

**Keynote closing address by Dato' Seri Mohamed Azmin Ali, Menteri Besar of Selangor, at the forum entitled "Zooming in – an honest assessment of Freedom of Information (FOI) in Malaysia" on 25th July, 2016 at Bangunan Annex, Selangor State Legislative Assembly**

I would like to congratulate the Selangor Speaker's Office, YB Speaker Puan Hannah Yeoh and Ms. Cynthia Gabriel, founder of the Centre to Combat Corruption and Cronyism for jointly putting this forum together.

Thank you also for inviting me to give this closing address.

I would also like to thank the distinguished speakers for taking part in this event. There is no doubt that the views coming from your different perspectives will add greater depth and dimension to the discourse.

Nevertheless, I believe there are some fundamental points of convergence with regard to the principles behind freedom of information.

First and foremost is the principle that the nature of the work of public bodies demands a presumption in favour of disclosure. In other words, disclosure of information is – or should be – the default rule and not the exception.

To my mind, laws on freedom of information should be seen from the prism of public entitlement to access official information.

Seen in this light, freedom of information is, therefore, a right and not merely a privilege.

However, this does not mean that this principle operates at all costs and without exception. Certainly there will be situations where this freedom may not be fully accessible.

Nevertheless, it must be stressed that this is only for exceptional situations or cases. And refusal to provide information in such circumstances must be fully justified. The first principle remains clear: the onus lies on the public authorities to give the information sought.

In principle, therefore, freedom of information laws fulfil the demands of transparency and accountability in policy and decision-making but as this forum has shown, that is only the theory.

This is because to actually satisfy the demands of good governance, particularly transparency, many factors come into play, not the least of which is the test of implementation.

Then, there are other constraints to contend with such as Federal laws which operate against the flow towards greater transparency and accountability.

Taken together, the net effect is not only that the demands of transparency and accountability are not answered but that government service delivery also suffers.

In my last budget presentation before the Selangor State Assembly, I had stressed the paramount importance of accountability, transparency and good governance as being key to effective government service delivery.

Certainly, delivery cannot be separated from the fulfilling of the demands of freedom of information legislation.

This is quite apart from the saying that meaningful and effective participation in the democratic process presupposes a well-informed community.

Today, it is taken as obvious that transparency of the activities of public bodies forms part and parcel of the legitimate expectations of the people. But historically, it wasn't really that obvious – even in western democracies.

The famous quote by Supreme Court Justice Louis Brandeis that “sunlight is said to be the best of disinfectants” was said more than a century ago (in 1913).

Back then, citizens were relatively slow to fight corruption because they did not yet know enough about the situation. The media, which was essentially the printed press, was only starting to play a role in focussing on government or more correctly, misgovernment. Transparency and dissemination was a slow process.

Today, of course, we not only have the internet but the most powerful and most effective medium of information dissemination known as the social media.

I believe new forms or modes of communication will come about with the progress of time – and this will be sooner than later.

However, let us not jump to the simplistic conclusion that because of this, we are automatically far better off now in terms of transparency and freedom of information.

We still need to turn passive observers to active participants in the quest for greater transparency through freedom of information. There is no doubt that this forum and, I will add, the efforts by civil society organisations are jointly working towards that as well.

And we recognise that in this endeavour there are many obstacles along the way. As alluded to earlier, we have at the federal level existing legislative stumbling blocks and bureaucratic barriers.

Above all, there is “political will” by the powers that be not in favour of but against transparency and freedom of information. This is most unfortunate but this is the reality.

I share the concern about secrecy laws being used as a cover against freedom of information. The onerous Official Secrets Act represents the single greatest barrier to more transparency and accountability of government to its citizens.

In fact, as rightly pointed out, secrecy breeds corruption.

But even worse, employed as a pretext for arbitrary executive action, secrecy via the law is used as a weapon of oppression.

To underscore the systemic negative implications of secrecy, let me quote Jeremy Bentham who said:

“Secrecy, being an instrument of conspiracy, ought never to be the system of regular government.”<sup>i</sup>

Talking about conspiracy, it is still very fresh in our minds the announcement just a few days ago by the US Department of Justice concerning the 1MDB scandal.

