetus to work harder for the country's development.