

23 October 2006

Mr. James Provenzano
Co-Chair
Public Information and Documentation Oversight Panel
United Nations Development Programme
One United Nations Plaza
New York, NY 10017
USA

Dear Mr. Provenzano,

I am writing with reference to your letter of 9 October 2006 refusing Professor Roberts' request for documents relating to the development of the communications strategy for the 2004 Arab Human Development Report. In this 'decision' on his appeal, you drew a distinction between documents and information, and refused access to documents other than those already made public. You then appended a summary of some 300 words providing an outline of the procedure followed in developing the aforementioned Report.

The effect of your decision is to deny Professor Roberts access to a single UNDP-held document or part thereof, from among the doubtless numerous documents the organisation holds that fall within the scope of his request. It may be noted that the summary you provided – which you presumably view as information rather than a document – in no way satisfies Professor Roberts' request.

ARTICLE 19 considers the UNDP's treatment of Professor Roberts request to fall well below even a minimum threshold of acceptability in relation to transparency and to be totally at odds with the UNDP's stated commitment to openness, as well as its efforts to promote access to information at the national level.

Procedurally, the letter fails even to state the grounds upon which access has been refused – although one might hazard a guess that it is paragraph 15(b) of the 1997 Public Information and Documentation Disclosure Policy. Providing reasons for refusing requests is common practice at the national level and a minimum condition for transparent processing of requests. Obviously the absurd delay, whereby it took more than two years to deal with the appeal, was also highly problematical (see our letter of 6 February 2006 to David Morrison on this).

Far more seriously, the decision effectively robs the Policy of substance and is completely at odds with its opening statement, to the effect that it is "intended to ensure that information concerning UNDP operational



6-8 Amwell Street
London
EC1R 1UQ
United Kingdom
Tel: 44 20 7278 9292
Fax: 44 20 7278 7660
Email: info@article19.org
Web: www.article19.org

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activities is made available to the public in the absence of a compelling reason for confidentiality.” The Policy also states explicitly that all *documents* are governing by the presumption of disclosure, subject to the exceptions (paragraph 6).

It is legitimate to protect certain internal documents, for example because disclosure would harm the free and frank provision of advice or the success of a proposed policy due to premature disclosure. It is not possible that the refusal to disclose all of the information requested by Professor Roberts can be justified by reference to a legitimate confidentiality interest.

It would appear, rather, that the decision interprets the exception noted as applying to all internal documents, regardless of whether or not a ‘compelling reason for confidentiality’ exists. ARTICLE 19 is convinced that this must be wrong and urges the Panel to review its reasoning. Otherwise, we would urge the UNDP to rewrite its Policy so as to bring it into conformity with democratic practice in this area.

ARTICLE 19 has long been active in promoting access to information. Our early work focused on national laws and regulations on access to information. We have become convinced, however, of the parallel need for openness at the inter-governmental level. In common with a growing number of groups, we see access to information held by public bodies – national and international – as a fundamental human right.

I attach, for your interest, the *Transparency Charter for International Financial Institutions: Claiming our Right to Know*, developed by the Global Transparency Initiative (GTI), of which ARTICLE 19 is a founding member. Although the Charter, consistently with the GTI’s mandate, is formally limited to financial institutions, similar principles apply to all inter-governmental organisations. It should be readily apparent that your decision in the Roberts case signally fails to respect the rules on exceptions, set out in Principle 5 of the Charter.

I personally applauded the UNDP for taking an early lead in this area, and described its policy in a comparative book on the subject I wrote for UNESCO in 2003 (*Freedom of Information: A Comparative Legal Survey*, available on the UNESCO website). Unfortunately, the manner in which the UNDP has dealt with Professor Roberts’ request suggests my optimism was not warranted.

I look forward to hearing from you about how you propose to address what I hope you will agree is a fundamentally unsatisfactory state of affairs.

Yours truly,



Toby Mendel
Law Programme Director