I have said on previous occasions why we can no longer allow the authorities to keep on making excuses to justify the wall of silence on 1MDB. Or to give the song and dance about the matter being under investigation and because of that, no further comment may be made. This has to stop.

They say we should not make a mountain out of a mole hill because this is merely a civil suit. Now, this is really an insult. The truth is that it is NOT just a civil suit. It is a civil suit – to recover assets and illegal proceeds – but the suit is the culmination of the investigations that have yielded a chain of criminal acts. They point to two key words – corruption and kleptocracy.

And we know that trans-border money-laundering investigations will firstly yield civil actions for asset recovery with a great likelihood of being followed by criminal actions.

Just to recall how serious – and how scandalous this issue is – the US Attorney-General Loretta Lynch said that “the 1MDB officials treated the state investment fund like ‘a personal bank account’ and stole billions of dollars from the people of Malaysia”. Now, if this is not criminal, I don’t know what is.

The fact of the matter is that at long last, the effort and the resources poured in at the expense of taxpayers’ money, all these attempts at pulling wool over the people’s eyes, by the Najib administration have failed.

As LAUNCELOT says in *The Merchant of Venice*:

“Give me your blessing. Truth will come to light. Murder cannot be hid long—a man’s son may, but in the end truth will out.”

Yes, the truth is finally out on this mother of all scandals. There was indeed a conspiracy to defraud and launder billions of the taxpayers’ money. And the perpetrators specifically named in the actions by the Department of Justice are closely connected with those occupying the highest rungs of public office.

It therefore comes as no surprise that these are the very people who are the greatest stumbling block to our efforts to achieve greater transparency and freedom of information.

Indeed, if we had been able to put the freedom of information principle to actual use and set it to the real litmus test, surely, the shameful example of 1MDB and all its related fiascos would not have been allowed to drag on this far.

That the Official Secrets Act facilitates corruption is obvious enough. What is more troubling is that, with the shady agenda of those in power to shield their wrongdoings from public scrutiny, the law is also being used as a weapon of mass oppression.

This is possible because the powers that be are hell-bent on resisting and opposing our drive for transparency and freedom of information.

That the Official Secrets Act facilitates corruption is obvious enough. What is more troubling is that, with the shady agenda of those in power to shield their wrongdoings from public scrutiny, the law is also being used as a weapon of mass oppression.

What we are seeing is abuse of power and executive authority to an extent that has never been seen before.

It is a classic case of the arrogance of power. It is pathological. What we are seeing therefore are the symptoms of an administration which places itself above the law and treats with contempt the people's demands for transparency and accountability.

### Moving forward

In light of the circumstances that we are in and looking at the weaknesses, we need to boost the infrastructure of the FOI Enactment, increase numbers of personnel, train information officers and allow for greater public participation in state affairs.

We need to make Selangor an exemplary state by safe guarding people's right to know. In this regard, I acknowledge there are calls for the amendment of restrictive provisions in the law such as third-party consent on issues related to them.

This cannot be done unilaterally without consideration to the confidentiality requirements and strategies of entities which are business driven and are not supported by public funds.

In this regard, we have to balance between freedom of information and our broad state economic philosophy of being pro-business. While we must invoke the disclosure presumption on public bodies and authorities, we cannot thrust down the throats of private entities and force them to disclose against their proprietary concerns. That would be a new kind of fascism.

Having said that, I would like to reiterate that the Selangor government welcomes and looks forward to forging a closer working relationship with civil society organisations to better provide access to information and put an end to the culture of secrecy in state administration.

Our Smart Selangor initiatives will come to naught if we do not set the bar for transparency and openness at the level that fulfils the legitimate expectations of the people. More open government solutions must therefore be the culture.

Thank you.

[End notes](#)

---

<sup>i</sup> Jeremy Bentham, *On Publicity from The Works of Jeremy Bentham* volume 2, part 2 (1839).